

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (Judicial)

M.A. No. 375/23 & 376/23.
In Appeal Nos. 441-442/ATVAT/2022
Date of Order. 20/12/2023.

Commissioner of Trade & Taxes, Delhi.

..... Applicant

v.

M/s Metrostroy-Era, JV.
1107, Indraprakash Building 21,
Barakhamba Road,
New Delhi-110020.

..... Respondent

Counsel representing the Applicant :

Sh. P. Tara.

Counsel representing the Respondent :

Sh. Rohit Gautam.

ORDER

1. This order is to dispose of 2 applications filed by Revenue - i.e., one application in each of the above captioned appeals seeking production of following documents ^{from} by the dealer:

“a) Copies of purchase bills obtained from M/s. ERA Infra Engineering Ltd.





b) Copies of bills pertaining to labour charges obtained from M/s. ERA Infra Engineering Ltd.

c) Copy of ledger account of ERA Infra Engineering Ltd., in the books of Metrostroy-Era JV.”

2. The applications have been opposed by filing reply thereto.
3. Counsel for the Revenue-applicant has submitted that only on production of the said documents, it can be gathered as to which were the transactions of sale between the JV (Contactor) and M/s Era Infra (sub-contractor); as to who had paid the valuable consideration for the material supplied by M/s Era Infra, in pursuance of the works contract i.e., whether the valuable consideration was paid to M/s Era Infra, by DMRC or by JV.
4. Learned counsel for the Revenue has also referred to the impugned order passed by learned OHA wherein he specifically mentioned that the dealer-objector did not produce any document before him during objections.
5. On the other hand, counsel for dealer has submitted that the application seeking production of documents is not maintainable, same having been filed by counsel for the Revenue, without any proper authorization from the Revenue. Another submission by counsel for the dealer is that at the time of assessment proceedings, the documents, now sought to be produced were submitted, and as such the application deserves to be dismissed.

12/2012



6. It may be mentioned here that by way of Appeal No. 441/22, dealer has challenged the impugned order passed by learned OHA, whereby penalty u/s 36A(8) of DVAT Act imposed due to non-deduction of TDS, has been upheld, and the objections filed by the dealer-objector stand dismissed. The penalty pertains to tax period Annual 2014.
7. It may be mentioned here that by way of Appeal No. 442/22, dealer has challenged the impugned order passed by learned OHA, whereby penalty u/s 36A(8) of DVAT Act imposed due to non-deduction of TDS, has been upheld, and the objections filed by the dealer-objector stand dismissed. The penalty pertains to tax period Annual 2015.
8. As is available from the material available on record, DMRC awarded contract to joint venture – “Metrostroy - Era [✓]~~Infra~~”, and not separately to each member of the JV, for execution [✓] of the works.
9. Whatever documents were produced by the dealer before the Assessing Authority find specific mention in the default assessments. No other document was produced by the dealer before the Assessing Authority or before the OHA despite ample opportunities.
10. Section 78 of DVAT Act provides that the burden of proving any matter in issue in proceedings under section 74 of this Act, or



before the Appellate Tribunal which relates to the liability to pay tax or any other amount under this Act shall lie on the person alleged to be liable to pay the amount. In view of this provision, and taking into consideration the opportunities already afforded to the dealer by the Assessing Authority, and non-production of any other document on the part of the dealer, I do not find it to be a fit case to call upon the dealer to produce any of the said documents.

11. Even otherwise, having regard to the fact that DMRC awarded contract to joint venture – “Metrostroy - Era” ~~Infra~~, the fact that the JV was registered as a dealer, and that the contract was not awarded by DMRC separately or individually to each member, for execution of the works, production of the documents mentioned in the applications is neither relevant nor necessary.
12. For the aforesaid reasons, both these applications are hereby dismissed.
13. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.
Date : 20/12/2023.



Narinder Kumar
20/12/23
(Narinder Kumar)
Member (J)