

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES, ASSAM :: KAR BHAWAN
DISPUR, GUWAHATI-6

CIRCULAR NO. 3/2017-GST

Dated Dispur the 24th August, 2017.

**Sub : Deduction of Tax at Source (TDS) in respect of works contractors and suppliers
– regarding.**

No. CT/GST-10/2017/194.— Everyone is aware that Goods and Services Tax (GST) has been introduced in Assam with rest of the country with effect from 1st July, 2017 replacing Assam Value Added Tax Act, 2003 which was in force upto 30th June, 2017. GST has two components: State GST levied and collected by the State and Central GST levied and collected by the Centre and these two components of GST i.e. SGST and CGST would be applicable on all intra-State (within the State) supplies of goods and services on the same taxable value of such supply. However, the inter-State supplies of goods and /or services would attract Integrated Goods and Services Tax (IGST) levied and collected by the Centre.

Under the old VAT law, the Drawing & Disbursing Officers (DDOs) of various Central and State Government departments and establishments were required to deduct tax at source in respect of conventional sale/supply of goods, execution of works contract and lease transactions.

Post introduction of GST, umpteen numbers of queries have been received from Drawing & Disbursing Officers (DDOs) of various Central and State Government departments and establishments regarding the applicability of the provision of deduction of tax at source (TDS) in respect of pre-existing contracts/supplies as well as contracts/supplies executed after introduction of GST.

The matter is examined at length. Since provision of TDS applies to execution of works contract as well as to supply of goods and it is deemed appropriate to issue following clarifications broadly under two heads:

(A) WORKS CONTRACT :

A “works contract” involves transfer of property and also element of service or work rendered. That is why it is called composite contract.

It is pertinent to make a brief reference to the legal position under the old Assam VAT Act vis-à-vis GST Act.

Provisions under the old Assam VAT Act:

As per provision of section 18 of the Assam VAT Act, the time of sale of goods was the earliest of the following,-

- (a) date of issue of the tax invoice;
- (b) date of receipt of payment, in full or in part;
- (c) transfer of title or possession of the goods or incorporation of the goods in the course of execution of any works contract.

It is settled position of law that "Taxable event is the transfer of property in goods involved in the execution of works contract and the said **transfer of property in such goods takes place when the goods are incorporated in the works.**"

There were two methods of taxation of works contract under VAT.

A contractor (having TIN) could pay **15% tax on the taxable turnover of goods**, that is, after excluding labour component and other prescribed deductions from gross turnover which is the composite price consideration for both material and labour component.

Alternatively, a contractor could opt for composition scheme (by registering under GRN) and pay **5% lump sum tax on the entire/gross value of works contract** without any deduction for labour and other charges.

Section 47(1) of the Assam VAT Act provides for deduction of tax at source by every person under the control of Government, while making any payment for execution of a work contract, as per the rates specified in the Fifth Schedule appended to the VAT Act. The rate of TDS was either 15% in case the contractor was under TIN or 5% in case the contractor was under composition Scheme (GRN), as mentioned above.

Provisions under the GST Act:

Under GST also, though a works contract is considered as composite supply, however, it is deemed to be a supply of services by virtue of entry 6(a) of Schedule II of the Assam GST Act, 2017.

As per serial number 3 of the Notification No. 11 (as amended), the value of a works contract executed for Government Department/establishment shall be taxable at combined GST rate of 12% (6% CGST and 6% SGST in case of intra-State works contract) or 12% IGST (in case of inter-State works contract).

Section 51 of the Assam GST/CGST Act and section 20 of the IGST Act, requires every Department or establishment of the State Government or Central Government or Local Authority or Government Agencies to deduct SGST at 1% and CGST at 1% in case of intra-State supply or IGST at 2% in case of inter-State supply from the payments to be made or credited to the supplier of taxable goods or services or both, where total value of such supply, under the contract exceeds two lakhs fifty thousand rupees.

It is important to note that even where the running payment made is less than Rs. 2.5 lakh but if the total contract/supply value is more than Rs. 2.5 lakh, the provision of TDS under GST shall apply to such payment.

