COMMERICAL TAXES DEPARTMENT

Circular No. 54/2014  
Dated: 14/11/2014

Office of the Principal  
Secretary / Commissioner of  
Commercial Taxes, Ezhilagam,  
Chepauk,  
Chennai – 600005

CIRCULAR

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(A) Realisation of revenue from Works Contract is showing a downward trend, not consistent with actual growth in this sector. Further, Performance audit shows that there is lack of understanding of procedures and provisions on the part of some of officers as well as disregard for principles to be followed, despite various Circulars issued in this matter already. On the other hand, many works contractors are seen to indulge in suppression of whole projects as such, suppression of inter-state purchases, suppression of value addition/sales turnover, etc. Therefore there
is need for a comprehensive Circular to prevent tax evasion as well as irregular assessment.

(B) **Legal history of Works Contract:**

Taxation no doubt is a bitter pill. It existed from time immemorial in one form or the other. Before the Constitution of India into force, various States picked up one or other ingredient of sale and relying on the territorial nexus levied tax on various transactions in order to raise revenue under entry 48 of the Government of India Act 1935 now under Entry 54 of List II of the Constitution of India. The execution of works contracts was introduced in this State in 1947, under the Madras General Sales Tax Act, 1939 by enlarging the definition of the term ‘sale’ that could be taxed under the Act to include ‘a transfer of property in goods involved in the execution of a works contract’.

Madras H.C in Gannon Dunkerley & Co Ltd Vs State of Madras (1954) 5 STC 216(Madras) held that in so far as building contracts are concerned there is no element of ‘sale’ in as much as the goods are not movable goods. The question came up before several High Courts of the country. There was good amount of differences on this issue. Finally, the Supreme Court of India applied its seal of approval by upholding the decisions of Madras High Court in the case of Gannon Dunkerley & Co Ltd reported in (1958) 9 STC 353(SC) ruling that levy of tax on consideration received in works contracts, after artificially or notionally separating the values of sales of goods therefrom, was held invalid; that there cannot be a sale unless there is an agreement of sale; that mutual assent is element of transaction of sale and until and unless there is an element of volition or consensuality the transaction would not amount to sale; that the sales tax laws could validly provide for the taxation of the sales of goods in the works contracts if they were severable as such and there was a distinct and clear agreement for such sales, the value of labour and other services being separately agreed upon. If this was not the case and the contract was a composite one, with no separate and severable sales of goods, the tax could not be levied.

Consequently, the provision in the definition of the term ‘sale’ in the Tamil Nadu General Sales Tax Act, 1959 (which replaced the previous Act of 1939), enabling the levy of tax even on sales of goods involved in composite contracts, was deleted from 1st October 1960.

In order to overcome inability of the states to tax work contracts, the Indirect Taxation Enquiry Committee (popularly known as Jha
committee) emphasized implementation of recommendations of the Law Commission in taxing works contract among other things. Consequently, a constitutional amendment was brought in.

(C) **Current Legal Status of - WORKS CONTRACT**

Definition of tax or sale or purchase was enlarged by way of constitutional amendment by bringing new clause 29(A) under article 366 of the constitution w.e.f. 2.2.83 as below:

"(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."(by the Constitutional (forth-sixty Amendment) Act, 1982)

In consonance with the constitutional amendment, definition of sale was brought under the TNGST Act to enlarge the definitions of the terms ‘dealer’, ‘goods’, ‘sale’ and ‘turnover’ from 29\textsuperscript{th} May 1984 by Fourth Amendment Act of 28 of 1984. The same provisions exist in TNVAT Act, 2006. Section 2(g) of the CST Act also got amended w.e.f. 11\textsuperscript{th} May 2002 to enable the State Government to levy and collect tax under the Act on interstate Works Contract.

(D) **Distinction between sale contracts and works contract:**

Although logically there is no large difference between sale and deemed sale there is certain revenue implication. If a transaction is determined as works contract instead of outright sale, the assessable value would be got reduced by deduction of labour and the other non-taxable transactions pertaining to works contract. There could be disputes in determining the nature, taxability and extent of taxability of such contract. Therefore, disputed transactions may be resolved by certain tests, arising from various decisions of the courts, listed below:

(E) **Tests to decide works contract:**

1. The essence of the contract as a whole must be seen and the exact nature of the transactions should be ascertained in deciding whether it is one of sale of goods or works contract.
2. If the thing to be delivered by the contractor has an individual existence before such delivery as his sole property, then it is clear case of sale. So also, when the main object of the contract is to transfer property in goods from the contractor to the buyer and the latter had no title over the goods, before the transfer, the contract is one of sale.
3. When the main object of the contract is not to transfer a chattel as chattel, the contract is one of work and labour. (Chattel means movable possession).

4. When the contract is primarily for work, and use or consumption of certain goods is accessory or incidental to its execution, it is contract for work.

5. Where the contract is essentially for sale of certain goods but some works is bestowed thereon before the sale, it is a contract of sale of goods.

6. When the contract is for the execution of some work which is to be separately paid for and for supply of some goods for a stipulated price, it consists of two contracts, one for work and the other for sale of goods.

7. For levy of tax on goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled (i) there must be a works contract (ii) the goods should have been involved in the execution of the works contract (iii) the property in those goods must be transferred to a third party either as goods or in some other form. These tests are however, not exhaustive and cannot be applied as rigid and inflexible rules in all cases.

