

ISSUES IN WORKS CONTRACT

Hanish & Associates

Works Contract

- 2(29) 'Sale' with all its grammatical variation and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes,-
 - (b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- 2(37) 'Works contract' includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property
- Involves supply of goods + rendering of services
- VAT can be applied only on supply of Goods
 - Three alternative methods applicable for computation of tax

Alternative Methods

Particulars	Regular	Abatement	Composition
Rate of Tax	Schedule VI	Schedule VI	4%
Input Tax Credit	Available	Available	Not Available
Sub-con deduction	Can be claimed	Can be claimed	Can be claimed
Inter State Purchases	No restriction	No restriction	Full rate of tax to be paid but deducted from contract value
URD Purchases	Tax to be paid and credit can be claimed	Tax to be paid and credit can be claimed	Tax to be paid and no credit
Labour Deduction	Actuals	Rule 3(2)	No deduction

Two Contracts

- Can we bifurcate the contract into two – Goods and Labour and treat them as Sale and Service Transaction?
- M/s Suzlon Infrastructure Limited – Karnataka HC
- *“The entire contract, if perused as a whole, is in the nature of composite single integrated contract, though designed as it is four separate work orders.*
- *All the segregated activities are related to the very same project with the very same customer involving transfer of goods and labour - **The contract executed by the assessee is a composite, single, integrated contract and all the four activities mentioned in the work orders as individual activities are intrinsically linked with each other** and the main object is for the installation and commissioning of WTGs as per the offer letter”*

Rate of Tax

- Schedule VI rates to be adopted other than declared goods
 - ▣ Iron and steel are declared goods liable at 5%
 - ▣ If transferred under works contract, will the declared goods still be liable to lower rate of tax?
 - ▣ *“mere cutting into different shapes and bending does not make these items lose their identity as declared goods, it cannot be said that the identity of the iron and steel goods had changed at the point of taxability” - SMT. B. Narasamma Vs DCCT Kar 2016-VIL-40-SC*

Payment to Sub-con

- Allowed as deduction from total turnover for computation of VAT under all the methods
 - **When can the deduction be claimed?**
 - Law provides for deduction of amount paid / payable
 - **Conditions for claiming sub-con deduction**
 - Proof that the sub-con is registered
 - Declared the turnover in the return filed by him
 - **Is there a time limit for claiming sub-con deduction?**
 - Applicable only in input tax credit and not sub-con deduction

Payment to Sub-con

- ❑ **What will be tax implication if the entire work is sub-contracted?**
- ❑ Deemed sale can take place only once. No tax payable on work executed by sub-con – L&T – Supreme Court
- ❑ **Contract Value Rs 1 Crore. Sub-contracted at Rs 80 Lakhs. Is tax payable on the balance Rs 20 Lakhs by the main contractor?**
- ❑ Underlying transaction is not taxable and hence the profit arising out of the transaction cannot be subjected to tax - Surya Construction – Kerala HC
- ❑ **What if the work is partially sub-contracted?**

Input Tax Credit v Sub Con Deduction

- If Input Tax Credit availed then sub-con deduction cannot be claimed and *vice versa*
 - ▣ Input tax is a deduction from output tax
 - ▣ Sub con is a deduction from turnover
 - ▣ Collection of excess tax will be forfeited

Option 1 - ITC

Particulars		Contractor	Sub Contractor
Total Turnover		10,00,000	3,00,000
Less: Labour Deduction	30%	3,00,000	90,000
Taxable Turnover		7,00,000	2,10,000
Tax Payable Collected	14.50%	1,01,500	30,450
ITC		30,450	0
Net Tax Payable		71,050	30,450

Option 2 – Sub Con

Particulars		Contractor	Sub Contractor
Total Turnover		10,00,000	3,00,000
Less: Sub Con Deduction		3,00,000	
Less: Labour Deduction	30%	2,10,000	90,000
Taxable Turnover		4,90,000	2,10,000
Tax Payable / Collected	14.50%	71,500	30,450
ITC		0	0
Net Tax Payable		71,050	30,450

Outside the State Purchases

- No restriction for Regular Dealers
- Inter State purchases/ receipts or Imports by CoT Dealers
 - ▣ **Can they purchase the goods from outside the State?**
 - ▣ **No restriction. But Composition tax rate will not apply**

 - ▣ **Is tax payable on Capital Goods / Goods not being sold?**
 - ▣ **No – Since property in such goods not transferred**

 - ▣ **Since Cap Good are not been re-sold can Form C be issued?**
 - ▣ **Yes. They are used for processing of Goods**

Outside the State Purchases

- ❑ **What is the rate of tax to be applied?**
- ❑ **The local rate applicable to goods if sold in Karnataka**
- ❑ **Should we add profit to these purchases for discharging tax?**
- ❑ **Tax is payable on the “value of goods”**

Outside the State Purchases

SI No / Rate	Particulars	Value	Tax
	Total Contract Receipts	10,00,000	
	Outside State Purchases	3,00,000	
Disclosure in the Returns			
4.1	Total Contract Receipts	10,00,000	
4.3	Value of Goods purchased from outside the State	3,00,000	
	4% Total Works Contract Receipt	7,00,000	28,000
	14.50% Value of Goods purchased from outside the State	3,00,000	43,500
	Total	10,00,000	71,500

Free Supplies

- Is the value of Cement provided free of cost to the Contractor to be included for computation of tax liability?
 - ▣ **Recovered from the contract value**
 - ▣ **Not recovered from the contract value**
 - ▣ Client to provide materials free of cost for execution of specific project
 - ▣ Contractor cannot divert these materials for use in other projects
 - ▣ Contractor to maintain account of these material and return the unused materials
 - ▣ Client to have the right to inspect the material supplied
 - ▣ The material supplied free of cost are the property of the client

Joint Development Agreement

- Developer incurs cost for 100 flats
- Sells only 70 flats
- 30 flats are exchanged for share in land for 70 flats
 - ▣ **Whether tax applicable on these transactions or does it qualify to be barter and hence no liable to tax?**
 - ▣ **Circular 12/2009**
 - ▣ **Space Sharing Agreement v Revenue Sharing Agreement**
 - ▣ **Tax implications on the land owner**

Immovable Property

- VAT is not applicable on sale of immovable property
 - ▣ **Tax on Sale after receipt of Occupancy Certificate**
 - ▣ **Immovable Property – No tax**

 - ▣ **Sale after proportionate completion of Villa**
 - ▣ **No tax applicable on value of work done before agreement – L&T Decision**

 - ▣ **Sale after proportionate completion of apartment**
 - ▣ **Impact on sub-con deduction**
 - ▣ **Impact on input tax credit**

Deduction from Turnover

- Deduction of labour and like charges and profit on the same
 - ▣ Depreciation on Plant and Machinery
 - ▣ Land Valuation
 - ▣ Profit on Abated labour and like charges

- Plotted Development
 - ▣ Development Charges
 - ▣ Continental Builders



Questions??

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