

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. T.K. Ziavudeen.
*Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. Dr. A. Bijikumari Amma.
*Joint Commissioner (A & I),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. N. Thulaseedharan Pillai.
*Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Manufacturing and supplying of steel channel sleepers - interstate works contract - liability for TDS - Orders issued.

Read:- Application dtd. 03/01/2017 from M/s. Eastern Hardware Mart, Kolkata.

ORDER No.CT/1117/2017-C3 DATED 25/03/2017.

1. M/s. Eastern Hardware Mart, Kolkata has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether the works contract entered into by the applicant with M/s. Southern Railway is an interstate works contract or not.

2. The applicant is a dealer situated in the State of West Bengal holding TIN 19260371023 and CST No. 24560101340.

3. The applicant has submitted that they have been awarded a works contract by the Southern Railway, Thiruvananthapuram for the renewal of Corroded Steel Channel Sleepers in Br. No. 402 Ernakulam-Kottayam section.

4. The applicant has further submitted that the works contract is for manufacturing, supplying and fixing of BG galvanized steel channel sleepers along with all fittings and fixtures. The applicant has also submitted that the authorised inspecting authority of Railways 'Rites Ltd.' had inspected the factory of the contractor at Hawrah and issued certificate before supplying the material. The captioned materials were moved from the factory at Hawrah only after the inspection. Based on the works contract agreement the materials supplied from

West Bengal and fixed the same in the specified areas of the Railway line in Ernakulam-Kottayam under Southern Railway.

5. The applicant has requested to clarify whether the above work is an interstate works contract and whether the provisions of TDS under the KVAT Act is applicable in this case.

6. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

7. The Supreme Court of India in the case **Union of India Vs. K.G. Khosla and Co. Ltd. (43 STC 457)** had held that what is really decisive is whether the sale is one which has occasioned the movement of goods from one State to another. The questions regarding interstate sale is to be answered on the basis of section 3 of the Central Sales Tax Act. The law requires that it should be levied and collected in the State from which the movement of goods commences. The movement of goods in pursuance of the agreement is the main criteria for fixing the situs of taxation [**Bharat Heavy Electricals Vs. Union of India** 102 STC 382]. A sale is an interstate sale under section 3, if there is a contract of sale preceding the movement from one state to another and the movement must be the result of this covenant [Indian Oil Corporation 47 STC 5]. In **Builders Association of India Case** [73 STC 394], it was held that if in the process of executing a works contract, a transfer of property in the goods take place outside the State, the State would have no power to levy sales tax on such a transfer. In **Larsen and Toubro Ltd. Vs. Commissioner of Commercial Taxes** (2003) 132 STC 272 (AP) it was held that, if movement of goods from outside the state was occasioned by contract and Central Sales Tax is paid in the State of origin, no local taxes are leviable.

8. The applicant has produced copies of the agreement with M/s. Southern Railway and inspection report issued by "Rites Ltd.", the authorized inspecting authority of Railways. As per the terms of the contract, the work would be supervised by competent personnel of the awarder and the work would have to be done as per his direction. The materials that are to be supplied and used for the work by the contractor would have to be got approved by the Engineer-in-charge before use. New channel sleepers are to be fixed as per Railway's approved drawings. The finished steel channel sleepers and grooved steel pad plates which are inspected and passed for the work by the nominated railway officials, should only be brought to the work site by the contractor.

9. Thus, from the terms of the contract it is clear that the goods used in the works contract are of specific quality and description, which are manufactured at the contractor's factory in Kolkata, and which are subject to strict inspection by the personnel of the awarder. Hence, there is no possibility of such goods being diverted by the dealer for any other purpose. In fact, the authorised inspecting body of the awarder, ie., 'RITES', after undertaking inspection of the galvanized steel channel sleepers, and fittings manufactured by the contractor/applicant, has issued an 'Inspection Certificate'.

10. In the circumstances, and as per the copy of agreement produced before this authority, the transaction involved is an interstate works contract for which the applicant is not liable to pay any tax under the KVAT Act.

The issues raised above are clarified accordingly.

**T.K. Ziaudeen
Thulaseedharan Pillai
Joint Commissioner (Law)
Commissioner (General)
O/o CCT**

**Dr. A. Bijikumari Amma
Joint Commissioner (A&I)
O/o CCT**

**N.
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To

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