(F) **Important Principles laid down by the Supreme Court:**

The levy is contemplated under the provisions of the Act as mentioned above is more based on the principles laid down by the Supreme Court of India in the case reported in 70 STC 370 and 88 STC 248 in the case of Builders Association of India and Ganon Dunkerley & Co and recently reiterated by the Apex Court in case of L&T and another Vs. State of Karnataka & another (Civi Appeal No. 8674 of 2013 arising out of SLP(C) No.17741 of 2007, dated 26.9.2013.

(G) **Elements of profit to be taken into account:**

The Supreme Court held (1993) 88 STC 204 (M/s Gannon Dunkerley & Co) that for the purpose of computing the taxable turnover, the element of profit related to the value of goods involved in the execution of the works contract and other related charges have to be taken into account.

The Supreme Court laid down certain vital principles for computing the taxable turnover for the purpose of works contract, which are brought under the provisions of the Act, are detailed in the section below:-
(H) **Value of the goods for the purpose of making assessment on works contract:**

In order to determine the assessable value of the goods, it is permissible to take the entire value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting the following amounts from the value of the works contract:

1. All amounts involved in respect of goods involved in the execution of works contract,
   - In the course of export of the goods out of the territory of India or
   - In the course of import of the goods into the territory of India or,
   - In the course of inter-State trade or commerce
   
   Rule 6 (5)(a)

2. Goods involved in the execution of works contract which are specifically exempted from tax
   
   Rule 8 (5)(b)

3. All amounts paid to the Sub-contractors;
   
   Condition:- The Sub-contractor must be a registered dealer under VAT Act, 2006. He must be liable to pay tax under this Act.

   The turnover of such amount is included in the return filed by him.
   
   Rule 8 (5)(c)

   Unless the genuineness of payments made to sub contractor is ensured by supporting documents such as bank statements, etc, exemption could not be granted. Even if there is any difference in turnover, which shall be brought under assessment at higher rate of tax.

4. All amounts towards labour charge and other charges not including any transfer of property in goods, actually incurred in connection with the execution of works contract;

5. If the charges are not ascertainable from accounts maintained and produced by a contractor before the assessing authority, deduction is allowable at the following rates given below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Type of works contract</th>
<th>Labour or other charges as a percentage value of the works contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Electrical contracts</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>All structural contracts</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Sanitary contracts</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Watch and / or clock repair contracts</td>
<td>50</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>5</td>
<td>Dyeing contracts</td>
<td>50</td>
</tr>
<tr>
<td>6</td>
<td>All other contracts</td>
<td>30</td>
</tr>
</tbody>
</table>

Rule 8(5)(d)

(5) All amounts, including the tax collected from the customer, refunded to the customer or adjusted towards any amount payable by the customer, in respect of the un-executed portion of works contract based on the corrections on account of measurements, or check measurements,

Conditions: -

i) the turnover was included in the return and tax paid;

ii) the amount including the tax collected from the customer is refunded or adjusted, within a period of six months from the due date for filing of the return in which the said amount was included and tax paid;

Rule 8(5)(e)

(7) THE FOLLOWING DEDUCTIONS also have to be granted as held by the Supreme Court in the case of Gannon Dunkerley & Co, Vs. State of Rajasthan, (1993) 88 STC 204(SC) from the value of the entire works contract to arrive at the value of goods involved in that contract: -

- Charges for planning, designing and architect’s fees;
- Charges for obtaining on hire, or otherwise, machinery and tools used for the execution of works contract;
- Cost of consumables, such as water, electricity, fuel, etc., used in the execution of works contract, the property in goods which is not transferred in the course of that execution;
- Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- Other similar expenses relatable to supply of labour and services;
- Profit earned by the contractor to the extent it is relatable to supply of labour and services;

(8) The Apex Court had further held that the amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of materials produced by the contractor; it rejected the claim that the charges for the transportation of the goods to the
work-site should also be excluded, as such charges are not excluded in the case of other dealers selling goods.

(I) **Purchase Tax – Works Contract**
Value of goods accreted in the course of execution of Works Contract is liable to be assessed irrespective of its source of purchase, treating it as (deemed) sale including purchases (sand, cement, jelly, etc.) made from unregistered dealers. In respect of purchases made from unregistered dealers, ITC need not be given as no tax paid on its purchase. However, if there is any change in form of any goods (like timber into furniture or sand /blue metal into concrete, etc) in the course of execution of works contracts, it amounts to manufacture and liability u/s.12 has to be levied (on sand/blue metal/timber, etc.) irrespective of the time of deemed sale (of concrete/furniture etc.).

(J) **Survey of works contracts:**
The Head of Circle should conduct periodical survey atleast once a month to identify such cases and the Assessing Officers and STCI while going for field visit, such as Street survey, pre-verification of Registration applications, arrear collection etc., shall specifically look for such works contract including construction activities and immediately bring to the notice of the Head of Assessment Circle / Assessing Officer to ensure registration, filing of returns, payment of taxes and/or deduction of TDS on such works contract. Besides, scrutiny of returns of dealers involved in works contracts, actual execution of works contract shall be watched vigilantly in the place of constructions etc., as often the contractors are non-traceable after works are complete, especially if they are non-resident contractors.

