

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

No.30/CDVAT/2013/182

Dated:10-7-2013

Raj Electrical Works,
21-A, Gur Mandi,
Delhi-110007

ORDER

Present for the Applicant : Sh. Sunil Minocha, Counsel
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 issuance of lower deduction of TDS Certificate in respect of electrical works contract awarded to it by various Organizations and Departments of the Govt. of NCT of Delhi e.g. Irrigation & Flood Control Department (I&FC), Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC).

2. The facts as stated in the application are as follows:-

- (a) That the applicant is a proprietorship firm and registered with the department and engaged in the business of execution of electrical works contract.
- (b) That the applicant has opted for Composition scheme @1% as provided under section 16 (1) of the DVAT Act, 2004.
- (c) That as per section 36 A (1) of the DVAT Act, 2004, the contractees has deducted TDS @ 2% (4% w.e.f. 16.01.2013), whereas under section 16 of the DVAT Act, 2004, he is liable to pay only 1% of the Gross Turn Over.

3. Sh. Sunil Minocha, counsel for the applicant produced the copy of DVAT-02 and stated that the applicant is a registered dealer and has opted to pay tax at the rate of 1% under General composition scheme, so the net tax liability of the applicant is restricted to 1%, but instead of 1%, the above mentioned contractees are deducting TDS @ 2%. In support of his contention, he filed the copies of DVAT-43 issued from I&FC and DSIIDC.

4. The Departmental representative stated that as per section 16 (4) of the DVAT Act, 2004 dealer was required to calculate his net tax at the rate of one paise in the rupee of his turnover and at the time of payment the applicant should have informed about this provision to the contractee. The Departmental Representative further pointed out that as per the provision contained in section 36A (2), lower deduction certificate is allowed in cases where 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. But in the instant case, the dealer is required to calculate composition tax on the gross turnover including the labour charges. Hence, the case of the dealer is not covered under section 36A (2) of the DVAT Act, 2004 and the provisions of section 36A (2) of the DVAT Act, 2004 does not apply.

Further, the departmental representative stated that section 16 (1) of the said Act has been amended w.e.f. 28.03.2013 and after 01.04.2013 works contract dealers have been excluded from section 16 (1) of the said Act, because composition scheme under section 16 (12) has been notified on 28.02.2013 for all types of works contract dealers. In the recently notified composition scheme, the provision relating to deduction of TDS is inbuilt at Sl. No. 9 of the 'General Conditions', which is 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 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 (Ward-69)
5. Guard File

(Prashant Goyal)
Commissioner, VAT