

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

No.38/CDVAT/2013/174

Dated: 08-07-2013

Gammon-Construtora Cidade-Tensacciai-JV  
Signature Bridge Project Office,  
Near Majnu ka Tila, Wazirabad, Delhi-110054

**ORDER**

Present for the Applicant : Sh. Neelkant Sankar Iyer,  
Manager (Indirect taxation)  
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 no deduction of TDS Certificate in respect of works contract awarded to it by M/s Delhi Tourism & Transportation Development Corporation Ltd., Majnu Ka Tila, Near Indian Oil Petrol Pump, Outer Ring Road, New Delhi-110054 vide acceptance letter no. DTTDC/Engg/WB/54(224)/1042 dated 28.02.2010 for Rs.631,81,00,000/- (Rupees Six Hundred Thirty One Crore and Eighty One Lac Only).

2. The facts as stated in the application are that the applicant company is a Joint Venture and its constituents as per Joint Venture agreement share of each constituents are as under:

(a) Gammon India Ltd. a company duly organized and existing under and by virtue of the laws of India with principal office at Gammon

House, Veer Savarkar Marg, Prabhadevi, Mumbai-400025, India,  
(Share in JV-60%).

(b) Construtora Cidade Ltda, a company duly organized and existing under and by virtue of the laws of Brazil having its Head Office/Registered Office at Rua Felipe Nery n 366, sala 501, CEP (ZIP) 90 440 150, Porto Alegre-RS, Brazil, (Share in JV-30%).

(c) Tensacciai S.p.A. a company duly organized and existing under and by virtue of the laws of the Italy, having its Head Office-Registered Office at Via XX Settembre, 24-20123 Milano (Italy), (Share in JV-10%).

3. Sh. Neelkant Sankar Iyer, Manager, Indirect taxation on behalf of the applicant appeared and stated that:

(a) DTTDC is deducting TDS on mobilization advances which is not a correct legal proposition and direction should be issued in this regard to DTTDC.

(b) DTTDC is deducting TDS on imported goods used in the project, so requested to direct the contractee not to deduct TDS on imported goods.

(c) Gammon-Construtora Cidade-Tensacciai-JV has given back to back work to its constituents through an agreement dated 27.04.2010. He submitted that the DTTDC is deducting 2% (read as 4% w.e.f. 16.01.2013) TDS on total certified bill value, while making payment to the contractor i.e. applicant. Further, while applicant is making payment to its constituents, then again 2% (read as 4% w.e.f. 16.01.2013) TDS is being deducted, hence, total 4% TDS is deducted on the same turnover. On this basis, the applicant has requested to issue a certificate under section 36A (2)

directing DTTDC not to deduct TDS @ 2% (read as 4% w.e.f. 16.01.2013).

4. The Departmental Representative pointed out that the application has been filed under section 36A (2) of the DVAT Act, 2004, which is regarding lower/no deduction of TDS. So, the requests made by the manager at Sl. No. 3(a) & 3(b) above are not maintainable under this section. He further stated that as per the provision contained in section 36A, 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. In the instant case, the issue is not related to major component of contract being labour and service but is a case of back-to-back contract to its constituents. In such cases, if the constituents claim wrong deduction then the liability of the main contractor is also affected because the main contractor claims labour deductions in the ratio of deduction claimed by the constituents. So, the back-to-back transactions are not said to be independent of each other and wrong claim by one of the constituents may result in loss of Government revenue. Accordingly, in the interest of revenue and with a view to know the turnover of the main contractor it is not preferable to allow no deduction certificate in such cases and instead it is a better proposition to make some minimum deduction at source to meet out such eventualities and for better administration of the said provisions of the DVAT Act, 2004.
5. I have heard the arguments put forth from both sides and have gone through the documents placed on record. The issues raised at Sl. No. 3(a) & 3(b) are not covered under section 36A (2) of the DVAT Act, 2004. Further, keeping in view the facts and complexities of the case,

a certificate for deduction of TDS at a lower rate of 1.0% is issued to the applicant as per provisions of Section 36A (2) of the DVAT Act, 2004 in respect of work order awarded to it by M/s Delhi Tourism & Transportation Development Corporation Ltd., Majnu Ka Tila, Near Indian Oil Petrol Pump, Outer Ring Road, New Delhi-110054 for Rs.631,81,00,000/- (Rupees Six Hundred Thirty One Crore and Eighty One Lac Only). Hence, M/s Delhi Tourism & Transportation Development Corporation Ltd. is instructed to deduct TDS @1.0% on the gross value of the balance payment to be made to the applicant i.e. Gammon-Construtora Cidade-Tensacciai-JV, Signature Bridge Project, Office, Near Majnu ka Tila, Wazirabad, Delhi-110054. This order is subject to the condition that the applicant shall strictly follow all legal provisions including the provisions relating to TDS as provided under Section 36A of the DVAT Act, 2004 and deduct full due TDS accordingly for transactions between the applicant and its constituents i.e. Gammon India Ltd., Construtora Cidade Ltda and Tensacciai S.p.A.

Further this certificate is issued with the condition that the applicant shall submit photocopies of invoices, TDS payment challans, TDS certificates etc. along with a monthly statement in the following format to Joint Commissioner (Special Zone) within seven days from the end of each calendar month:

1	2	3	4	5	6
Sl. No.	Name & Address of Sub-Contractor/ Constituents	Regn. No./TIN of the Sub-Contractor/ Constituents	Gross value of the contract	Amount Credited /paid to Sub-Contractor/ Constituents	TDS deducted from the amount credited/ paid to sub-Contractor /constituents

The same shall be submitted till the finalisation of all payments made under the said contract, including the payments made on account

of settlement of disputes through arbitration. A copy of the same shall also be submitted to DTTDC to enable it to collect lower TDS.

**(Prashant Goyal)**  
**Commissioner, VAT**

Copy for information and necessary action to:

1. Applicant
2. M/s Delhi Tourism & Transportation Development Corporation Ltd., Majnu Ka Tila, Near Indian Oil Petrol Pump, Outer Ring Road, New Delhi-110054
3. Addl. Commissioner (Law & Judicial)
4. Joint Commissioner (Special Zone)
5. Joint Commissioner (System)
6. Value Added Tax Officer (Policy Branch)
7. Guard File

**(Prashant Goyal)**  
**Commissioner, VAT**