



FINANCE [Salaries] DEPARTMENT

G.O.Ms.No.296, Dated 9th October 2017.

(Heyvilambi, Puratasi-23, Thiruvalluvar Aandu 2048)

ABSTRACT

Works Contracts – Payment in Works Contract Consequent to the Introduction of Goods and Services Tax – Orders – Issued.

Read:-

G.O.(Ms)No.264, Finance (Salaries) Department, dated: 15.09.2017.
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ORDER:

In the Government Order read above, orders were issued directing the procuring entities to make 'on account' payment of bills presented by the contractors, restricting the payments to the value due as per existing contract agreements and to make final payment, adjusting excess payment if any in the retained amount, after issue of detailed orders on policy decision that the risk arising due to introduction of GST regime shall be borne by procuring entities.

2. Presently, Rule 14(7) of the Tamil Nadu Transparency in Tenders (TNTIT) Rules, 2000 requires that financial bid quoted should be inclusive of taxes and duties. The new Goods and Services Tax (GST) laws require that all invoices should show the value of supply and GST separately, and the value of supply will therefore include non GST taxes, which remain embedded in the input prices, such as taxes on petroleum products.

3. Since the tender rules require that price bid quoted should be inclusive of taxes and duties, most procuring entities have entered into contract that are subsisting on 01.07.2017 that provide for payment to the contractor or supplier of a sum that includes taxes. While procuring entities have obtained tax payable information separately, some procuring entities have not done so.

4. The Tamil Nadu Value Added Tax Act, 2006 allowed Input Tax Credit (ITC) of Value Added Tax (VAT) paid on inputs. The ITC in the account of the supplier refers to the total VAT that has been paid by the supplier while purchasing the input goods and services. The GST laws allow

P.T.O.

the ITC credit under the existing Acts to be carried forward under their transitional arrangements.

5. As regards the Central Excise Duty that have already been paid on goods that have been purchased in the pre-GST period by way of embedded tax in the pre-GST price of the goods, the GST laws in section 140 allow ITC on the closing stock on the transition date. Even in case of a registered taxable person who was not a registered dealer prior to GST, section 140(3) Tamil Nadu Goods and Services Tax Act, 2017 and Rule 117(4) Tamil Nadu Goods and Services Tax Rules, 2017 allow ITC on VAT on normative basis and section 140(3) Central Goods and Services Tax Act, 2017 and Rule 117(4) Central Goods and Services Tax Rules, 2017 allow ITC on Central Excise Duty on normative basis. Therefore, Section 140 of the GST laws in effect allow credit of all subsumed taxes paid by a taxable person on his inputs, including the Central Excise Duty embedded in the price of inputs. Thus, the ITC that finally gets credited into the GST credit ledger of the supplier through transitional arrangement includes both the VAT and Central Excise Duty paid on the inputs.

6. The supplier, while raising bills and tax invoice post- GST, will now have to collect GST from the purchaser at revised rates of notified percentage of value of supply and remit the same to the respective Government. The entire GST of the supply will have to be finally borne by the purchaser.

7. Under works or supply contract that has been entered into, prior to GST, the work order amount or the contracted amount can be divided into two components, namely, (1) value of supply including taxes and duties such as Customs Duty, taxes on petroleum products and other non-VAT taxes that have not been subsumed into GST; and (2) value of taxes subsumed into GST such as Central Excise Duty and VAT. Therefore, value of subsumed taxes under GST needs to be separated out from the contracted amount to arrive at the value of supply.

8. The supplier will have to pay GST on the value of supply, which he will pay to the respective Government, partly using the ITC that represents the taxes that he has already paid through the inputs, and partly using cash collected from the procuring entity concerned. Through this arrangement, the value of value addition (profits) by the supplier would remain unchanged. The supplier also cannot claim to have incurred loss on account of embedded Central Excise Duty that has been paid on the inputs, since the GST law provides for ITC credit towards this payment.

9. The existing TNTIT Rules require that the bid amount in tender should be inclusive of all taxes. In many departments, the quoted or contracted amount is inclusive of tax, and therefore, there is a need to estimate the value of subsumed tax. The key issue is to estimate the value of subsumed tax carefully and as accurately as possible.

10. Considering the necessity to provide for a transparent means of estimating subsumed tax Government direct that the following methodology

be adopted for estimating the value of subsumed taxes in the contracted value of work:

- a. If the supplier has furnished break up of taxes within the quoted value (bid value) at the time of submission of tenders, it shall be taken as the basis for estimating the value of subsumed tax. If, after negotiation, the contracted value is less than the bid value, the tax quoted shall be proportionately reduced to arrive at estimate of the value of subsumed tax. For instance, if the bid value was Rs.50 lakh and the break up of tax is Central Excise Duty of Rs.1 lakh and VAT or CGST of Rs.1 lakh, the corresponding subsumed tax as per his break up of taxes is Rs.2 lakh and after negotiation, the contracted value was reduced to Rs.48 lakh, the subsumed tax shall be taken as $\text{Rs.2 lakh} \times \frac{48}{50} = \text{Rs.1.92 lakh}$.
- b. In case, the break up of taxes was not obtained or furnished in the bid document, the supplier may be asked to furnish break up of the taxes within the contracted amount, giving details and explanations and based on this estimate of total subsumed tax shall be arrived. For instance, if for the contracted amount of Rs.48 lakh in the example above, the supplier states that the Central Excise Duty is Rs.1 lakh and VAT or CGST is Rs.1 lakh, after checking the reasonability of his claim, the subsumed tax may be arrived at Rs.2 lakh.
- c. The estimate of subsumed tax should also be worked out independently from the departmental estimates. Revised Schedule of Rate (SOR) showing basic price and tax components separately are being issued by the Public Works Department. Using the revised SOR, revised departmental estimates for the work without subsumed tax shall be arrived as per normal procedure. The difference between the departmental estimates arrived using earlier SOR with taxes would constitute value of subsumed tax in the value of work. For instance, if the Estimate arrived at using the revised SOR without subsumed taxes is Rs.45 lakh and that with earlier SOR with taxes is Rs.50 lakh, the value of subsumed taxes in the value of work is Rs.5 lakh. If the contracted value for this same work of Rs.50 lakh is Rs.55 lakh, i.e. with tender premium of Rs.5 lakh, then the value of subsumed tax may be proportionately enhanced (or reduced in case of tender discount or minus tender) as follows: $\text{Rs.5 lakh} \times \frac{55}{50} = \text{Rs.5.5 lakh}$. This method is considered as a good proxy for the actual value of subsumed tax for the purpose of determining the value of supply for payment to the supplier along with taxes under the GST laws.

11. The value of the subsumed tax may finally be arrived at values estimated in (a) or (b) or (c), whichever is higher.

12. The procuring entities shall negotiate existing agreements with works contractors and enter into supplemental agreements with revised agreement value fixed as the original contracted value minus the value of

P.T.O.

subsumed tax arrived in paragraph 11 above plus GST as applicable. The procuring entities shall make payment of final bills accordingly, in cases where 'on account' payment has been made as per Government Order first read above and any excess payment, if made 'on account', shall be adjusted from out of 5 percent amount retained by the procuring entities.

(BY ORDER OF THE GOVERNOR)

**K.SHANMUGAM
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT**

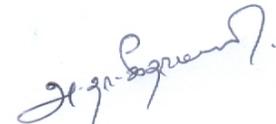
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All Heads of Department.
All Collectors / All District Judges / All Chief Judicial Magistrates.
All Departments of Secretariat.
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The Accountant General (Audit-II), Chennai-6.
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