(K) **Market Intelligence and Data Analysis:**
Details of construction agreements registered with Registration Department and DTCP/CMDA should be collected every month by DBIU shall be used to ensure registration of dealers/collection of TDS as applicable. Similarly, media information ( Newspapers / Magazines / Electronic media) fairs conducted on construction sector, real estate websites, etc., shall be periodically collected and cross checked with data available in the assessment circles by Assessing Officers and ensured that there is registration of all eligible works contractors and no escapement of taxable turnover. If any information available in the domain of officers of Territorial and Enforcement is not used in time and leads to loss of revenue,
officers concerned will be held responsible, including Enforcement. DBIU in Enforcement divisions have been directed to maintain an excel sheet with such market data of projects and prepare IFs in cases required and share rest of data on monthly basis with concerned circles to enable timely assessment.

Further, data of regular contracts awarded by major Government agencies: State and Central may be regularly downloaded from Websites such as www.tenders.gov.in and www.tn.tenders.gov.in. Agency/Department Websites of major national and central agencies can also be used to identify major work contracts e.g – NHAI, CPWD, AAI, etc. Besides, list of contracts awarded may be obtained from Local Bodies, BDOs/ Commissioner of Municipalities and Corporations and DRDA on monthly basis, added to the excel sheet and communicated to circle offices by DBIU.

**L) Special Register**:–

For this purpose, an excel based register of works contract detected in (J) above containing the following columns shall be maintained by the Assessing Officers individually to record the details of works contract :-

- a. Sl. No.
- b. Site address of the works contract:
- c. Name and address of the Contractee, contact person and designation with phone and email id.
- d. TIN & PAN of the contractee (if any)
- e. Whether TDS deducted, if so how much deducted whether statement in R file or not.
- f. Name and address of the contractor, contact person and designation with phone and email id
- g. TIN / PAN of the contractor
- h. Whether returns filed upto date or not.
- j. Total Contract Value.
- k. Value of works executed so far
- l. Name and designation of the verifying official
- m. Date and time of field visit and Initials of the Official
- n. Whether Form S issued and value
- o. Whether turnover has been assessed and tax paid?
(M) **Scrutiny & Assessment of works contracts** :-
All works contract dealers shall be subject to detailed scrutiny of account without omission ONCE A YEAR. During return scrutiny, issue of Form ‘S’, check of accounts in randomly selected cases for desk audit, VAT Audit / Surprise inspection following aspects shall be verified and findings shall be recorded.

(i) **Annual declaration of Works Contracts:**
Many Works Contracts dealers undertake a large number of contracts and it is necessary for the assessment officer to obtain a full list of works undertaken by the dealer as on 31st of March of each year to ensure that there is no suppression of projects as such. There have been several such instances where dealers have not declared some or all projects leading to large escapement of turnover. Failure to assess turnover in time often leads to loss of revenue. Details to be sought shall be location of project, contractee name, address, TIN, value, Duration, Nature of contract, Breaking of contracts into components, contract agreement copy, etc.

(ii) **Input and output analysis:**-
Wherever, purchases at higher rates of tax and deemed sales goods is reported at lower rate of tax only, correctness of the same in terms of nature of goods, quality and quantity and applicable rate of taxes shall be determined by providing an opportunity to the assessee in order to ensure that there is no undue accumulation of ITC. For example, when the contractor reports purchases at 5% and 14.5% and pay tax by adding Gross profit at 10%, but the deemed sales are reported at 5% only, then the correctness of the purchase and deemed sale value shall be ensured with reference to nature of goods as well as quantum of purchase and deemed sale at the time of doing above functions.

(iii) **Expenditure scrutiny:**-
It shall be verified as to whether, details of expenses related to other than goods used in the contract are supported by documentary evidences like bills, vouchers in order to deduct the same from the value of works contract and arrive at value of goods involved in execution of works contract. It shall be checked as to whether such ratio of materials to non-material component follows industry norms. Industry norms may be verified with reference to estimates prepared by PWD / High Ways / CPWD, etc for standard works like buildings, roads, bridges, etc to arrive at material component to non-material component ratio. If any
abnormal claim of non-goods component is noticed, this shall be subject to detailed scrutiny, including bank transactions of payments of such non-goods suppliers/dealers.

The value of transfer of property in Ready mix concrete should be verified as to whether expenses such as hiring for batching plant or machinery, charges incurred for chemicals, water and pumping charges and transport expenses are added on the value of purchase of cement, jelly stones and sand and taxes are paid on entire value or not.

Correct assessment of goods value is a very important aspect of assessment of works contracts, especially since there is a tendency to under-report such turnover and over-report exempted labour or services turnover. Verification of Inter-state purchases of electrical goods, tiles, marbles, timber, etc., may be done in certain cases with help of ISIC. Surprise Inspection of site may be ordered to ascertain the usage of materials only wherever needed with help of enforcement wing.

(iv) **ITC reversals:-**

In dyeing and works contract, the transfer of property in dyes is fixed at 50% or the value fixed by various judicial decisions and this aspect has to be borne in mind in arriving liability on such deemed sale value transactions as well as reversal of ITC is made for non accretion of dyes on which ITC was already claimed.

(v) **Wrong reporting of deemed sale:**

In some cases, contractors often incorrectly add certain adhoc percentage of gross profit on purchases while reporting in the returns, instead of using the actual gross profit. In some cases, contractors reporting the turnover only in the month in which running account bills or final bills are issued for payment belatedly instead of month in which accretion takes place. In some cases, the work is subcontracted and the turnover is partly or wholly not reported. There are cases in which, contractors report expenses alone, excluding value of transfer of property in goods as an exempted turnover in return and annexure. The varying modus operandi adopted by the contractors for reporting the deemed sale value needs to be verified in the above mentioned process of compliance monitoring.
(vi) **Bogus purchases:-**

The duplication of purchases in same project or different projects shall be verified for ascertaining the correctness of ITC and liability to tax on works contract.