The transitional provision containing in section 142(13) of the Assam GST Act, 2017 lays down that where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the Assam Value Added Tax Act, 2003 and has also issued an invoice for the same before the introduction of GST i.e. before 01/07/2017,

no deduction of tax at source under section 51 of the GST Act shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day i.e. 01/07/2017.

Now in the light of the above provisions, the matter relating to TDS in respect of works contract has been examined and following clarifications are issued:

- (a) Works Contract executed up to 30/06/2017 and the bills/invoices etc. also have been raised on or before 30/06/2017 (during VAT period) but the payment is pending or made on or after 01/07/2017 :**

In respect of such payment, **deduction of tax at source will be made as per the provisions of section 47(1) of the Assam VAT Act.** The applicable tax rate shall either be 15% of taxable turnover or 5% of the gross turnover, as already mentioned above.

Provisions of deduction of tax at source (TDS) under the Assam GST Act, 2017 shall not apply to such cases [section 142(13)].

- (b) Works Contract executed upto 30/06/2017 but bills/invoices etc. have been raised on or after 01/07/2017 (during GST period) and the payment is also pending or made on or after 01/07/2017 :**

In respect of such payment, **deduction of tax at source will be made as per the provisions of section 51 of the Assam GST Act, 2017** since two events i.e., raising of invoice and payment of supply arise under the GST regime and the transaction was not accounted for under VAT. The applicable rate for deduction of tax at source (TDS) shall be: SGST 1% and CGST at 1% in case of intra-State supply or IGST at 2% in case of inter-State supply.

Such contractor shall, however, remain liable to pay balance tax, as per the rates of tax applicable under GST law.

Provisions of deduction of tax at source (TDS) under the Assam VAT Act, 2003 shall not apply to such cases.

- (c) Works Contract partially executed on or before 30/06/2017 (during VAT period) and the balance works being executed on or after 01/07/2017 (during GST regime):**

In case of works contract, which were **partially executed on or before 30/06/2017** (during VAT period), there can be two situations:

- (i) Bills/invoices were raised before GST:** TDS will be made as per provision of the VAT Act, as mentioned in para (a) above.
- (ii) Bills/invoices were raised after GST:** TDS will be made as per provision of the GST Act, as mentioned in para (b) above.

In case of works contract, which are **partially executed on or after 01/07/2017** (during GST period) and invoices are raised during GST regime and payments are received during GST period, since the transaction was not accounted for

under VAT, TDS will be made as per provision of the GST Act, as mentioned in para (b) above.

(B) SUPPLY OF GOODS / SERVICES:

Provisions under the old Assam VAT Act:

Section 47(3) of the Assam VAT Act provides for deduction of tax at source by every person under the control of Government, while making any payment in respect of supply of taxable goods, at the rates specified in the Schedules appended to the VAT Act.

Second Schedule provides for 6% taxable goods and Fifth Schedule provides for 15% tax rate for unclassified or residuary goods not specified elsewhere.

Provisions under the GST Act:

As mentioned in Para (A), section 51 of the Assam GST/CGST Act and section 20 of the IGST requires every State /Central Government department or establishment or Local Authority or Government Agencies to deduct SGST at 1% and CGST at 1% in case of intra-State supply or IGST at 2% in case of inter-State supply from the payments to be made to the supplier of taxable goods or services or both, where total value of such supply, under the contract exceeds two lakhs fifty thousand rupees.

At the cost of repetition, it is mentioned that even where the running payment made is less than Rs. 2.5 lakh but if the total contract/supply value is more than Rs. 2.5 lakh, the provision of TDS under GST shall apply to such payment.

The transitional provision as laid down in section 142(13) of the Assam GST Act, 2017 provides that where supply of goods was made during VAT regime and also the invoice for the same was issued during VAT period i.e. on or before 30/06/2017, but payment to the supplier is made on or after the date of introduction of GST i.e. on or after 01/07/2017, no deduction of tax at source (TDS) under section 51 of the GST Act shall be made by the deductor.

