

PART - IV

GOVERNMENT OF NAGALAND
DEPARTMENT OF JUSTICE AND LAW

NOTIFICATION

Dated Kohima, the 24th Oct. 2008.

No.LAW/ACT-114/2004 : : The Nagaland Value Added Tax (Amendment) Act, 2008 (Act No. 6 of 2008) which received the assent of the Governor of Nagaland on 11th September/- 2008 is hereby published for general information.

Sd/-

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The Nagaland Value Added Tax (Amendment) Act, 2008. (Act No. 6 of 2008)

An

Act

to further amend the Nagaland Value Added Tax Act, 2005.

1. Short title and commencement:-

- (i) This Act may be called the Nagaland Value Added Tax (Amendment) Act, 2008.
- (ii) It shall extend to the whole of the State of Nagaland.
- (iii) It shall come into force with immediate effect.

2. Amendment of Section 2:-

(a) In section 2 of the Nagaland Value Added Tax Act 2005, after sub-clause (c) of clause (v), the following sub-clause shall be added namely:-

“(cc) the execution of any works contract, or the transfer of the right to use any goods for any purpose.”.

(b) In section 2 of the Nagaland Value Added Tax Act 2005, sub-clause (d) of clause (xxvi) shall be deleted.

(c) In section 2 of the Nagaland Value Added Tax Act 2005, in the explanation to clause (xxvi), after sub-clause (a) the following shall be inserted namely:-

“(aa) A sale falling under sub-clause (b) shall be deemed to have taken place within the State if the goods involved in the execution of works contract are within the State at the time of their use, application or appropriation for the execution of works contract;”.

(d) In section 2 of the Nagaland Value Added Tax Act 2005, after clause (xxvii), the following explanation shall be inserted, namely:-

“Explanation:

(a) In respect of the sale falling under sub-clause (b) of sub-section xxvi, the full value of the consideration received or receivable under the contract for the transfer of property in goods whether as goods or in any other form including –

i) In a case where any part of the work is carried out or executed by a sub-contractor, the amount received or receivable by such sub-contractor; and

ii) In a case where any goods have been supplied to the contractor by the contractee or any other person for use in the works contract for a consideration, the market value of the goods on the day they were so supplied.

(b) Where there are several contracts relating to the same works or which is incidental or ancillary to each other, all such contracts shall be deemed to constitute a single contract.

(c) The transfer of property in goods involved in a works contract (whether as goods or in any other form) shall be deemed to have taken place at the time and to the extent the whole or any part of the sale price under the contract is received or receivable by the contractor.”.

(e) In section 2 of the Nagaland Value Added Tax Act 2005, after sub-clause (1) of the explanation to clause (xxxii), the following shall be inserted, namely:-

“(1A) The turnover of sales in respect of works contract shall be the aggregate of the amount of sale price received or receivable by the contractor during any period whether executed fully or partly, including any advances received or receivable by the contractor towards the sale price but excluding any amount refunded or refundable by the contractor or withheld from any payment made to him by way of discount, rebate, penalty, damages or otherwise in respect of such contract and reduced by:-

- i) such percentage of the turnover towards labour and other charges as may be prescribed; and
- ii) such other amount as may be prescribed.”.

(f) In section 2 of the Nagaland Value Added Tax Act 2005, after sub-clause (xxxvi), the following clauses shall be inserted, namely:-

“(xxxvii) “Works contract” means any agreement for carrying out or executing such works as may be specified for cash, deferred payment or other valuable consideration.

(xxxviii) “Contractor” means the person carrying out or executing a works contract directly or otherwise.

Explanation 1: The manager or agent of a contractor who resides outside the State and carries out or executes a works contract in the State, shall in respect of such works contract, be deemed to be a works contractor for the purpose of the Act.

Explanation 2: Notwithstanding anything contained elsewhere in the Act, or in any other law for the time being in force, every person holding a formal document or instrument empowering such a specified person to act for and in the name of a local Naga authorized by or under “Power of Attorney” or any other authorization or document by whatever name called, executed or signed, carries out or executes a works contract in the State, shall be deemed to be a works contractor along with the local Nagas and shall be jointly or severally subject to the provisions of the Act.

(xxxix) “Contractee” means any person for whom or for whose benefit a works contract is carried out or executed.”.

3. Amendment of Section 12:-

(a) In section 12 of the Nagaland Value Added Tax Act 2005, sub-section (2) shall be deleted.

(b) Entry Sl. No. 171 of Schedule-V under clause (d) of sub-section (4) shall be deleted.

