

**ORDER OF CLARIFICATION MADE BY SHRI HARDEEP KUMAR, IAS,  
PRINCIPAL SECRETARY TO GOVERNMENT OF HARYANA,  
EXCISE & TAXATION DEPARTMENT,  
Under Section 56(3) of the Haryana Value Added Tax Act, 2003**

This order of clarification issued under section 56(3) of the Haryana Value Added Tax Act, 2003 (here-in-after referred to as the Act) disposes of the applications of the following dealers, vide which they have sought clarifications on issues detailed in para 2 of the order:

1. M/s. Himgiri Construction, Mewat
2. M/s. Bahl Builders Private Limited, Gurgaon.
3. M/s. Girdhari Lal Construction Private Limited, Gurgaon.
4. M/s. Bhavya Builders, Gurgaon.
5. M/s. IL&FS Rail Limited, Gurgaon

2. The above named dealers (here-in-after referred to as applicants) are works contractors and the issues requiring clarifications are framed as under:

- a) **Whether the contractors who have exercised the option of payment of lump sum in lieu of tax are liable to discharge the liability of surcharge under section 7A of the Act?**
- b) **On what turn over a lump sum contractor is liable to pay tax on a contract involving transfer of property in goods in execution of a works contract?**
- c) **What is the liability of a works contractor for payment of interest in case the contractee does not deduct the TDS or after deducting the TDS does not deposit the same in Government Treasury in time or deposit the same partially as required under the law?**

3. The issues have been examined in the light of the statement of facts and the interpretation of law given by the applicants. To the issue at (a) above, the same stands decided by the Hon'ble Haryana Tax Tribunal in STA No. 485 of 2012-13 in the case of M/s. Mahashiv Promoters Private Limited, Rohtak V/s State of Haryana decided on 8.10.2013 holding that lump sum tax

is also a tax under rule 46 of the Haryana Value Added Tax Rules, 2003 (herein-after referred to as the Rules), therefore, the provision of additional tax i.e. the surcharge will also be applicable in case of lump sum dealers. **Hence the works contractors who have exercised the option of payment of lump sum in lieu of tax under the Act are liable to discharge the liability of surcharge under section 7A of the Act too.**

4. On the issue raised at (b) above, rule 49 contained in the Rules is the relevant rule. According to sub rule (1) of Rule 49, a contractor opting to pay lump sum in lieu of tax is liable to pay **a lump sum calculated at 4% of the total valuable consideration receivable for the execution of the contract.** Thus it is clear that the lump sum paying works contractor is liable to pay lump sum tax at the total consideration value or the total contract value receivable for the execution of the contract and no deduction on account of labour and the like expenses is available to a lump sum paying contractor.

5. Broadly speaking the third issue at (c) above pertains to the default done by the contractee in meeting out his statutory liability of deducting and paying TDS under the Act. Vide notification No.S.O.53/H.A.6/2003/S.24/2003 dated 7.4.2003 a contractee is required to deduct TDS @ 4% while making payment to a contractor and further he is required to deposit the same into the government treasury as per the provisions of the Act/Rules. There are three possible propositions in relation to issue at (c) when the contractee:

- i. fails to deduct the TDS;
- i. after deducting the TDS does not deposit the same into the Government Treasury in the prescribed period; and
- ii. after deducting the TDS deposit the same partially into the Government Treasury in time.

5.1. As per section 24, the contractee liable to deduct TDS shall make the payment of the deducted amount as per rule 33 of the Rules. Sub section (5) of section 24 stipulates that the TDS shall be adjustable by the contractor on the authority of the certificate issued to him by the contractee and this certificate shall be furnished to the assessing authority who will allow the

same after verification. Further sub rule (5) of Rule 33 contains that the contractee shall pay the deducted amount into the Government Treasury in Form VAT C-1 for each payee/contractor and the fifth copy of this Form VAT C-1 shall be handed over by the contractee to the contractor and the contractor shall affix this copy with his returns. Thus a harmonious reading of the relevant provisions of the Act and the Rules makes it clear that the contractor can claim benefit of the amount of TDS deducted by a contractee only when the TDS certificate and Form VAT C-1 is available in original with him at the time of meeting out his statutory tax liability under the Act. In a case when such a certificate is not available with the contractor at the time of paying tax and filing returns under the Act, then no such claim or deduction on account of TDS deducted is available to the contractor. Hence in the absence of TDS certificate in original the contractor has to pay the full amount of tax as per his liability under the Act as if no TDS is deducted by the contractee.

5.2. Admittedly a contractor dealer is like other registered dealer under the Act who is statutorily required to meet his tax liability in time as per the provisions contained in the Act and the rules framed thereunder. Availability of a TDS Certificate only entitles the works contractor to reduce his statutory tax liability under the Act and to pay the balance amount, if any, to the Government. So it is clear that the benefit of TDS will be available, if and only if, the contractor is in possession of TDS Certificate and Form VAT C-1 in original. Co-joint reading of section 24(5) of the Act and rule 33(6) of the Rules stipulates that the contractor shall be entitled for claim of tax deducted by the contractee only on verification of genuineness and correctness of the certificate and payment claimed therein. In case a contractee after deducting the TDS does not deposit the same he cannot issue a TDS certificate. In such a case if the contractee issues a TDS certificate then it is an **in-genuine** TDS certificate and the contractor is not entitled for any rebate while discharging his tax liability against such **in-genuine** TDS certificate.

5.3. The position which emerges on reading the section 24(5) & 24(6) of the Act and rule 33(5), 33(6) and 35(1) of the Rules in continuity is that a contractee is required to deduct TDS and to pay the same in Form VAT C-1

