

# **Indirect Tax Implications on Supply of Goods and LSTK Contracts**

- ONGC Perspective

# Exemption on Import of Goods

Customs Notfn. No.12/2012 dtd 17.03.2012 provides for the following exemption :

- i.SI.No.356 – Goods required in connection with petroleum operations undertaken under PEL/ML issued or renewed after the 1st of April, 1999 to ONGC on nomination basis
- ii.SL.No.358 – Goods required in connection with petroleum operations undertaken under specified contracts ( Ex – PMT,RAVVA)

# Exemption on Import of Goods

iii. Sl.No.359 – Goods required in connection with petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy

Subject to :

- Goods must be specified under List 13
- Certificate from DGH that goods are essential for petroleum operations

# Exemption on Import of Goods

- A Certificate from ONGC (Licensee) that he is the bonafide contractor of ONGC
- An undertaking from ONGC that in case of non-compliance of above notification ONGC (Licensee) shall pay customs duty, fine and penalties.

# Exemption on Import of Goods

iv. SL.No.357 - Parts and raw materials for manufacture of goods to be supplied in connection with the purposes of Offshore Oil Exploration or Exploitation

Subject to :

- Parts and raw materials shall be used for manufacturing under bonded warehouse (Sec 65 of Customs Act)
- Essentiality Certificate from DGH

# **CBEC clarification on goods imported under SL.No.356,358 & 359**

## **Circular No.21/2013 – Cus dated 16.05.2013**

Query	Clarification
Whether diversion of goods from one eligible project to another is permissible ?	Yes, on the basis of valid EC for transferee project
Whether execution of Re-Export bond is compulsory ?	No as exemption notification provides for undertaking only
Whether member of Consortium is eligible to import goods ?	Yes. EC should mention the name of that member
Whether Sub- Contractor whose name is not appearing in the contract with GOI is eligible to import ?	Yes, on the basis of valid EC

# Indigenous Purchase under ICB

The following benefits are available under Para 8.3 of [FTP 2009-14](#) on supply of goods:

- Advance Authorization for import of raw material
- Deemed Export Drawback for indigenous procurement of input
- **Exemption** of Terminal Excise Duty on final product

Subject to :

# Indigenous Purchase under ICB

- The goods are supplied under ICB Tender and
- such goods are exempted from payment of Customs duty

# Exemption from Central Excise

- As per Sl.No.336 of Excise Notifn.12/2012 dtd 17.03.2012, exemption is available, if:

- such goods are supplied under ICB and exempted from customs duty; and

To prove the above exemption a certificate from DGH that goods are for petroleum operations under eligible PEL/ML is required

# LSTK Contracts

- The scope of LSTK Contract includes design, engineering, procurement, erection, installation and commissioning etc.
- These activities are covered under definition of works contract which is leviable to both VAT (VAT on Works) under respective VAT Acts and Service Tax under Service Tax Law.
- VAT (VAT on Works) is applicable on transfer of property in goods (value of goods incorporated in works) and Service Tax is applicable on value of service component.

# LSTK Contracts

## Service Tax

- If the contract provides for value of goods and value of service separately, the service tax shall be payable on the value of service under Rule 2A(i) of Service Tax Valuation Rules, 2006 .

# LSTK Contracts

Where value of service is not determined under Rule 2A(i) of Service Tax Valuation Rules, 2006, then Rule 2A (ii) shall apply as under:

Sl.	Particulars	Value for Service Tax
(A)	Works contract – Original works	40% of the total amount charged
(B)	Works Contract – for maintenance or repair or reconditioning or restoration or servicing of any goods	70% of the total amount charged
(C)	Works Contract – Not covered under (A) & (B), including maintenance, repair and completion & finishing services such as glazing, plastering, floor and wall fitting, installation of electrical fittings of an immovable property	60% of the total amount charged

# LSTK Contracts

## VAT (VAT on works)

- VAT (VAT on Works) is applicable on value of goods incorporated in the works.
- VAT (VAT on Works) is not applicable on the following transaction:
  - (i) Goods purchased in the course of import (Goods cleared on the strength of EC for petroleum operation for eligible PEL/ML)
  - (ii) Interstate purchase of goods against Form-“C” issued by ONGC. This covers E-I/E-II Sale as well.

# LSTK Contracts

- To avail the benefit, the contract should provide description and value of goods
  - Imported
  - Interstate Purchase
  - Local purchase (purchase within the State).
- The above details are also required for issuing recommendatory letter to DGH and for issuance of Project Authority Certificate (PAC) for availing Deemed Export Benefit.

# Method to pay VAT on works (WCT)

Method	Value for VAT on works
<p>Actual value of goods</p>	<p>VAT is payable on value of material for each item as indicated in the Contract.</p> <p>Here, Bidder is eligible to avail VAT Credit.</p> <p>Further, VAT (WCT) is not applicable on goods purchased in the course of import &amp; Interstate purchase against Form "C" issued by ONGC.</p>
<p>Percentage Deduction</p>	<p>VAT is payable on prescribed %age of total value of works. Bidder is eligible to avail VAT Credit.</p>

# Method to pay VAT on works (WCT)

Method	Value for VAT on works
Composition Scheme	<p>VAT is payable at concessional rate but on total value of works contract.</p> <p>Here, Contractor as well as contractee (ONGC) is not eligible to avail VAT Credit.</p> <p>Contractor cannot issue tax invoice.</p>

**THANKS**