(vii) **Suppression of purchases:-**

It has been noticed that work contractors suppress purchases of materials used in the contract (e.g. tiles purchases from Gujarat have been identified as evasion prone). Hence, assessment of works contracts may need some knowledge of extent of material requirement Vs. actual reporting for each project.

(viii) **Verification of records:-**

1. Where the contractor / contractee is a registered dealer
2. Tax liability of contractor may be cross checked with TDS liability of contractee.
3. The TDS made under Income tax Act and Service tax payments may also be cross verified.
4. Findings on outsourcing like fabrication, etc., addition and deletion in assets, balance sheet, Trading and Profit and loss account, etc., shall be recorded.

(ix) **Returns filed by the Government Department:**

a) All the Assessing Officers and Head of Circle should verify the 'M' returns filed by the Government Departments in order to ensure that all information reported in such returns are made use to assess the liability of the dealer u/s 5 of the Act. It may be ensured that M-return from major Government departments are called for properly. Returns of contractee Government agencies may also be cross-verified to verify payments received by the contractor. Copy of estimates approved and approved tender submitted may be called for in cases where there is doubt about the material component.

b) Especially, the claim of exemption by a contractor on account of Government supply shall be granted only when it is declared by the Government Department in their 'M' returns filed before the respective assessing authority. Unless and until such facts are available in the 'M' return, the claim of a contractor shall not be given exemption on this score and such claim shall be assessed u/s 12 of the Act on such works contract, if there is any
change in form, in addition to the levy u/s 5 of the Act on
defined sale value.
(c) Based on ‘M’ returns, the payment of tax on value
addition shall be ensured throughout the supply chain.
The concerned Enforcement Official and the Assessing
Officer shall take out extracts for taking further action.
(d) In large works contracts, the final contract value after
completion may be called for from contractee and
assessment caused out on full completed value.

(N) Works contract – Compounded tax (Section – 6)
Instead of paying tax at the rates specified in the Schedule in
respect of transfer of property in goods in Works Contract, a
contractor can opt for payment of tax at 2% or 4% under
compounded rate as provided under section 6.
But the following contractors cannot pay tax at compounded rate:-
1) Who purchases goods from outside the State;
2) Who imports goods from outside the country.

(i) **No deductions allowed:**
Compounded rate of tax has to be paid on the total value of
works contract executed by him in a year. No deduction is
allowed.

(ii) **OPTIONAL:-**
Payment of tax under compounded rate is only optional.

(iii) **Rate of compounded tax:-**

(i) Civil works contract : 2% of the total contract
value of the civil works executed.

(ii) Civil maintenance works contract : 2% of the total contract
value of the maintenance works executed

(iii) All other works contracts : 5% of the total contract
value of the works executed

Sec 6(1)

(iv) **Civil works contract - defined** – see explanation to sec 6 (5)
(v) Approving option to compound tax:

A contractor can apply to the assessing authority;

1) Along with the first monthly return for the financial year.
   
   Or

2) In the first monthly return after the commencement of the
   works contract and shall pay the tax during the year in
   monthly instalments; Section 6 (2)

3) The option exercised shall be final to that financial year;
   Section 6(3)

Assessing authority shall approve the option within 30 days
on receipt of such option and make an endorsement on the
returns. The Assessing Authority shall submit list of such
cases before DC/JC within 15 days from the date of such
approval.

After approving the option to compound, it would be wise to
carry out some checks through BIU and ISIC as to whether
the dealer makes interstate purchase or imports goods within
90 days from the date of such approval.

(vi) Filing of return:-

Every registered contractor who opts to pay tax under sec. 6
or sec. 8 shall file a return for each month in Form 'L' on or
before 20th of the succeeding month, to the assessing
authority along with proof of payment of tax.

The return shall be filed in duplicate. Rule 7(1)(c)

(vii) Maintenance of accounts:-

A contractor is not be required to maintain accounts under
this Act or the rules. He has to maintain the following
records only -

The records in original of the works contract

1) Extent of their execution

2) Payments received or receivable in relation to such works
contract executed or under execution. Section 6(4)

(viii) Collection of tax:-

A compounding works contractor shall not collect any tax
Section 6 (5)

(ix) Eligibility of Input Tax credit:-

Such dealer shall not entitled to Input tax credit on goods
purchased by him. Section 6 (5)
(O) **DEDUCTION OF TAX AT SOURCE (TDS) (Section 13)**

(i) **Who should deduct tax and when to deduct:**

Every person responsible for paying any sum to any dealer for execution of works contract shall, at the time of payment of such sum, deduct an amount calculated at the following rate:-

a) Civil work contract : 2% of the total amount payable to such dealer

b) Civil maintenance : 2% of the total amount payable to such Works contract dealer

c) All other contracts : 5% of the total amount payable to such dealer

Section 13(1)

(ii) **Liability to deduct TDS:**

The term “person” under section 13 who are liable to deduct “TDS” shall includes:-

a. The Central or a State Government,
b. A local authority,
c. A Corporation or body established by or under a Central or State Act,
d. A Company incorporated under the Companies Act, 1956 including a Central or State Government undertaking,
e. A Society including a Co-operative Society
f. An educational institution; or
g. A Trust.

Explanation to section 13(1)

Since the definition of word “person” is wide open, it includes private persons awarding contracts for work contracts also.

