

VATR 78

Facts

A is a company engaged in the business of hotels operation. It presently operates 8 hotels.

Three of the hotel buildings are owned by B, a subsidiary of A, incorporated in April 2016. B is VAT registered with effect from December 2016.

A has entered into contracts for the renovation of 3 hotels owned by B. A restructuring exercise has been undertaken whereby the cost of the structural part of the renovation to the immovable property will be borne by B and any capital expenditure on movable property will be borne by A.

The contractors and service providers will continue to invoice A and A will withhold TDS at the appropriate tax rates on payments to the contractors and service providers. A quantity surveyor will determine the structural and non-structural aspects of the expenditure, so that A will invoice B for the structural aspect in accordance with the report of the quantity surveyor.

An Agreement would be executed between the parties so that all the terms and conditions between A and the relevant suppliers equally apply to B and A.

Points at issue

- (1) Whether B should apply TDS on payments made to A?
- (2) Whether A will be able to claim credit for input tax on VAT charged by the contractors and service providers on the structural aspect of the capital expenditure and whether the corresponding amount charged to B by A will be subject to VAT at the standard rate?

Ruling

On the basis of the facts mentioned above, it is confirmed that -

- (1) A not being a contractor or a provider of services as specified in the Fifth Schedule to the Income Tax Act, B is not required to apply TDS on the payment made to A.
- (2) A will be entitled to claim credit for input tax on VAT charged by the contractors and service providers on the structural aspect of the capital expenditure and the corresponding amount A will charge to B will be subject to VAT at the standard rate of 15%.