

**ORDER OF CLARIFICATION MADE BY SHRI L.S.M. SALINS,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003**

Querist: M/s DLF Universal Ltd., Gurgaon

The querist DLF appoints contractors for designing and development of commercial complexes and residential colonies. The contractors further appoint sub-contractors for doing a part or whole of the job. Whether DLF will be privy to the contract of appointment of sub-contractors by the contractors is a question of fact. If answer to this question of fact is 'yes', the transfer of property in the goods from sub-contractor to DLF would take place otherwise it would pass through contractor only.

The statutory provisions under Haryana Value Added Tax Act, 2003 under section 42, however, make contractor and sub-contractor jointly and severally liable to pay tax in respect of transfer of property in goods whether as goods or in some other form involved in the execution of works contract by the sub-contractor. Sub-section (2) further provides that if tax has been paid by the sub-contractor and the assessment of such tax has become final the contractor shall not be liable to pay tax on sale of such goods. It further provides that the contractor will be entitled to claim input tax, if tax, in respect of them has not been availed of by the sub-contractor.

The charging section of HAVT Act makes every VAT dealer liable to pay tax on the sales including deemed sales under works contract. Further by virtue of provisions of sub-section (2) of section 42 the sub-contractor is entitled to claim input tax.

A conjoint reading of these provisions would reveal that there is no difference in the basic liability of the contractor or sub-contractor. Both are liable to pay tax under the charging section independently. It appears that in order to ensure the payment of tax by sub-contractor, contractor has been made liable to pay that tax jointly and in order to avoid the payment of tax twice on the transfer of the same goods a provision has been made under sub-section (2) of section 42 absolving the contractor from the liability to pay tax on the sale of goods by sub-contractor, if the contractor proves to the satisfaction of the Assessing Authority that the tax has been paid by the sub-contractor on such sales and assessment of such tax on sub-contractor has become final.

For the reasons recorded above, the question in annexure 'A' to the application are answered as under:-

- 1(a) Sub-contractor can not claim immunity from payment of tax where a contractor is paying tax on the total value of contract under composition scheme.
- 1(b) Sub-contractor being independently liable to pay tax can purchase material against Value Added Tax D-1 and 'C' form for use in execution of works contract.
2. The contractor will be entitled to avail exemption from payment of tax only if the sub-contractor has paid the same and the assessment of sub-contractor of such tax has become final.
3. The contractor should be liable to deduct TDS while making payment to the sub-contractor.

The above opinion is based on the existing provisions under VAT law.

Chandigarh
Dated 23.4.07

(L.S.M.SALINS)
Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise & Taxation Department.