

## **Payment to NR under a composite contract for offshore supply and installation subject to TDS**

**Summary – The High Court of Andhra Pradesh in a recent case of Shakti LPG Ltd., (the Assessee) held that Payment made to US firm for installation of machinery would be liable to deduction of tax at source there being no severality of sale and installation components and payee being not covered by section 195(1)**

### **Facts**

- The assessee-company entered into a contract with a firm of USA to acquire some machinery and installation thereof in the premises of its factory/plant and paid certain sum as consideration. However, no deduction at source towards tax was made.
- Therefore, proceedings under section 201 were initiated and a notice was issued treating the assessee as assessee in default.
- The assessee submitted that the amount was paid to a non-resident and the contract was mostly for supply of goods on purchase and on that account, there was no occasion to effect deduction of tax at source.
- The Assessing Officer rejected assessee's plea and passed an order under section 201 requiring the assessee to pay tax and also interest thereon.
- On appeal, the Commissioner (Appeals) upheld the Assessing Officer's order.
- The Tribunal also rejected assessee's appeal.
- On appeal to the High Court, the assessee contended that the contract was composite in nature comprising of the sale of goods by the recipient of the amount and the contract of installation and at the best, it could be the second portion of it, that could be brought under the purview of sections 195 and 201.

### **Held**

- The deduction of tax at source is one of the important features of the Act. In a way, it obviates the necessity for the department to track the amount paid by an assessee to another, and then to levy tax on the recipient. What started as a matter of convenience has assumed the character of legal obligation on the part of the person who pays the amount. The failure to deduct tax at source which was otherwise to be done, invites several consequences, including levy of interest under section 201. Such assessee is liable to be treated as the one, in default, under section 221.
- Section 195 deals with a set of circumstances, pertaining to deduction of tax at source where, not only the person who receives the amount, but also the nature of the amount that is paid, becomes relevant. In other words, the verification can be person-specific and/or the amount-specific. If the person, who receives the amount, happens to be non-resident, subject to certain qualifications, the individual, who pays the amount, stands relieved from the obligation to effect deduction of the tax

on the amount so paid. Similarly, if the amount paid is not taxable under the Act, the obligation ceases.

- In the instant case, the assessee is not able to demonstrate that the person or agency to whom it paid the amount is the one that is described in the first part of sub-section (1) of section 195 and thereby it is not under obligation to pay tax at all. Secondly, the assessee was not able to establish that the amount paid by it is not taxable. It is not in dispute that it was paid in the context of the installation of a machinery of sophisticated technology.
- In case, the contract has separate components of sale of machinery on the one hand and the installation of machinery on the other hand and the consideration for both of them was specified, the assessee could have certainly mentioned the same in his returns, in which case it was possible for the assessing authority to address the issue even from the point of view of sections 195 and 201. That not having been done and the plea not having been taken in its correct perspective in the proceedings initiated under section 201, it is difficult to accept the contention as to the severality of the two components referred to above. The inescapable conclusion is that:
  - (i) the recipient of the amount did not qualify under section 195(1),
  - (ii) the amount paid by the assessee was taxable and
  - (iii) the assessee was under obligation to effect deduction of tax at source.

Since that was not done, no exception can be taken to the proceedings under section 201.