(iii) **Cases where no TDS deduction shall be made**

No deduction shall be made in the following cases;

1) Where no transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract; or Sec. 13(1)(a)

2) Where transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract in the course of inter-State trade or commerce or in the course of import; or Sec. 13(1)(b)

3) Where the dealer produces a certificate in the form prescribed from the assessing authority concerned that he has no liability to pay or has paid the tax under Section 5. Sec 13(1)©

4) The certificate that a contractor has no liability to pay or has paid tax under Section 5, referred to above shall be in Form ‘S’. Rule 9 (2)
5) No deduction shall be made, where the amount paid during the year does not or is not likely to exceed rupees one lakh. 
Proviso to Sec. 13(1)(c)

(iv) Duties of the person deducting TDS
1) The person shall deposit the sum deducted to the Assessing authority having jurisdiction over the person or to any other authority authorised by the Deputy Commissioner to receive such payment, on or before 20th day of the succeeding month in which the deduction was made with a statement in Form R.

Sec 13(2) – Rule 9(1)

2) The person who is making deduction and deposit, shall within 15 days of such deposit, issue to the said Contractor a certificate in Form.T for each deduction separately.

Rule 9(2)(3)

3) He shall also send a copy of the certificate of deduction to the Assessing authority, having jurisdiction over the said Contractor.

Sec.13(3)

4) Any person fails to deduct or deposit the amount within the above period (as provided under section 13(1) and 13(2), shall pay in addition to the amount required to be deducted and deposited, interest at 1.25% per month of such amount for the entire period of default.

Sec. 13(5)

5) The tax or interest shall become due without any notice of demand on the date of accrual for the payment by the person as provided under section 13(1) and 13(2).

Section 13(7)

6) If any person contravenes the provisions of Section 13(1) or 13(2) the whole amount payable shall be recovered from such person and all provisions of this Act for the recovery of tax including those relating to levy of penalty and interest shall apply, as if the person is an assessee for the purposes of this Act.

Sec. 13(8)

(v) Duty of the dealer claiming deduction
The burden of proving that the tax on such works contract has already been deposited and of establishing the exact quantum of tax so deposited shall be on the dealer claiming deduction.

Proviso Sec. 13(4)

(vi) Duty of the assessing authority/Deputy Commissioner (CT)
1) The application for Form S Certificate shall be forwarded to Deputy Commissioner, Territorial within 15 days from the
date of receipt of application or from the date of online request.

2) The Deputy Commissioner (CT) shall send his approval or otherwise with reasons within 15 days from the date of receipt from the Assessing Officer/Assistant Commissioner concerned.

3) On receipt of approval or otherwise, the Assessing officer/ Assistant Commissioner will issue 'S' certificate or otherwise within 15 days from the date of receipt of communication from the Deputy Commissioner concerned.

4) On receipt of a certificate of deduction in Form "T" the amount deposited by the person shall be adjusted by the assessing authority towards the liability of the dealer under section 5 or 6 as the case may be, and shall constitute a good and sufficient discharge of the liability of the person making deduction to the extent of amount deposited Sec. 13(4)

5) Where the Contractor applies to Assessing authority that he is not liable to pay tax under Section 5, the Assessing authority shall carry out a detailed scrutiny of accounts and refund the amount eligible, after adjusting the arrears of tax, if any, due from him. Sec 13(6)

(vii) **Status of contractee:-**
For the purpose of Section 13 of the Act, the Contractee necessarily need not be a registered dealer under the TNVAT Act, 2006 for making tax deduction at source. Any ‘person’ in Section 13(1) therefore includes any one who awards a works contract, including private individuals, as long as the work value exceed Rs.1 lakh.

(viii) **TDS Circle:-**
1) In respect of works contract executed by unregistered works contractor in the jurisdiction of Chennai Divisions, the TDS collection made from unregistered contractor shall be remitted to TDS Circle functioning in the Office of the Joint Commissioner of Chennai East Division along with Form-R.

2) The certificate for TDS collection made from unregistered works contractor located in Chennai shall be sent to Assessment Circle having jurisdiction over the such works contractor for taking further action such as registration, assessment etc., on such unregistered works contractor.

3) In respect of works contract executed by registered works contractor in the jurisdiction of Chennai and other Divisions, the TDS collection made from registered contractor shall be remitted to the Assessing Authority
having jurisdiction over the person under rule 9 of TNGST rules 2007.

4) After receiving the certificate for TDS collection, Assessing authority concerned shall ensure prompt filing of returns and payment of taxes thereon by way of return scrutiny and cross checking with the certificate of deduction.

5) There are huge pendency of transfer of credits (Form R) to be made to concerned assessment circles. If this much of backlog is available in corresponding assessment circle this will remain as non-payment of tax by the works contractors which will result in unnecessary harassment on the works contractors. Therefore steps should be taken immediately to transfer pending credits then and there.

6) The Principal Secretary/ Commissioner of Commercial Taxes also instructed the Assistant Commissioner(CT),TDS to get the list of Top 1000 contractees from the Enforcement Wing and issue notice to enlighten them on the mandatory deduction of tax at source on the Works Contract bill payments as per the provisions of the TNVAT Act,2006 and send a special report to Enforcement to investigate the same.

Note: From the date of TSP roll out, TDS collection will be dealt as per the mechanism available under TSP.