Now in the light of the above provisions, the matter relating to TDS on supply of goods or services has been examined and following clarifications are issued:

(a) Supply of goods made upto 30/06/2017 and the bills/invoices etc. also have been raised on or before 30/06/2017 (during VAT period) but the payment is pending or made on or after 01/07/2017:

In respect of such payment, **deduction of tax at source will be made as per the provisions of section 47(3) of the Assam VAT Act** at the rates specified in the Schedules appended to the VAT Act.

It may be mentioned that Second Schedule provides for 6% taxable goods (w.e.f. 4/7/2016 prior to which the tax rate was 5% since 31/10/2009) and Fifth Schedule provides for 15% tax rate (w.e.f. 10/8/2016 prior to which the tax rate was 14.5% since 13/9/2013) for unclassified or residuary goods not specified elsewhere.

Provisions of deduction of tax at source (TDS) under the Assam GST Act, 2017 shall not apply to such cases [section 142(13)].

- (b) Supply of goods made upto 30/06/2017 etc but bills/invoices etc. have been raised on or after 01/07/2017 (during GST period) and the payment is also pending or made on or after 01/07/2017 :**

In respect of such payment, **deduction of tax at source will be made as per the provisions of section 51 of the Assam GST Act, 2017** since two events i.e., raising of invoice and payment of supply arise under the GST regime and the transaction was not accounted for under VAT.

The applicable rate for deduction of tax at source (TDS) shall be: SGST 1% and CGST at 1% in case of intra-State supply or IGST at 2% in case of inter-State supply.

The supplier of goods or services shall, however, remain liable to pay balance tax, as per the rates of tax applicable under GST law.

Provisions of deduction of tax at source (TDS) under the Assam VAT Act, 2003 shall not apply to such cases.

- (c) Supply of goods partially made on or before 30/06/2017 (during VAT period) and partially made on or after 01/07/2017 (during GST regime) :**

In case of supplies of goods, which were **partially made on or before 30/06/2017** (during VAT period), there can be two situations:

(i) Bills/invoices were raised before GST: TDS will be made as per provision of the VAT Act, as mentioned in para (a) above relating to supply of goods or services.

(ii) Bills/invoices were raised after GST: TDS will be made as per provision of the GST Act, as mentioned in para (b) above relating to supply of goods or services.

In case of supplies partially made on or after 01/07/2017 (during GST regime), and invoices are raised during GST regime and payments are received during GST period, TDS will be made as per provision of the GST Act, as mentioned in para (b) above, relating to supply of goods or services.

- (d) Supply of goods and or services during post GST regime i.e. on or after 01-07-2017:**

In case of supplies of goods or services, which are **exclusively made on or after 01-07-2017** (during GST period) and invoices/bills are also raised during GST period, TDS will be made as per provision of the GST Act, as mentioned in para (b) above, relating to supply of goods or services.

Certain Government services are exempted under GST. In this regard, GST Rate Notification No.12/2017 and 21/2017 may be referred to which are available at www.tax.assam.gov.in and at www.cbec.gov.in

However, the provision relating to TDS under GST Law is put on hold for the time being and the same will be brought into force from a date which will be notified later.

This Circular is clarificatory in nature and not meant for any interpretation of provisions of the Act and rules.


Sd/- Anurag Goel,
Commissioner of State tax, Assam,
Dispur, Guwahati

Memo No. CT/GST-10/2017/194-A

Dated Dispur, the 24th August, 2017

Copy to :

- 1) The Additional Chief Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6 for favour of kind information.
- 2) The Principal Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6 for favour of kind information.
- 3) The Commissioner of Central GST, Guwahati/Dibrugarh Commissionerate for favour of kind information.
- 4) The Additional Commissioner of State tax, Assam (All) / Joint Commissioner of State tax, Assam (All) for information.
- 5) The Deputy Commissioner of State tax (All) for information and necessary action.
- 6) The Assistant Commissioner of State tax (All) / Superintendent of State tax (All) / Inspector of State tax (All) for information and necessary action.
- 7) The Information Technology Officer, Office of the Commissioner of State tax, Assam for uploading it on the website of the Commissionerate for information of all concerned.


Commissioner of State tax, Assam,
Dispur, Guwahati