

**OFFICE OF THE COMMISSIONER, VAT
DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI
VYAPAR BHAWAN, NEW DELHI**

No.33/CDVAT/2013/176-180

Dated: 10-7-2013

Bharat Constructions Co.
WZ-72/2, Village Todapur,
New Delhi-110012

ORDER

Present for the Applicant : Sh. Yatendra Malik, F.C.A.
Present for the Department : Sh. T.C. Sharma,
Departmental Representative

The above named applicant has filed an application under section 36A (2) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") for issue of lower deduction of TDS Certificate in respect of two works contract awarded to it by Municipal Corporation of Delhi.

2. The facts as stated in the application are as follows: -
 - (a) That the applicant is a Government Civil Work Contractor and registered with this department.
 - (b) That the applicant has opted for Composition scheme @3%.
 - (c) That the applicant has been awarded works contract by MCD.

3. Sh. Yatendra Malik, counsel for the applicant appeared and reiterated the grounds of application. He stated that applicant is registered under composition scheme @ 3% in this department, so the net tax liability of the applicant is restricted to 3% only, but instead of deducting 3%, the contractee is deducting TDS @4%.

Further, he requested to issue a certificate directing MCD to deduct TDS at a lower rate of 3%.

4. The Departmental Representative stated that it is not a case of issue of certificate for lower deduction of TDS under section 36A (2) because for such cases, the Government in its recently notified composition scheme applicable from 01.04.2013 has made a provision for deduction of TDS according to the rate of tax opted by the contractor at Sl. No. 9 of the 'General Conditions', which reads as under:

Sl. No. 9- *“The composition dealer who opts to pay composition tax under this scheme, shall make an application to the contractee/awarder, not being an individual or a Hindu Undivided Family, authorizing it to deduct tax at source at such rate, as may be applicable to the contracts for which composition is opted by the dealer. The contractee shall deduct the TDS accordingly. The contractor shall not be able to claim benefit of the TDS in his return unless the contractee/awarder has deposited the amount in the appropriate Government Treasury and the copy of the TDS Certificate obtained in the prescribed form and in the prescribed manner, along with challan in proof of such deposit is enclosed with the return.”*

Based on the above facts, the departmental representative stated that as per the above provision, the contractor shall make an application to the contractee and contractee shall deduct the TDS at the applicable composition tax rate i.e. 1%, 2%, 3% or 6% as may be applicable in the case of the contractor. So, now the applicant has sufficient support of law and should take up the matter directly with the contractee. He further, stated that the application of the dealer is not covered under section 36A (2) of the said Act, therefore, it should be rejected.

5. I have heard the arguments put forth from both sides and have gone through the documents placed on record. Keeping in view the facts of the case, I agree with the view point of the Departmental Representative and held that the application filed by the applicant is not maintainable under section 36A (2) appended to the Delhi Value Added Tax Act, 2004, hence disposed of accordingly.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (System)
3. Value Added Tax Officer (Policy Branch)
4. Value Added Tax Officer (concerned ward)
5. Guard File

(Prashant Goyal)
Commissioner, VAT