

# Bimal Jain

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Dear Professional Colleague,

## Goods imported/ purchased inter-State used in Works contract, would be exempt from VAT

We are sharing with you an important judgement of the Hon'ble Supreme Court of India in the case of *Commissioner of Delhi Value Added Tax Vs. ABB Ltd [(2016) 68 taxmann.com 227 –SUPREME COURT OF INDIA]* on the following issue:

### Issue:

Whether the movement of goods in pursuance of Works contract constituted inter-State trade as well as sale/ purchase in the course of import, covered by Section 3(a) and Section 5(2) of the Central Sales Tax Act, 1956 (“**the CST Act**”) and thus, exempt under the Delhi Value Added Tax Act, 2004 (“**the DVAT Act**”)?

### Facts & Background:

ABB Ltd. (“**the Respondent**”), a subsidiary of ABB Ltd., Zurich Switzerland (a market leader in power and automation technologies having operational presence in over 100 countries), was engaged in manufacturing and sale of engineering goods, including power distribution system and SCADA system. The Delhi Metro Rail Corporation (“**the DMRC**”) awarded a contract to the Respondent to provide transformers, switch gears, high voltage cables, SCADA system and also complete electrical solution, including control room for operation of metro trains on the concerned section, which were imported by the Respondent from Zurich Switzerland. The Assessing Officer (“**the AO**”) asked the Respondent to pay VAT under the DVAT Act on the deemed sale made to the DMRC. The lower authorities including Tribunal upheld the order of AO.

Respondent's contention: The Respondent denied its liability on the ground that it was exempted from payment of VAT in respect of sale affected in the course of import and also in respect of inter-State sale of goods, on account of provisions of Sections 3(a) and 5(2) of the CST Act.

Revenue's contention: The AO as well as the Appellate Authority returned that there was no link between the contractee (DMRC) and the supplier of goods that were imported by the Respondent and hence on account of lack of any privity of contract, the requirements of Section 3(a) of the CST Act were not satisfied in respect of movement of goods from outside Delhi to the required site of the DMRC in Delhi. Similar finding was returned in respect of movement of the goods under import i.e., it cannot be held to have been occasioned by the contract between the DMRC and the Respondent.

Decision of the Hon'ble High Court: The Hon'ble High Court held that the lower authorities and the Tribunal had failed to consider relevant clauses & conditions of the contract, which

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demonstrated & clarified that the importation of goods was strictly as per requirement and specification set out by the DMRC in the contract and only to meet such requirement of supply, the specified goods were imported. Hence, the event of import & supply was clearly occasioned by the contract awarded to the Respondent by the DMRC. Thus, the transactions were not covered by the DVAT Act but covered by the CST Act.

Being aggrieved, the Revenue preferred an appeal before the Hon'ble Supreme Court of India.

## **Held:**

The Hon'ble Supreme Court of India after detailed deliberation held as under:

- **Sale in course of inter-State sale:** The High Court found that terms of the contract envisaged inter-State movement of goods. Such movement of goods was within the knowledge of the DMRC, because there was total ban on setting up/working of heavy industries in Delhi and the DMRC had approved 18 places within the Country from where the equipment & goods had to be supplied. These included the premises and factories of the Respondent also. On facts, therefore, it was rightly held by the High Court that the inter-State movement of goods was within the contemplation of the parties and it can be reasonably presumed that such movement was to fulfill the terms of the contract and, therefore, the transaction was covered by Section 3(a) of the CST Act.
- **Sale in course of imports:** The Hon'ble Supreme Court relied upon the judgement of the Constitution Bench of the Supreme Court in the case of *K.G. Khosla & Co. Vs. Dy. Commissioner of Commercial Taxes [AIR 1966 SC 1216]*, wherein it was held that Section 5(2) of the CST Act does not prescribe any condition that before the sale could be said to have occasioned import, it is necessary that the sale should precede the import. The sale is only required to be incidental to the contract. In other words, the movement of goods from another country to India should be in pursuance of the conditions of the contract.

Therefore, the Hon'ble Supreme Court held that the salient features flowing out as conditions in the contract and the entire conspectus of law on the issues as noticed earlier leaves one with no option but to hold that the movement of goods by way of imports or by way of inter-State trade in instant case was in pursuance of the conditions and/or as an incident of the contract between the Respondent and the DMRC. The goods were of specific quality and description for being used in the Works contract awarded on turnkey basis to the Respondent and there was no possibility of such goods being diverted by the Respondent for any other purpose.

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*Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.*

Thanks & Best Regards,

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