

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES:::::ASSAM:::::GUWAHATI

ORDER

Dated Dispur, the 21st June, 2016.

No. CTS-84/2005/103 - This application is filed by M/s. NTPC BHEL Power Projects Pvt. Ltd., Guest House no.1, Namrup Thermal Power Station, P.O- Namrup-786125, seeking clarification under section 105 of the AVAT Act, 2003 as to whether for erection and commissioning works, VAT is payable or not when there involves no transfer of property in goods (either in same form or otherwise).

The questions raised by the querist are:-

- a. Whether there will be any liability to pay VAT under the Assam Value Added Tax Act, 2003, in respect of contract of services namely, Erection and Commissioning of Equipments including Performance Guarantee Test, wherein no transfer of property in goods is involved in execution of such Service Contract?
- b. Whether any tax is liable to be deducted at source under Section 47 of the said Act by the contractee on payment against the above service?

The application in Form 76 filed by the petitioner is found in conformity with the provision of Rule 57 of the Assam Value Added Tax Rules, 2005, and accordingly it is accepted for issuance of clarification as sought for by the petitioner under section 105 of the Assam Value Added Tax Act, 2003.

The petitioner is represented through their Authorised Representative Manoj Kumar Singha, FCA, Tinsukia and Gauri Shankar Agarwal, DGM, Corporate Finance who contended that the petitioner have been awarded with a contract for Erection and commissioning of equipments for Rs. 376649100/- by BHEL PSER vide amendment No. 1 vide Doc No. PSER:SCT:304:09 (Rev 01), Ref No: BHEL: PSER: SCT: NAM – M1025:09 WO: AMEND: 4747 dated 13.11.2015. From the scrutiny of the above contract order, it is found that the scope of work in brief covers receipt, transportation to site, storage, preservation and conservation, erection, testing, commissioning, trial run of all equipments at site including equipments supplied by BHEL, test on completion, putting into commercial operation, Performance Guarantee Test as required for erection and commissioning of 100 MW gas based CCCP, Namrup Replacement Power Project, Phase-1, Assam.

The Authorised Representative also brought to the notice of the undersigned the earlier clarifications issued from this Commissionerate vide order No. CTS-21/2005/331 dated 09.08.2012 and No. CTS-25/2012/115 dated 30.04.2015 and No. CTS-25/2012/116 dated 30.04.2015 in support of their application for clarification.

The Authorised Representative of the petitioner contended that they rely upon the judgement of the Apex Court in case of *Bhawani Cotton Mills Ltd. vs. State of Punjab (1967) 20 STC 290 (SC)* wherein the Apex Court held that **“If a person not liable for payment of tax at all, at any time, the collection of a tax from him, with a possible contingency of refund at a later stage, will not make the original levy valid; because if particular sales or purchases are exempt from taxation all together, they can never be taken into account, at any stage, for the purpose of calculation or arriving at the taxable turnover and levying tax.”** The Authorised Representative also placed reliance on the ratio decided by a full bench of the Patna High Court in case of *Builders Association of India vs. State of Bihar (1992) 85 STC 362* wherein it is held that **“It is now well known that levy includes recovery. A provision of recovery of tax is not permissible in law unless it is payable. The provision must be held unreasonable where tax will compulsorily be deducted although in certain circumstances, no tax at all may be leviable.”**

Perused the definition of sale price defined under section 2(44) of the Assam Value Added Tax Act, 2003, and from a close reading of it, it is found that erection and installation charge is beyond the scope of sale price provided these are charged separately.

Perused each and every terms and conditions of the aforesaid work order and found that the contractor utilized the road permit obtained by APGCL (emphasis laid on Para 7 of the letter No. NBPPL/NRPP/15-16/01 dated 01.03.2016) for import of plant and material for Rs. 718100000/- for use in execution of the said works contract. And the contractee imported goods for Rs. 718100000/- and subsequently issued C Form to the consignor and as such it was an interstate sales within the meaning of Section 3 (a) of the Central Sales Tax Act, 1956 and the contractee made inventory of such goods and delivered to the contractor against their indent for use in erection and commissioning of equipments at the site of the contractee where there involve no transfer of property in goods either in same Form or otherwise to attract levy of VAT and deduction of VAT under section 47 of the Assam Value Added Tax Act, 2003. Suffice it to clarify the position that if in any individual case, it could be proved before the authority that their contracts are such which do not involve any transfer of property in goods, and on the other hand are pure and simply works contract involving merely labour and services in terms by law declared by Apex Court, they would be entitled to the relief and such rights could be vindicated before the assessing officers or appellate authorities and ultimately before this court interims of the remedies provide under the TNGST Act, 1959 and the Rules made thereunder as held in case of **LARSEN AND CARGO LTD. VS. STATE OF TAMIL NADU (1993) 88 STC 289 (MAD DB)**. In the instant case the contractee did not reimburse the value of the plant and material amounting to Rs.71,81,00,000/- from the running bills of the contractors in view of the judgement of the Apex Court in case of **Ganon Dunkerley and Company Vs. State of Rajasthan (1993) 88 STC 204 (SC)**. But in the instant case the contractee transferred it to NTPC BHEL Power Project Pvt. Ltd., it is found that the plant and materiel supplied by the contractee to the contractor is free of charge and no tax is chargeable.

In view of the above discussions and judgements of the Apex Court and Madras and Other High Courts, the instant case of the petitioner is beyond the purview of sales tax levy as it is purely a Labour and Service Contract and accordingly the question raised by the petitioner is replied in affirmative. Further, this clarification applies to this particular contract only and cannot be extended to any other contract.

Inform accordingly.

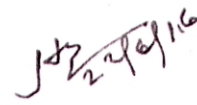
Sd/- Anurag Goel, IAS,
Commissioner of Taxes, Assam,
Guwahati

NO. CTS-84/2005/103-A

Dated Dispur, the 22nd June, 2016.

Copy to:-

1. The Commissioner & Secretary to the Govt. of Assam, Finance (Taxation) Department, Block-F, Dispur for favour of kind information.
2. The Superintendent of Taxes, Naharkatia, for information and necessary action.
3. The M/s. NTPC BHEL Power Projects Pvt. Ltd., Guest House No. 1, Namrup Thermal Power Station, P.O- Namrup -786125 for information and necessary action.


(H. Borgohain),
Joint Commissioner of Taxes, Assam,
Guwahati