

(Issued vide no. 631/ST-1, dated 7.4.2006)

**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: Simplex Concrete Piles India Limited, Gurgaon

Bare minimum facts to appreciate the query are that the National Highway Authority of India (NHAI) is converting Delhi-Gurgaon section of NH-8 from single highway to dual highway. NHAI appointed Jay Pee DSC Ventures Limited as Concessionaires for doing the same. The Concessionaires awarded contract of constructing the dual highway to DS Construction Limited, who awarded contract of piling-work of the Haryana section of the aforesaid highway from Km.23.96 to Km.42.00 to the querist. The question put is whether the querist is a sub-contractor and if so is he liable to pay tax under the Haryana Value Added Tax Act, 2003 ('the HVAT Act') in respect of the works contract awarded to it or not. The querist has referred to the decision of the Punjab and Haryana High Court in DLF Industries Ltd. Vs. State of Haryana where the court after examination of the provisions of the Haryana General Sales Tax Act, 1973 ('HGST Act') relating to the definition of the contractor, contractee and the charging section 6, which absolves a sub-contractor of liability to pay tax as it devolves the same on the contractor alone, and noting the facts of the case before it that there was no privity of contract between the contractee and the sub-contractor and as the contractor alone was liable to the contractee, held that the contractor was liable to pay tax in respect of the works contract.

2. Under the HVAT Act things are materially different from the HGST Act because there is no provision in the HVAT Act which absolves a sub-contractor of his liability to pay tax as was the case in the charging section in the HGST Act though there is no change in the definitions of contractor and contractee in the two Acts. It has been

stated by the querist that the property involved in the execution of the works contract of piling awarded to him in respect of Haryana section of NH-8 will pass directly from him to NHAI / Concessionaires. This means also that NHAI / Concessionaires will be privy to this arrangement. Thus there will be a sale of these goods from him to NHAI / Concessionaires and he will be liable to pay tax on such sale of goods under the provisions of the Act. (See Gannon Dunkerley v State of Rajasthan 88 STC 204 (SC) Page 232 para 2 reading “Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, ...”)

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3. It may be added that under section 42 of the HVAT Act, the contractor and the sub-contractor both are 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 the works contract by the sub-contractor and further if the contractor proves to the satisfaction of the assessing authority that the tax has been paid by the sub-contractor in respect of the sub-contract and the assessment of such tax has become final, the liability of the contractor to that extent shall abate. Thus, a contractor, who includes the turnover of the sub-contractor in his taxable turnover, can claim the rebate of the tax paid by the sub-contractor from his tax liability in his returns and assessment subject to the provisions of section 42 of the Act.

(L.S.M.SALINS)

Chandigarh
Dated: 30.3.2006

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