

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES : : : ASSAM : : : : KAR BHAWAN
DISPUR, GUWAHATI.

(Circular No. 5/2009)

No. CTS-81/2007/258

23 rd .
Dated Dispur, the February/2009

Sub : Registration and realization of VAT from Real Estate Developers/Builders of residential or commercial units.

Hon'ble Supreme Court of India in its judgment dated 5.5.2005 in K. RAHEJA DEVELOPMENT CORPORATION - Vs.- State of Karnataka (2005) 141STC (0298) has held that if a developer enters into an agreement of sale of flat or other unit, the same is liable to be taxed as works contract except if the agreement is entered into after flat or unit is already constructed. However, hardly any Real Estate Developer has been paying tax as per the decision of Hon'ble Supreme Court. Many Real Estate Developers or builders have not even registered themselves under AVAT Act,2003.

All Superintendents of Taxes and Assistant Commissioners of Taxes were instructed to realize the tax from Real Estate Developers/Builders vide this Office letter No. CTS-2/2006/24 dt. 9.5.2007. However, hardly any action appears to have been taken to register the Real Estate Developers/Builders and realize due tax from them.

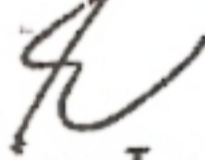
Some builders may raise an objection that in case of sale of flat/other unit, the stamp duty and registration fees are being paid at the time of registration of sale in the office of Sub-Registrar, and therefore they do not have any liability either for registration under the AVAT Act or for payment of tax thereunder. In this context, it may be clearly noted that if agreement of sale is done before construction of flat/other unit is completed the same comes within the purview of "works contract" and hence attracts liability to pay tax under the AVAT Act, notwithstanding the fact that subsequently the sale of flat is registered with Sub-Registrar. Only if agreement of sale is entered into after flat or unit is already constructed then it is not liable to VAT.

In some cases, there may not be a written agreement of sale. Even if there is no written and registered agreement of sale before the completion of construction of flat or unit, the existence of such agreement can be easily inferred from receipt of part payment or even

full payment before the completion of construction because no purchaser will make any payment if there is no agreement to sale whether oral or written, whether explicit or implicit. Therefore, even if there is no written or registered agreement, the liability for tax on works contract remains.

A meeting was held with Assam Real Estate and Infrastructure Developers Association on 18.2.2009 and the legal position was explained to them. They have been asked to get themselves registered within 10.3.2009. All Assistant Commissioners of Taxes/Superintendents of Taxes are requested to ensure registration of all Real Estate Developers or builders of residential or commercial buildings at the earliest. In case, any builder remains unregistered after 10.3.2009, necessary action may be taken as per law to register them. Further, due taxes may be realized without fail.

All unit offices will submit a report within 10.4.2009 on Real Estate Developers/property dealers registered up to 31st March/2009.


(Sanjay Lohiya),
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-81/2007/258-A

Dated Dispur, the 23rd February/2009

Copy to :-

1. The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Addl. Commissioner of Taxes/Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioners of Taxes (All) for information and necessary action.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information and necessary action.
5. Circular file.


Commissioner of Taxes, Assam,
Guwahati-6.