



OFFICE OF THE DIR. (F&A)
DELHI JAL BOARD: DELHI SARKAR
VARUNALAYA PHASE-II, KAROL BAGH
NEW DELHI-110005



No. DJB/Fin./DD-III/Circular/S.Tax./VAT/2015-16

39008

Dated:- 10-4-15

CIRCULAR

As per Report of the Comptroller and Auditor General of India on Social Sector (Non-PSU) for the year ended 31st March 2012 G.N.C.T.D Report No.2 of the year 2013 Chapter -2- Performance Audit in r/o Para no. (d)-irregular payment of Rs.17.85 crore on account of Service Tax and VAT & Para No.(j)-Inadmissible payment of Rs.1.39 crore on account of VAT was made, copies of relevant portions of the report /informations are enclosed for compliance by all DDOs with immediate effect.

Essence of the Audit paras are re-produced below:-

1. As per Para No.(d) - "According to Clauses 37 and 38(1) of the General Conditions of Contract (GCC), all tendered rates shall be inclusive of all taxes and levies (except service tax) payable under respective statutes. In respect of service tax, the same shall be paid by the contractor to the department concerned on demand and it will be reimbursed to him by the Engineer-in-Charge after satisfying that it has been actually and genuinely paid by the contractor".
2. As per Para No.(j) - "According to the VAT Act, VAT on renting of machinery is applicable in case of transfer of right to use. However, in this case, the contractor had provided the services of machine along with its operation and maintenance and therefore, there was no 'transfer of right to use'. Audit observed that while preferring bills, the contractor claimed VAT @ 12.5 percent along with his claims. Machinery/equipment transferred along with the operator should be treated as transfer of goods without transferring right of possession and effective control and hence, levy of VAT was not applicable. However, the DJB paid Rs. 1.39 crore to the contractors during 2007-12 on hiring of jetting cum suction sewer cleaning machines, which was inadmissible and thus, recoverable from the contractors".

Encl - As above.

All DDOs/Sr.AOs/AOs/AAOs

Copy for kind information pl:-

1. PS to CEO
2. Member(Finance)
3. Jt.Dir.(F&A)-I/II
4. Dy.Dir.(F&A)-I/II/III/IV

(H.V.Tandon)

Director (Finance & Accounts)

Director (Finance & Accounts)

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EOTOMUS
K. G. S.

Report of the
Comptroller and Auditor General of India
on
Social Sector (Non-PSU)
for the year ended 31 March 2012

Government of National Capital
Territory of Delhi
Report No. 2 of the year 2013

(d) Irregular payment of ₹ 17.85 crore on account of Service Tax and VAT

According to Clauses 37 and 38 (1) of the General Conditions of Contract (GCC), all tendered rates shall be inclusive of all taxes and levies (except service tax) payable under respective statutes. In respect of service tax, the same shall be paid by the contractor to the department concerned on demand and it will be reimbursed to him by the Engineer-in-Charge after satisfying that it has been actually and genuinely paid by the contractor. Scrutiny of the records revealed that the DJB did not include the above clauses of general conditions of contract in the agreement.

The DJB paid service tax to the tune of ₹ 4.12 crore to various contractors during the period 2007-12 through running bills. Payment of service tax without ensuring that the same has actually been paid by the contractor to the department concerned was irregular.

Another condition for payment of VAT was accepted by the DJB while awarding the works. Audit is of the view that the VAT was also to be reimbursed to the contractors in the manner in which service tax is to be

reimbursed as the contractors collected this amount, as custodian of government money. The DJB paid VAT to contractors to the tune of ₹ 13.73 crore during 2007-12.

Thus, non-inclusion of relevant clauses of GCC in the contract agreements, resulted in absence of a mechanism for verification of payment of service tax and VAT amounting to ₹ 17.85 crore by the contractors to the department.

The DJB stated (March 2013) that there were no instructions earlier that the service tax would be reimbursed only after deposit. As per VAT provisions the DJB had to deduct the TDS-VAT from the bills of contractor. The reply was not acceptable as clause 37 and 38 of the GCC clearly state that service tax would be reimbursed and the contractor's payment would include all taxes and levies. Despite this, the DJB accepted the condition of payment of VAT and did not ensure its deposit into Government account by the contractors.

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(i) Inadmissible payment of ₹ 1.39 crore on account of VAT

The work of providing 30 vehicle mounted jetting-cum suction sewer cleaning machines (Annexure-2.3) including its operation and maintenance was

awarded to M/S City Line Travels Pvt. Ltd. in April 2006 for a period of five years at a cost of ₹ 5.76 crore (at the rate of ₹ 3200 per day per machine). As per terms and conditions of the agreement, the rates included all taxes as applicable to government/semi-government department till the deployment of machines in Delhi, except government levies/taxes on hiring of these machines which were to be paid extra.

According to the VAT Act, VAT on renting of machinery is applicable in case of transfer of right to use. However, in this case, the contractor had provided the services of machine along with its operation and maintenance and therefore, there was no 'transfer of right to use'. Audit observed that while preferring bills, the contractor claimed VAT @ 12.5 per cent along with his claims. Machinery/equipment transferred along with the operator should be treated as transfer of goods without transferring right of possession and effective control and hence, levy of VAT was not applicable. However, the DJB paid ₹ 1.39 crore to the contractors during 2007-12 on hiring of jetting cum suction sewer cleaning machines, which was inadmissible and thus, recoverable from the contractors.

The DJB stated (March 2013) that the VAT was paid considering the transfer of right to use and the overall control of the machine remained with it. The reply was not acceptable as in this case the DJB could use the machine only for eight hours in a day and six days in a week. The right to use was applicable only if DJB had acquired the machine for full period of agreement.

