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EXTRAORDINARY

Daman 10th January, 2008, 20 Pausa 1929 (Saka)

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No.

सरकारी राजपत्र
OFFICIAL GAZETTE



सत्यमेव जयते

भारत सरकार

Government of India

संघ प्रदेश दमण एवं दीव प्रशासन

U.T. ADMINISTRATION OF DAMAN & DIU

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NOTIFICATION

The following Daman & Diu Value Added Tax (Amendment) Regulation, 2007 (No. 2 of 2007) published in the Gazette of India, Extraordinary, Part-II-Section-1, dated 20th December 2007/Agrahayana 29, 1929 (Saka) is hereby published in the Official Gazette of this UT Administration of Daman & Diu for general information of the public.

Sd/-
(P. S. Jani)
Deputy Secretary (Taxation)

**MINISTRY OF LAW AND JUSTICE
(Legislative Department)**

New Delhi, the 20th December, 2007/Agrahayana 29, 1929 (Saka)

**THE DAMAN AND DIU VALUE ADDED TAX (AMENDED)
REGULATION, 2007**

No. 2 of 2007

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

In exercise of the powers conferred by article 240 of the Constitution, the President is pleased to promulgate the following Regulation made by him : –

1. (1) This Regulation may be called the Daman and Diu Value Added Tax (Amended) Regulation, 2007.

Short title and commencement.

(2) It shall come into force at once.

Reg. 1 of 2005

2. In the Daman and Diu Value Added Tax Regulation, 2005 (hereinafter referred to as the principal Regulation), in section 2, –

Amendment of section 2.

(i) after clause (u), the following clause shall be inserted, namely : –

(ua) "output tax" means the amount of tax payable by the dealer at the rates specified in section 4 in respect of the taxable turnover arising during the tax period, after making any adjustment to the tax as required by section 8;

(ii) after clause (v), the following clause shall be inserted namely : –

(va) "quarter" means a period of three months commencing on the 1st day of April, the 1st day of July, the 1st day of October or the 1st day of January in each year;

Amendment of section 11

3. In section 11 of the principal Regulation, –

(i) in sub-section (2), for clause (b), the following clause shall be substituted, namely –

"(b) in case the tax period for the dealer is monthly, carry forward the surplus amount, if any, after making adjustments under clause (a) to the next tax period of the same quarter";

(ii) for sub-section (3), the following sub-section shall be substituted, namely –

“(3) Where the net tax of the dealer at the end of the quarter in a financial year is a negative value, the dealer shall be entitled to claim a refund of any excess amount of tax and the Commissioner shall deal with the claim of refund in the manner specified in sections 38 & 39

Provided that the dealer may opt to adjust the refund under this sub-section as a tax-credit in any succeeding tax period within the same financial year”.

Insertion of
new section
36A

4. After section 36 of the principal Regulation, the following section shall be inserted, namely –

Tax deducted
at source

36A. (1) Notwithstanding anything contained in this Regulation, any person not being an individual or a Hindu undivided family, who is 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 some other form) in pursuance of a works contract for value exceeding twenty thousand rupees or such amount as may be notified by the Commissioner from time to time shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate notified by the Government from time to time.

(2) Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a works contract with the sub-contractor, for value exceeding twenty thousand rupees or such amount as may be notified by the Commissioner from time to time, for the transfer of property in goods (whether as goods or in some other form) involved in the execution, whether wholly or in part of the works contract 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 two percent of such payment or discharge purporting to be part of full amount of the tax payable under this Regulation.

(3) Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract involves both transfer of property in goods and labour and service, or involves only labour and service and accordingly justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate and for such period, as may be appropriate :

Provided that nothing in the said certificate shall affect liability of the contractor to pay tax under this Regulation.

(4) Where any such certificate is granted under sub-section (3), the person responsible for making payment under sub-section (I) shall, until such certificate is cancelled by the Commissioner, deduct tax at the rate specified in such certificate or deduct no tax, as the case may be.

(5) The amount deducted under this section shall be deposited into the Government treasury of Daman and Diu or a branch in Daman and Diu of a bank which may be prescribed, or at such other place or in such other manner as may be prescribed, by the person making such deduction before the expiry of twenty-eight days following the month in which such deduction is made.

(6) The person making such deduction under this section shall, at the time of payment or discharge, furnish to the contractor from whose bills or invoices such deduction is made, a certificate as may be prescribed by the Government in respect of the amount deducted, the rate at which it has been deducted and the details of deposits referred to under sub-section (5).