(P) ISSUE OF FORM S:

In order to avoid incorrect levy and double taxation, a mechanism has been provided u/s13 to refrain from deducting tax at source by contractee on production of ‘S’ certificate by the contractors. The ‘S’ certificate has to state that contractor has either no liability to pay or has paid tax u/s 5. In some cases, certificate are issued without mentioning the quantum of tax paid, which is highly illegal, which warrants disciplinary action. Certificate should specify only one of the two options i.e. either he has no liability OR has paid tax u/s 5. Issue of certificates in a casual manner is sternly discouraged.

(a) Form S not eligible:-

The Contractor, who opts to pay tax under Section 6 of the Act, is not eligible for Form-S. The Assessing Officers shall take care of this aspect while issuing form-S.

(b) SEZ contract:-

The Contractee is also liable to deduct and make TDS payment with respect to any contracts executed in SEZ; irrespective of the fact, whether the Contractor is liable to pay tax or not at his end on such contracts in the absence
of Form-S for such SEZ contracts. This will also equally apply to sub contract payments.

(c) **Pre sale expenses:**
Whether any of the expenses are attributable to transfer of property in goods or in some other form, such taxable expenses are not included in deemed sale value for tax payment such value shall be added to determine the value of goods involved in works contract to be executed for making tax payment in advance so as to issue form ‘S’.

(d) **Points to be verified before issue of Form S**
The following points shall be verified in processing the application for issue of Form S:-

(i) **Works contract agreement/other:**
1) Whether, the signed copy of agreement is obtained and filed.
2) Whether, the same amount of contract /portion is considered for earlier form ‘S’ or claim for Form ‘S’.
3) Whether, the period of works done claimed in form S is covered in the agreement for validating time and cost.
4) Whether, the agreement is supported by Letter of Intent and Schedules for work and material description.

(ii) **Return filing:**
Whether the returns relating to other works contract had been filed in time and tax thereon have been paid and realised. Whether TDS payments adjusted in returns are correct or not.

(iii) **Correctness of return:**
1) Whether there is any discrepancy in the commodity code of purchases and deemed sales and rate of tax with reference to the contract and actual payment.
2) Whether there is any omission to mention purchases relating to the works contract for which ‘S’ certificate sought.
3) Whether the ITC on purchases claimed or to be claimed is eligible.
4) If any bogus purchases are noticed and such purchases reported to be used in works, the value of such purchases are not eligible for issue of form S.
5) The value of form S considered as eligible to be issued, shall be the approximate estimated value of
sum total of transfer of property in goods and all the expenses other than goods. The material component shall be quantified and verified from the work order and the agreement to arrive at the tax liability. Such tax liability shall be collected before issue of Form S.

6) While processing the application of “S” certificate, ITC available as on date may be taken into account for determining the provisional tax payable relating to the works contract for which “S” certificate is sought. But on no account TDS payment relating to some other works contract shall be taken into account for the ‘S’ certificate under process.

7) As the ‘S’ certificate shall be issued on provisional basis, after the completion of the year, the balance taxes payable if any shall be collected after making surprise inspection/Field Audit or assessment u/s 22(3) of the Act. The Assessing Officer shall send necessary proposals to Enforcement Wing or Commissioner of Commercial Taxes as the case may be for necessary action.

(iv) Value of contract:-
The form S shall contain the contract value written clearly in words and the period of works to be executed, in order to avoid any overlapping of contract value and period of form S issued earlier for previous works.

(v) Sub contractor:-
Where, subcontracting is made, form S cannot be issued to contractor merely based on the form S issued to sub contractor as the exemption is available to main contractor only to the extent sub contracted turnover with reference to the returns of sub contractor (as prescribed in the Rules). Therefore verification has to be made as to whether any taxable turnover escaped assessment by non report in the hands of contractor.

Sd/- K. Rajaraman
Principal Secretary/Commissioner
Of Commercial Taxes

To
All the Joint Commissioners (Territorial & Enforcement) including
JC(CT), LTU, JC(CT) MoU, JC(CT) BIU, JC(CT), En’t. ISIC, Chennai -6.
All the Deputy Commissioners (Territorial & Enforcement).
All the Assistant Commissioners (Territorial & Enforcement).

**Copy to**
1. All the Additional Commissioners in the Commissionerate.
2. Joint Commissioner (Computer Systems) (for hosting in Intranet and Internet).
3. Director, CTSTI, Chennai – 6.
4. The Special Government Pleader (Taxes), High Court of Madras (for information)
5. SR/STAT, Chennai -104
6. PA to PS/CCT
Stock file / Spare – 2

//forwarded/by order//

[Signature]
25.11.2014

ADDITIONAL COMMISSIONER (CT)(AUDIT)

**Enclosures**
1) Types of works contracts – Annex I
2) Clarifications relating works contracts –Annex - II
3) Judgement in Builders Association of India reported in 73 STC 370 (SC)
4) Judgement in Gannon Dunkerley & Co reported in 88 STC 204(SC)
ANNEXURE - I

Types of works contracts

1. Civil Works
   a. Construction of buildings of any kind, factories, stations, airports, ports, etc.
   b. Construction of bridges, highways, tunnels, etc.
   c. Construction of dams, checkdams, irrigation tanks, canals, etc.
   d. Any other type of civil works

