

THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

35: Recovery of Tax by way of Tax Deduction at Source:

(1) Notwithstanding anything contained in sub-section (1) of section 22, every person responsible for making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in any other form) in pursuance of a works contract, not being a building contract of such class or value as may be notified by the State Government in public interest in this behalf, shall, at the time of making such payment to the contractor, either in cash or in any other manner, deduct an amount equal to **six percent** (*four percent*) (*substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with notification no.- 1093/2012/181(120)/XXVII(8)/08 Dt.14-12-2012*) of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such works contract:

Provided that the assessing authority may, if satisfied that it is expedient in the public interest so to do and for reasons to be recorded in writing, order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at a lesser rate,

Provided further that where any deduction has been made by a contractor from the payment made to his sub-contractor in accordance with sub-section (3), the amount of such payment shall be deducted from the amount on which deduction is to be made under this sub-section.

(2) Where under an agreement of transfer of right to use any goods for any purpose (whether or not for a specified period) the lessee to whom the right to use any goods is transferred, is-

(a) a registered dealer, or

(b) the Central Government or any State Government; or

(c) any local authority, any corporation or undertaking constituted by or under a Central Act or a State Act; or

(d) any Co-operative society or any other society, club, firm or other association of persons or a company, whether incorporated or not,

the person responsible for making such payment to the lessor (who is transferring the right to use any goods) for discharge of liabilities under such agreement, shall at the time of making such payment to the lessor, either in cash or by credit or any other manner, deduct an amount at the rate of four percent of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such transfer of right to use any goods:

Provided that the assessing authority may, if satisfied that it is expedient in the public interest so to do and for reasons to be recorded in writing, order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at a lesser rate;

Provided further that where any deduction has been made by a contractor from the payment made to his sub-contractor in accordance with sub-section (3), the amount of such payment shall be deducted from the amount on which deduction is to be made under this sub-section.

(3) Any contractor responsible for making any payment for discharge of any liability to any sub-contractor in pursuance of a contract with the sub-contractor for the transfer of property in goods (whether as goods or in any

other form) involved in the execution of a works contract or for transfer of right to use any goods for any purpose, whether wholly or in part, of the work undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or by any other mode, deduct an amount equal to four percent of such payment or discharge, purporting to be a part of full amount of tax payable under this Act on such transfer from the bills or invoices raised by the sub-contractor as payable by the contractor:

Provided that no deduction under this sub-section shall be made on the amount on which deduction has already been made under sub-section (1) or sub-section (2).

(4) The amount deducted under sub-section (1) or sub-section (2) or sub-section (3) shall be deposited into the Government Treasury by the person making such deduction **before the expiry of the month following** that in which deduction is made.

(5) The person making such deductions under sub-section(1) or sub-section(2) or sub-section(3) shall, at the time of payment or discharge furnish to the person from whose bills or invoices such deduction is made, a certificate in such form and manner and within such period as may be prescribed.

(6) The person responsible for making the payment to the contractor or sub-contractor shall submit such return of such payments at such intervals, within such period, and in such manner as may be prescribed, but the assessing authority may, in its discretion, for reasons to be recorded extend the date for the submission of the return by such person.

(7) Any deduction made in accordance with the provisions of this section and credited in the Government Treasury shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been

made, and credit shall be given to him for the amount so deducted on the production of the certificate referred to in sub-section (5), in the assessment made for the relevant assessment year.

(8) If any such person as is referred to in sub-section (1) or in sub-section (2) or in sub-section (3), fails to make the deduction or after deducting fails to deposit the amount so deducted as required in sub-section (4), the assessing authority may, after giving such person an opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, **a sum not exceeding twice the amount deductible** under this section but not so deducted and, if deducted, not so deposited into Government. Treasury.

(9) Without prejudice to the provisions of sub-section (8), if any such person fails to make the deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of fifteen percent per annum on the amount deductible under this section but not so deducted and, if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited.

(10) Where the amount has not been deposited after deduction, such amount together with interest referred to in sub-section (9) shall be a charge upon all the assets of the person concerned.

(11) Payment by way of deduction in accordance with sub-section (1) or sub-section (2) or sub-section (3) shall be without prejudice to any other mode of recovery of tax due under this Act from the contractor or the sub-contractor, as the case may be.

Explanation: For the purpose of this section, "assessing authority " means the officer having jurisdiction over the place where the place of business or residence of the person is located.

(12) Nothing contained in this section shall prevent the assessing authority from making an assessment of tax payable by the dealer in accordance with other provisions of the Act and notwithstanding any thing contained in this section the dealer shall be liable to pay tax according to other relevant provisions of the Act.

(13) (i) Every person responsible for making tax deduction at source in accordance with the provisions of this Section, if he is not registered dealer, shall submit an application in the prescribed form to the Assessing Authority for allotment of Tax Deduction Account Number. The application shall be disposed of by the Assessing Authority in such time and manner as may be prescribed;

(ii) If the application is in order and particulars given therein are correct, the Assessing Authority shall allot him a Tax Deduction Account Number;

(iii) Tax Deduction Account Number shall be mentioned in all the documents pertaining to deposit of tax and in all correspondence and returns filed. No person other than a registered dealer can make tax deduction at source unless he has applied for a Tax Deduction Account Number;

(iv) If any person referred to in clause (i) above fails to apply for Tax Deduction Account Number, he shall be liable for penalty as per the provisions of this Act.

(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)