

**ORDER OF CLARIFICATION MADE BY SHRI RAMENDRA JAKHU,  
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 Tata Projects Ltd., Faridabad – TIN No. 06941213102.**

The applicant querist M/s Tata Projects Ltd., Faridabad is a contractor registered under HVAT Act, 2003 and has applied for clarification under section 56(3) of the HVAT Act, 2003. As explained by the querist, he had opted for lump-sum payment of tax under section 26 of the repealed Act and has been paying tax @2% on contracts awarded to him by HVPNL in Haryana State since 1998.

The question that has been raised by the querist is whether the lump-sum rate of 2% will continue, for the contracts entered into prior to 1.08.2001, under the HVAT Act as well.

The applicant's view point is that lump-sum tax on such contracts is applicable @2% and has drawn the attention of the department towards the public notice issued by the department which appeared in the leading dailies on 16.03.2003 (Times of India dated 16.03.2003). The applicant has relied on Rule 46(2) of the HVAT Rules and has further explained that the relevant notifications issued under section 26 of the repealed Act i.e. HGST Act, 1973 viz notification dated 24.03.1989 and 1.08.2001 are still in force and have not been rescinded. Thereafter, by way of additional evidence, the applicant has derived strength from the deeming amendment with effect from 1.04.2003 to section 61 carried out vide notification No. Leg. 27, dated 4.10.2006. Relevant portion of the same are reproduced as under :-

**Section 61(1)(b)** “provided that such repeal shall not affect any right, title privilege, obligation or liability acquired, accrued or incurred under the said Act; or

**Section 61(1)(c)** “affect any act done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate) in the exercise of any power conferred by or under the said Act.”

The applicant has interpreted the said amendment as revalidation of the repealed Act. Further the applicant has enclosed a copy of judgment delivered by Karnataka High Court in case of Hotel Madhuvan International Pvt. Ltd. V/s State of Karnataka (2006) 147 STC 619 in support of his contention.

The question raised by the applicant has been examined in light of legal position explained by the applicant and the relevant provisions laid down in the HVAT Act and Rules there under. No doubt, the department had issued a public notice at the time of introduction of HVAT Act and in para 5 of that public notice it was made clear

that “The existing scheme of lump-sum in case of BKO, plyboard manufacturers, lottery dealers, halwaiies and works contractors would continue under VAT system with some VAT related changes.” However contents of para 5 of public notice dated 16.03.2003 have been misinterpreted by the querist applicant. Purpose of highlighting this aspect of the HVAT Act was that as per general scheme of Model VAT Act composition scheme was not to be continued except in the cases of small dealers. However, since HVAT Act continued with the composition scheme in trades explained above, the same was highlighted through public notice. It was a broad message. Nuts and bolts were to be gathered from the text of HVAT Act and Rules thereunder.

Coming to Rule 46(2) of the HVAT Rules, it is provided in Rule 46(2) that “the rates of lump-sum applicable under the scheme of composition of tax made under the Act of 1973 as part of the 1975 Rules of notified under the said Act in respect of BKO, lotteries dealers, halwaiies, contractors and plyboard manufacturers shall continue to be in force with effect from the appointed day unless changed in the rules in this chapter”.

No doubt, where the rates of lump-sum have not been changed in respect of any class of lump-sum dealers in this chapter (i.e. chapter IV of HVAT Rules), the lump-sum rates applicable under the HGST Act are to continue under the HVAT Act as well. However, in respect of lump-sum work contractors, lump-sum rates have been changed in Rule 49(1) and 49(3) of this chapter (chapter IV). Relevant portion of Rule 49(1) of the HVAT Rules is reproduced as under :-

49(1) “a contractor liable to pay tax under the Act may, in respect of a work contract awarded to him for execution in the state, pay in lieu of tax payable by him under the act on the transfer of property (whether as goods or in some other form) involved in the execution of the contract, a lump-sum calculated at 4% of the total valuable consideration receivable for the execution of the contract.”

Under the repealed Act there were two rates applicable on lump-sum contracts, @2% on contracts entered into before 1.08.2001 and @4% on the contracts entered on or after 1.08.2001 whereas, under the HVAT Act and Rules there under there is uniform rate of 4% on lump-sum contracts. Thus it is not proper to say that lump-sum rates have not been changed under chapter IV of the HVAT Rules.

Further it is wrong to interpret that lump-sum rates of 4% prescribed in sub-rule 49(1) and 49(3) pertain to future contracts only. Lump-sum rates of 4% are applicable w.e.f. the date of coming into operation of HVAT Act and where the lump-sum contractor finds it inconvenient, he can opt out of the lump-sum scheme as, in light of position explained above, lump-sum rates in respect of work contractors have been revised.

It is worth while to mention that in the provisions dealing with lump-sum work contractors, provisions pertaining to Tax Deducted at Source and payment of lump-sum tax have to be harmonious since, according to scheme of HVAT Act, a lump-sum contractor can't be granted refund out of Tax Deducted at Source. Rule 33(1) and 33(2) provide for tax to be deducted at source @4% on all work contracts and not @2% for work contracts entered into before 1.08.2001 and @4% on contracts entered into on or after 1.08.2001. Thus the combined reading of Rule 33, 46 and 49 of the HVAT Rules makes it amply clear that lump-sum rates on work contracts under the HVAT Act shall be applicable @4%. Even amendment of section 61 doesn't effect the law position in applicant's case. It saves the operation of the repealed Act, and in the case under instance, tax rates applicable under the HGST regime. However, tax rates decided under the HGST regime can't override the tax rates prescribed under the VAT regime. By that analogy all the tax rates applicable under the VAT regime shall be under challenge which can't be the intention of the legislature. Also the notification dated 24.03.1989 and 1.08.2001 were not to be rescinded since the impact of these notifications under the repealed Act has to remain operational.

Judgment delivered by Karnataka High Court in case of Hotel Madhuvan International Pvt. Ltd. V/s State of Karnataka and others is also of no help to the applicant. Landmark judgment on such matters is judgment delivered by Hon'ble Supreme Court in case of Gammon India Ltd. V/s Spl. Chief Secretary and others (145 STC 1) relevant portion of this judgment (para 73) is reproduced as under :-

“On the critical analysis and scrutiny of all relevant cases and opinions of the learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and the provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless, the re-enacted manifests an intention incompatibility will have to be ascertained from a consideration of the relevant provisions of the re-enacted enactment and the mere absence of saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the re-enacted enactment has to be inferred and gathered whether it is intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether”.

The judgment speaks of intention of the legislature. No doubt, the legislature has preserved the provisions of lump-sum tax under the re-enacted enactment i.e. HVAT Act as well. However, certain modifications have been made and it has been made clear that under the HVAT Act and Rules there under Tax Deducted at Source and tax payable on lump-sum contracts shall be at the uniform rate of 4%, be it the contracts

prior to 1.08.2001 or those entered into on or after 1.08.2001. Thus lump-sum rate of 2% on work contracts entered into prior to 1.08.2001 shall not continue after coming into operation of the HVAT Act i.e. w.e.f. 1.04.2003. The matter clarified accordingly.

Chandigarh  
Dated : 19-07-07

(RAMENDRA JAKHU)  
Financial Commissioner and Principal Secretary  
to Government Haryana, Excise and Taxation  
Department.

Issued vide letter no : 2192-94/ST-I dated 24-07-07