(7) If any person referred to in sub-section (6) fails to furnish to the contractor the certificate of tax deduction at source within seven days of making payment or discharge, he shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day of making payment to the contractor or discharge until the failure is rectified.

Provided that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.

(8) Any deduction made and deposited in accordance with the provisions of this section shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and he shall claim the adjustment towards the payment of output tax of the amount so deducted in his return for the tax period in which the certificate of such deduction was issued to him.

(9) A dealer claiming adjustment in his tax return of the amount deducted under this section shall preserve the certificate issued to him for a period of seven years and shall produce the same to the Commissioner on demand.

(10) If any person responsible for deduction under this section fails to make the deduction or, after deducting fails to deposit the amount so deducted as required in this section, the Commissioner may, 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 besides the tax deductible but not so deducted and, if deducted, not so deposited.

(11) Without prejudice to the provisions of sub-section (10), if any person fails to make deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the annual rate to be notified by the Government 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.

(12) Where the amount has not been deposited after deduction, such amount together with penalty and interest referred to in sub-section (10) and (11) shall be a charge upon all the assets of the person concerned and recoverable as arrears of land revenue.

(13) Every person responsible for making deduction of tax under this section shall apply to the Commissioner for a Tax Deduction Account Number within the prescribed time and in the prescribed form and shall also furnish a return in the prescribed form within the prescribed period.

(14) Any person who fails to comply with the requirement under sub-section (13) shall be liable to pay, by way of penalty, a sum of two hundred rupees per day from the day on which requirement arose, until the failure is rectified.

Provided that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.

Explanation – Nothing contained in this section shall apply to works contract executed in the course of Inter-State trade or commerce or outside the State or in the course of import into or export out of India.

Amendment
of Section 38.

5. In section 38 of the principal Regulation, for sub-section (3), the following sub-section shall be substituted, namely : –

“(3) Subject to the provisions of sub-section (4), any amount remaining at the end of the quarter after the application of the excess amount referred to in sub-section (2) shall, at the option of the dealer, either –

(a) be refunded to the person within ninety days after the date on which the claim was made for the refund; or

(b) be carried forward to the next tax period in the same financial year as a tax credit in that period.”

Insertion of
new section
46A.

6. After section 46 of the principal Regulation, the following section shall be inserted, namely: –

Provisional attachment to protect revenue in certain cases.

"46A. (1) Where, during the course of inquiry of any proceeding (including any proceeding for recovery of any amount due in respect of any person or dealer) or during any inspection or search in relation to the business of any person or dealer under this Regulation, the Commissioner is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, notwithstanding anything contained in any law for the time being in force or a contract to the contrary, by order in writing, attach provisionally any property movable or immovable, belonging to such person or dealer, as the case may be.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that the Commissioner may, by order in writing, revoke such order, if the person or the dealer furnishes to the Commissioner, a Bank Guarantee within such time, for such period as may be specified by the Commissioner in this behalf :

Provided also that the power under this section shall be exercised by the Commissioner himself or by the Additional Commissioner to whom the Commissioner has delegated such power."

Insertion of new section 58A.

7. After section 58 of the principal Regulation, the following section shall be inserted, namely: –

Special Audit.

"58A. (1) If, at any stage of the proceeding under this Regulation, the Commissioner, having regard to the nature and complexity of the business of a dealer and the interest of the revenue, is of the opinion that it is necessary so to do, he may direct the dealer by notice in writing to get the records including books of account, examined and audited by an accountant or a panel of accountants nominated by the Commissioner in this behalf and to furnish a report of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants and setting forth such particulars as may be specified.

(2) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the dealer have been audited under any other provision of this Regulation or any other law for the time being in force or otherwise.

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DATED : 10TH JANUARY, 2008.

(3) Every report under sub-section (1) shall be furnished by the dealer to the Commissioner within such period as may be specified by the Commissioner :

Provided that the Commissioner may, on an application made in this behalf by the dealer, for any good and sufficient reason, extend the said period by such further period or periods, as he thinks fit :

Provided further that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (1) is received by the dealer.

(4) The expenses of, and incidental to, for the examination and audit of records under sub-section (1) (including the remuneration of the accountant or a panel of accountants) shall be paid by the dealer as determined by the Commissioner and that determination shall be final, and default in such payment shall be recoverable from the dealer as tax in the manner provided for the recovery of arrears of tax under this Regulation."

PRATIBHA DEVISINGH PATIL,
President.

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K. N. CHATURVEDI,
Secy, to the Govt. of India.