2. Civil Maintenance Works Contract
   a. Repairs to any civil works
   b. Periodic Maintenance of any civil works

3. Other Works Contracts
   a. Electrical works contracts such as electrical and electronic control systems, communication towers, substations, transmission lines, power generation systems, electrical/electronic cabling, etc and their Maintenance/repairs.
   b. Mechanicals works contracts include contracts for structural fabrication, ship building, boilers, cooling towers and plants, air-conditioning plants, aircraft/automobile/bus/train/machine fabrication, furnaces, steam turbine units, etc and their maintenance and repairs.
   c. Other works contracts like construction of chemicals process plants, nuclear reactors, waste processing, treatment plants, building interiors, joinery (carpentry), sanitary/cleaning/house keeping contracts, dyeing contracts, etc., and related repairs and maintenance.
   d. Repair and Maintenance works contract of any other category.
ANNEXURE - II

CLARIFICATIONS:-

1) Rate of tax on steel structural contracts within the State and outside the State.
   (i) If the dealers opt for compounding system, the said contract may be classified as 'other contracts' taxable at 4% under section 6(1)(iii) of TNVAT Act, 2006.
   (ii) If the dealers do not opt for compounding system, they have to pay tax on the deemed sale value of the steel structural transferred in the execution of works contracts taxable at 12.5% under Part C of First Schedule to TNVAT Act, 2006.
   (iii) If the dealers execute inter-State works contract, they have to pay tax on the deemed sale value of goods transferred with execution of works contract(i) taxable at 4% with 'C' form (ii) taxable at 12.5% without 'C' form under C.S.T. Act 1956.

   The above clarification is effective from 01.01.07 under TNVAT Act, 2006. (VAT Cell/763/07)(VCC No.33) dt. 12/03/2007.

2) Galvanising job works: The dealers have to pay tax on the value of zinc or other goods which gets transferred in the course of execution of galvanizing works under TNVAT Act, 2006 with effect from 1.1.2007 (VAT Cell 2/70485/06) (VCC No. 79) dt. 12.03.1997.

3) 1. Pure labour work: No tax is leviable for pure labour under TNVAT Act, 2006.

   2........

   3. Chrome plating is works contract. Chemicals used therein are taxable at 4% vide entry No.1 of Part B to First Schedule with effect from 01.01.2007. If the dealers opt for compounding tax payment, they are entitled to pay tax at 4% on the total receipts of works contract as per section 6(1)(iii) of TNVAT Act, 2006 with effect from 01/01/07 (VAT Cell/59/2007 (VCC No.108) dt. 12.03.07.

4) Printing: - Regarding printing on job work basis, tax under VAT Act is liable for the supply of materials involved in the job work. (VAT Cell/4618/07 (VCC No.263) dt. 30.03.07)

5) Bleaching, dyeing and printing: Bleaching are not taxable as no transfer of any materials occur. In the dyeing contract, there is transfer of property in goods and therefore, it is liable to tax at the appropriate rate. Printing materials is
taxable at 4%. Value of ink transferred is liable to tax at 4% vide entry 45/106 of Part B to the First Schedule to TNVAT Act, 2006 with effect from 1.1.2007. (VAT Cell/3817/07 (VCC No. 387) dt. 25/04/2007)

6) (1) Service contract not involving any transfer of material has no liability to tax. (VAT Cell/14631/07 (VCC No.530) dt. 21/05/07)

7) Printing and sale of question papers to Government High Schools are taxable at 4% vide entry 105 of Part B to First Schedule to TNVAT Act, 2006, with effect from 01.01.2007(VAT Cell/20516/07 (VCC No. 683) dt. 04.06.2007.

8) Cooly printing:-
It is clarified as follows:
The dealer has to pay tax at 4% under entry 106 Part -B of First Schedule under TNVAT Act, 2006, on the value of the ink used in the cooly printing, (they are eligible for Input tax credit) if the paper is supplied by the party and own ink is used by the printer. If the party has supplied ink, paper etc; then pure labour charges are exempt.(VAT Cell/32465/07(VCC No.840) dt. 05.07.07)

9) Collection of tax : It is clarified that if they pay tax under regular VAT system (under section 5 of the TNVAT Act, 2006), they can collect tax. If they are paying tax under compounding system, they should not collect tax. (VAT Cell 40791/2007 (VCC No.1062) dt. 21.08.07)

10) It is clarified that if any material is involved in maintenance contract, the deemed sale value of the materials involved is liable to tax under section 5 (1) of the TNVAT Act, 2006 (VAT Cell/39294/2007(VCC No.1077) dt. 22.08.07).

11) Labour contract: (i) whether clarification stating that gas, electrodes are consumable issued under TNGST Act is continuing under VAT Act. YES (Vat Cell 25858/2007(VCC No.1212) dt. 11.09.07).

12) Printing of reading books: It is informed that you are liable to pay tax on the ink transferred in the works contract, because ink is used in the course of execution of works contract. Earlier clarification is in consonance of the provisions of the Act and principle of works contract (VAT Cell/40802/07(VCC No. 1231) dt. 17.09.2007).

13) As per Section 5(1) of the TNVAT Act, the dealer who pays tax under this section shall pay tax specified in the First Schedule. 
If he opts for compounded rates under section 6(1), he shall pay tax at 2% on civil works contract and civil manufacturing works contract and at 4% on all other works contract.
If the contract works is done entirely by sub-contractor and the main contractor is only a promoter, tax has to be paid by the sub-contractor and not by the promoter. If the promoter himself carried out construction, he will pay VAT on all his purchases and set off on transfer of property under section 5(1) of the TNVAT Act. (VAT Cell/41930/2007(VCC No.1238) dt.17.9.07)

14) It is clarified that water roofing in the basement and roof which comes under false ceiling under civil contract work and taxable at 2% under works contract (VAT Cell/44126/07(VCC No.1252) dt. 07.09.07).

