

From

Excise & Taxation Commissioner.
Haryana. Panchkula.

To

All the Dy. Excise & Taxation Commissioner (ST).y
in the State of Haryana.

Memo No. 841 /ST-1,
Panchkula, dated the 9-6-2010

**Subject :- Circulation of Clarification-M/s Bharat Nigam Limited, Railway Road, Hisar
TIN No. 06911533946.**

MEMORANDUM

A copy of clarification order issued by Government under section 56(3) of Haryana Value Added Tax Act, 2003 sought by M/s Bharat Nigam Limited, Railway Road, Hisar TIN No. 06911533946 is sent herewith for information and necessary action by all the concerned.

amk 7/6/10
Superintendent (Sales Tax)

for Excise & Taxation Commissioner, Haryana.

Endst. No. 842 /ST-1, Panchkula, dated the 9-6-2010

A copy alongwith copy of clarification is forwarded to the following for information and necessary action :-

- Registered
1. General Manager-M/s Bharat Nigam Limited, Railway Road, Hisar.
 2. Addl. Excise & Taxation Commissioner, Haryana Institute of Public Administration, 76 HIPA Complex, Sector-18, Gurgaon.
 3. Jt. Excise & Taxation Commissioner (Division Range) Ambala, Faridabad, Gurgaon and Hisar.
 4. All Joint. Excise & Taxation Commissioners (Appeals) in the State of Haryana.
 5. Senior Deputy Accountant General (Audit), Haryana, Chandigarh.
 6. Dy. Excise & Taxation Commissioner (Vigilance), Haryana Vigilance Bureau, Sector - 6, Panchkula.

amk 7/6/10
Superintendent (Sales Tax)

for Excise & Taxation Commissioner, Haryana.

Endst. No. 843 /ST-1, Panchkula, dated the 9-6-2010

A copy alongwith copy of clarification is forwarded to the following in the Head Office for information and necessary action :-

1. All Addl. Excise and Taxation Commissioners
2. Flying Squad Officer
3. All JETCs
4. Jt. Director (L)-I and II
5. DETC(ST)
6. CAO
7. ETO(C/Excise)
8. AO-I, II, III
9. DA-I and II
10. DDA-I & II
11. Superintendent (C) for sending E-mail to all the DETC(ST) and uploading on website.
12. ST-II only (For adding in Annual Sales Tax Circular, 2009).

amk 7/6/10
Superintendent (Sales Tax)

for Excise & Taxation Commissioner, Haryana.

**ORDER OF CLARIFICATION MADE BY SH. RAMENDRA JAKHU,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56 (3) OF THE
HARYANA VAULE ADDED TAX ACT, 2003.**

Querist: M/s Bharat Sanchar Nigam Limited.

Subject: Clarification u/s 56 (3) of the Haryana VAT Act - M/s Bharat Sanchar Nigam Limited, Railway Road, Hisar holding TIN No. 06911533946.

M/s Bharat Sanchar Nigam Limited, Railway Road, Hisar is a dealer registered under Haryana VAT Act holding TIN No.06911533946 and has sought clarification u/s 56(3) of the Haryana VAT Act as to their liability in regard to deduction of tax at source u/s 24(1) of the Haryana VAT Act read with sub rule (2) of Rule 33 of the Haryana VAT Rules in respect of job assigned by the querist to the contractors for laying of under ground cables. M/s BSNL is a Public Sector Undertaking engaged in telecommunication activities and have explained that they outsource the work of laying underground cables, pole less work etc. For that purpose works contracts are given to private contractors through tendering process. Major items (i.e. cables, poles etc.) to be laid or installed are provided by the applicant itself and hence do not form part of the standard price.

For illustration sake the applicant has given breakup of contract price of a work contract of laying underground cables awarded by it. This single work contract contains four major activities which are as under:-

S. No.	Name of the activity	Nature of activity	Amount (Rs.)
A.	Digging of Trench	Purely labour	74
B.	Laying of underground cable	Purely labour	11
C.	Construction of foundation	Material (Rs.0.5)+labour(Rs.0.5)	1
D.	Filling up trenches	Material (Rs.12)+labour(Rs.2)	14
	Total		100
	Addl. Service Tax (Say)		10
	Total value of works contract		110

In view of facts explained above the querist has sought clarification regarding liability to deduct tax at source, as contractee, on the following points:-

- (i) Whether tax is to be deducted on whole of the payments made to the contractors including service tax (i.e. Rs.110/-) or
- (ii) Whether tax is to be deducted on bill amount excluding service tax (i.e.Rs.100/-) or
- (iii) Whether tax is to be deducted only on material portion of Rs.12.50/- in activities C & D of the works contract where the value of material is separately identifiable
- (iv) Whether tax is to be deducted on total value (i.e.Rs.15/-) of activity C & D of the works contract where the value of the material is not separately identifiable.

Clarification sought by the applicant has been examined. Sub rule (2) of Rule 33 of the Haryana VAT Rules, 2003 provides for deduction of TDS from the payment made to the contractor for execution of a works contract in the State involving transfer of property in goods. In the query raised by the applicant it is clear that there is a single works contract involving digging of trench, laying of underground cable, construction of foundation and filling of trenches. Although transfer of material/property in goods is involved in construction of foundation and filling of trenches only as claimed by the applicant, it being a composite works contract, the applicant querist, as a contractee, has to deduct TDS on whole of the payments to be made towards the contract. Regarding service tax, since the same is not paid to the contractor but is to be paid by the applicant contractee on payments made to the contractor, therefore, TDS is not to be deducted on service tax and is to be deducted on value of works contract only. Point wise the queries raised by the applicant querist are replied as under:-

- (i) TDS is not to be deducted on whole of the payments made to the contractor including service tax (i.e.Rs.110/-) but on Rs.100/- only in the illustration given above.
- (ii) TDS is to be deducted on bill amount (Rs.100/- only) excluding service tax.
- (iii) TDS is to be deducted on whole of the bill value as explained at Sr.No.(ii) above. BSNL, as a contractee cannot bifurcate or separate a single works contract into two or more contracts for the purpose of deduction of TDS. It is the works contractor who can claim refund, if any, from the department at the time of

assessment whenever any excess TDS is deducted from the payments made to a contractor.

- (iv) TDS is to be deducted on whole of the bill value as explained at Sr.No.(ii) & (iii) above and not on value of construction of foundation and filling of trenches only.

Matter is clarified accordingly.



(RAMENDRA JAKHU)

Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise and Taxation Department.

Chandigarh

Dated: