

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

No.29/CDVAT/2013/ 172

Dated: 08-07-2013

J.M.C. CHEV (JV)
Shahdara, CBD Ground, Behind
Karkarduma Court, Delhi

ORDER

Present for the Applicant	:	Sh. Raj K. Batra, Advocate
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 works contract awarded to it by the Delhi Metro Rail Corporation Limited, 5th Floor, Metro Bhawan, Fire Brigade Lane, Barakhambha Road, New Delhi-110001 vide acceptance letter no. DMRC/20/III-036/2012 dated 11.04.2012 for Rs.398,33,99,968/- (Rs. Three hundred ninety eight Crore thirty three lakh ninety nine thousand nine hundred sixty eight only) including all taxes, duties, levies, cess, Delhi VAT etc. subject to such additions thereto or deductions there from as may be made under the provisions of the Contract at the times and in manner prescribed by the Contract.

2. The facts as stated in the application are that the applicant company is a Joint Venture and the constituents of the said Joint Venture are as follows:

- (a) M/s JMC Projects (India) Ltd., a company registered under the Indian Companies Act, 1956 and having its Registered office at A-104, Shapath-4, opp. Karnavati Club, S.G. Road, Ahmadabad 380051.
- (b) M/s China Harbour Engineering Company Ltd., a company registered under the State Administration for Industry and Commerce of the People's Republic of China and having its registered office at no. 9, Chunxiu Road, Dogzhimenwai, Beijing 100027, China.

The Joint Venture has been awarded work contract by Delhi Metro Rail Corporation Ltd. for 'Design and Construction of elevated viaduct and 6 elevated stations viz Krishna Nagar, East Azadnagar, Welcome, Zafrabad, Maujpur and Gokulpuri stations including architectural finishing works of stations form chainage 46200.863 to 55122.863m of Line-7 Mukundpur – Yamuna Vihar corridor of Phase-III Delhi MRTS' for Rs.398,33,99,968/- (Rs. Three hundred ninety eight Crore thirty three lakh ninety nine thousand nine hundred sixty eight only). The agreement for the aforesaid work contract was signed on 21.06.2012 between Delhi Metro Rail Corporation as Employer and J.M.C.-CHEV (Joint Venture) as Contractor.

3. Sh. Raj K. Batra, counsel for the applicant stated that in the Joint Venture, J.M.C. is the Lead Partner/Partner-in-charge in the joint Venture; and is authorized to sign and submit the Bid, incur liabilities and to receive instructions for and on behalf of all JV Partners. Further, the counsel for the applicant stated that after the bidding process started, the Joint Venture entered into the supplementary agreement wherein as per Para 6, it was agreed between the parties that CHEC shall be entitled to receive

payments from JV 1.35% of the Awarded Contract Value of the project in proportion to the payments received against work done by the Joint Venture from the Employer.

He also submitted that no tax would be leviable on Joint Venture as entire tax on 100% of the value received from Delhi Metro Rail Corporation would be payable in the hands of the aforesaid constituents.

4. The Departmental Representative pointed out 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 constituents may result in loss of Government revenue. Accordingly, in the interest of revenue and based on the past experience in such cases, it is not safe and mandatory to allow no deduction certificate in such cases and it is better proposition to make some minimum deduction at source to meet out such eventualities.
5. I have heard the arguments put forth from both sides and the documents on record. Keeping in view the circumstances of the case, certificate for deduction of TDS at a lower rate of 1% 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 the Delhi Metro Rail Corporation Limited, 5th Floor, Metro Bhawan, Fire Brigade Lane, Barakhambha Road, New Delhi-110001 for Rs.398,33,99,968/- (Rs. Three hundred ninety eight Crore thirty three lakh ninety nine thousand nine hundred sixty eight only). Hence, Delhi Metro Rail Corporation Limited is instructed to deduct TDS @0.25% on the gross value of the balance payment to be made to the applicant J.M.C. CHEV (JV) Shahdara, CBD Ground, behind Karkarduma Court, Delhi. 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 for transactions between the applicant and its constituents i.e. M/s JMC Projects (India) Ltd. and M/s China Harbour Engineering Company Ltd.

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 DMRC to enable it to deduct lower TDS.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Delhi Metro Rail Corporation Limited, 5th Floor, Metro Bhawan, Fire Brigade Lane, Barakhambha Road, New Delhi-110001
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