15) It is clarified that as follows:
   (i) For supply contract, they have to pay tax entirely on sale value of electro mechanical items. They are entitled for input tax credit, if they purchase goods within the State. If they purchase from outside the State, they are not entitled for input tax credit. They have to file return in Form I.
   (ii) For works contract in which both supply and labour involved, they can opt for composition, if they do not make inter-State purchase.
   (iii) For compounding, they have to file return in Form L.
   (iv) They cannot opt for composition project wise.
       (VAT Cell/40797/07(VCC No.1275) dt. 22.09.07)

16) Plumbing works: The work of plumbing for new building which falls under civil works contract is liable to tax at 2% as clarified in this office VAT Cell/30368/07(VCC No.923) is reiterated.

Clarification issued in Lr. No.27273/07 (VCC No.698) dt. 11.6.2007 stating that plumbing and sanitary works is to be treated under other works contract which is liable to tax at 4% is hereby cancelled with effect from 11.6.2007
   (VAT Cell/42965/07(VCC No.1276) dt. 25.09.07)

**CLARIFICATIONS – COMPOUNDED TAX**

1) **Rate of tax on steel structural contracts within the State;**
   If the contractors opt for compounding system, the said contract may be classified as 'other contracts' taxable at 4% under section 6(1)(iii) of TNVAT Act, 2006.
   (VAT Cell/763/2007 (VCC.No.33) dt. 12.03.07)

3) The petitioners are informed that, for civil works contract and civil maintenance works contract they can pay compounded rate of tax at 2% on the total contract value, with reference to Section 6 of TNVAT Act, 2006, when they pay tax at 2% under Section 6 to the total contract value will include labour also. They cannot separately charge labour in the same bill.
(VAT Cell/71106/07 (VCC.No.129) dt.13.03.07)

4) Partition, decoration are all defined as Civil works contract and it is taxable at 2% under section 6 under Civil maintenance Civil works contract to TNVAT Act, 2006
(VAT Cell/2694/07(VCC.No.230) dt:29.03.07)

5) No separate options eligible for separate projects; Options cannot be exercised for compounding some projects and some out of compounding;
(VAT Cell/7254/07 (VCC.No.255) dt:29.03.07)

6) It is clarified that the interior works is classified as Civil works contract and taxable at 2% of the total Contract value of the works executed.
(VAT Cell/30802/07 (VCC.No.834) dt.28.06.07)

7) Question:- whether supply and installation of fire fighting system in the building falls under civil works contract or other contract;

   Clarification:-- It is clarified that supply and installation of fire fighting system in the building is classified under other contract;
   (VAT Cell/38590/07 (VCC.No.1203) dt.05.09.07)

8) Question:- whether a contract can opt to pay tax under compounded rate either on the total value of each contract or on the total value of all works contracts.

   Clarification:--As per Section 6 of TNVAT Act, 2006 the Contractor can opt to pay tax at compounded rate on the total value of the contract only for the financial year and not on each contract.

   Question:- If the contractor has exercised his option to pay tax under compounded rate in one financial year and has not opted for compounded rate during the year; whether he can avail input tax credit on the closing stock at the end of the year.

   Clarification:-- No works contractor can avail input tax credit
   (VAT Cell/3274/07 (VCC.No.850) dt.04.07.07)

9) Compounding scheme under Works contract:

   Doing re-treading of tyres under works contracts have requested to permit them to change their option from compounding rate of tax to regular rate of tax in the same financial year.

   It is clarified that the petitioners have to wait till the next financial year to effect the change from compounded rate of tax to regular rate of tax. As per the provision, option exercised for compounding shall be final in that assessment year. So the company may revised the option in next year.
   (VAT Cell/33512/07 (VCC.No.894) dt.17.07.07)

10) Question:- whether they can opt for compounding rate of tax at 2% for plumbing and fire extinguishing work which is part
of the new building, as fire extinguishers are mandatory for big building, as per the latest Town planning rules;

**Clarification:** It is clarified that plumbing work done as part of new building is "Civil works contract" falling under the explanation under Section 6 of TNVAT Act, 2006 and hence taxable at 2%. But installation of fire extinguishers in a new building is not covered in that explanation and as such it is not eligible for tax at 2% under Section 6(1) of the TNVAT Act, 2006. It is taxable at 4%.

(VAT Cell/30368/07 (VCC.No.923) dt.20.07.07)

10) **Question 1)** Whether it is possible to opt inter-State purchase for certain contract and local purchase for some other contract.

**Clarification:** The Contractor cannot opt inter-State purchases for one contract and local purchase for other contract.

**Question 2)** If a client purchases an inter-State material whether he will loose the compounded scheme for all the first 6 months or it effects only for the one month or for the next 6 months;

**Clarification:** The contractor / client will lose opting option of Compounding scheme.

**Question 3)** If a client is doing multiple project can he go for Section 5 for one project and Section 6 for another project.

**Clarification:** The dealer cannot opt for section 5 for one project and Section 6 for another project.

(VAT Cell/35964/07 (VCC No.932) dt.20.07.07)

11) **PAYING TAX UNDER SECTION 6:**

It is clarified that they should not collect tax from the customers as they are paying tax at compounded rate of tax. Further, the purchasers from them are not entitled for input tax credit.

(VAT Cell/38028/07 (VCC No.1116) dt.23.08.07)