(c) In the schedules under the Nagaland Value Added Tax Act 2005, the following schedule shall be inserted, namely:-

“Schedule-VII
[See section 12 (5)]

Sl. No.	Conditions	Rate of tax
1	Without any deductions whatsoever	4%
2	With deduction on account of labor and service charges subject to a maximum of 40% of the total value of works contract.	12.5%”

4. In section 17 of the Nagaland Value Added Tax Act 2005, after clause (x) of sub-section (8), the following shall be inserted, namely:-

“(xi) In respect of any works contract, or the transfer of the right to use any goods for any purpose.”.

5. In section 53 of the Nagaland Value Added Tax Act 2005, after sub-section 3, the following shall be inserted, namely:-

“(4) Notwithstanding anything contained in this Act, the Government may, by notification, publish in the official gazette and subject to such conditions and restrictions, if any, as may be specified therein, permit any dealer liable to pay tax on sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, to pay, at his option in lieu of the amount of the tax payable by him under this Act, an amount by way of

composition at the rate as may be specified in the said notification but not exceeding four per centum of the total contract value of the works contract.

(5) Notwithstanding anything contained in this Act, the Government may, by notification, publish in the official gazette and subject to such conditions and restrictions as may be specified therein, permit any class of dealer to pay in lieu of the tax payable under this Act, for any period, an amount linked with the production capacity or the extent of the business, or calculated at a fixed rate of gross receipts of business or such other thing, to be determined by the Government by way of composition, and to be paid at such intervals and in such manner as may be prescribed, and the Government for the purpose of this Act may, in respect of such class of dealers, prescribe a simplified system of maintenance of accounts and filing of returns which shall remain in force during the period of such composition.

(6) A dealer in whose case composition under this section is in force, shall not:-

- (i) be entitled to any claim of ITC in respect of the purchase of any goods by him in the State;
- (ii) charge any tax on the invoices in respect of sales of goods made by him; and
- (iii) issue tax invoices to any dealer who has purchased to goods from him.”.

6. In section 92 of the Nagaland Value Added Tax Act 2005, the following amendments shall be made, namely:-

(a) The heading of sub-section (3) shall be substituted by the following, namely:-

“(3) Special provisions to deduction of tax at source in certain cases”.

(b) After the heading, the existing sub-section (3) shall be numbered as clause (i).

(c) In clause (i), the words “referred to in section 8” shall be substituted by the words “or transfer of the right to use any goods, or sale or supply of any goods,”.

(d) After clause (i) of sub-section (3) of section 92, the following clauses shall be added, namely:-

“(ii) (a). Where on an application being made by the contractor in this behalf, the Prescribed Authority is satisfied that any works contract under reference is separable and involves both transfer of property in goods and labour and services, or involves only labour and services and accordingly, justifies deduction of tax on a part of the sum payable in respect of any works contract or, as the case may be, justifies no deduction of tax at all, he shall, after giving the contractor a reasonable

opportunity of being heard, grant him such certificate as may be appropriate.

Provided that the Prescribed Authority may reject such application, or on his own motion, cancel or modify such certificate, after giving the contractor a reasonable opportunity of being heard.

(b) Where such certificate is produced by the contractor before the person responsible for payment, such person shall, unless the certificate is cancelled or modified by the Prescribed Authority, make deduction of tax in accordance with the said certificate. In the event of such certificate being cancelled or modified as provided, such person shall make the deductions accordingly.

(iii) Any person entering into any contract with any contractor for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall furnish within fifteen days from the date of signing of the contract such information as may be prescribed to the Prescribed Authority under whose jurisdiction the contractor's place of business is situated. Failure to do so shall entail a penalty not exceeding five hundred rupees per day of default after affording such person a reasonable opportunity of being heard.

(iv) Notwithstanding anything contained in any other law for the time being in force, every person mentioned in clause (i) of sub-section (3) of section 92 responsible for paying sale price in respect of any works contract or lease or sale or supply of goods shall not enter into such transaction unless the contractor, lessor or seller or supplier, as the case may be, produces an authenticated copy of the certificate of registration under this Act or furnishes an undertaking for getting himself registered and any such contractor, lessor or seller or supplier who is not so registered under this Act shall not be paid by the said responsible person any amount in respect of the sale or supply, before he gets himself registered under this Act and submits an authenticated copy of the certificate of registration.

(v) Every person referred to in clause (i) of sub-section (3) of section 92 responsible for paying sale price shall, within the prescribed time, apply to the Prescribed Authority for allotment of a Value Added Tax deduction number. The number shall be quoted in such documents, statements and returns as may be prescribed.

(vi) No interest or penalty shall be imposed or no recovery proceedings against the dealer or payee shall be initiated in respect of deduction of tax under this section."