

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

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

*3. Harindranath K.R.
Deputy Commissioner (Internal Audit),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Installation and commissioning of Solar power project – inter-state works contract – liability for TDS – Orders issued.

Read:- Application dtd. 17/02/2017 from M/s. Genus Power Infrastructures Ltd., Rajasthan.

ORDER No.CT/12777/2017-C3 DATED 28/10/2017.

1. M/s. Genus Power Infrastructure Ltd., Rajasthan 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. Kerala State Electricity Board Ltd. is an inter-state works contract or not.

2. The applicant is a registered works contractor in Jaipur holding VAT and CST registration. The applicant is undertaking works of solar power project in Rajasthan and all other states in India. They have been awarded a works contract by the KSEB Ltd. for the installation and commissioning of 700 kwp Grid Tied solar PV power project in the roof top of power house building owned by KSEB Ltd under Generation wing, on turnkey basis and operation and maintenance of plant for the first 5 years from the date of commissioning of the plant.

3. The applicant would submit that it is clearly mentioned in the agreement that for the goods supplied from outside the state/country, the supplier shall be

entirely responsible for all taxes, duties, stamp duties, license fees and other such levies imposed outside the purchasing country.

4. The applicant would further submit that as per clause 20 of the Letter of award issued by the KSEB Ltd., it is clearly mentioned that “Engineer in charge shall arrange inspection of material/equipment and upon satisfactory completion of the inspection and tests, Engineer-in-charge shall approve and issue material dispatch clearance certificate”. The Engineer-in-charge has inspected the specified material/equipment required for the project and issued material dispatch clearance certificate. Accordingly the applicant has brought the entire materials/equipments from outside the State through the border check post. The applicant has produced a copy of contract agreement, pre-dispatch clearance certificate issued by the Chief Engineer etc. The applicant has also produced copies of their agreement with M/s. Prozeal Infra Engineering Pvt. Ltd., Ahmedabad, Application for ‘Bill of Material’ of Prozeal Infra Engineering Pvt Ltd. for grant of customs and excise duty benefits by Ministry of New & Renewable Energy, tax invoice, transaction slip, delivery chalan and e-consignment declaration in form 8F.

5. The applicant would further submit that the material/equipment used in the project also be pre-inspected at the manufacturing place and the material/equipment dispatched only after the authorized Engineer/in/charge issued the dispatch clearance certificate, thus it is very clear that the materials/equipments used for the projects as specified in the contract were brought from outside the State.

6. The applicant would contend that the above works contract is an interstate works contract as the entire materials used for projects as specified in the contract were brought from outside the State and no local purchase were effected from the State of Kerala. Also, there is no tax liability in Kerala.

7. The applicant has relied on the judgment of the Hon’ble Supreme Court of India in **Union of India vs. K.G.Khosla & Co. Ltd.** wherein it is 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 sec. 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 (**Bharath Heavy Electricals vs. Union of India**). A sale is an interstate sale under sec.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**). In **Builders Association of India** case, it was held that if in the process of executing a works contract, a transfer of property in the goods takes place outside the state, the state would have no power to levy sales tax on such a transfer. In **Larsen & Toubro Ltd. vs. Commissioner of Commercial Taxes**, 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 also relied on the clarification orders C3/24336/11/CT dtd. 28-03-2012 in the case of M/s. Hyderabad Industries Ltd., Tsr, C3/38881/14 dtd. 30-04-15 in the case of M/s. Innovative Seating (P) Ltd., Vadodara, C3/20680/16 dtd. 30-09-16 in the case of M/s. Hitech Elastomers Ltd., Ahmadabad and CT/1117/2017/C3 dtd. 25.03.2017 in the case of M/s. Eastern Hardware Mart, Kolkata wherein it is clarified that they are interstate works contracts and hence the provisions of TDS is not applicable.

9. The applicant has requested to clarify-

- 1) whether the works contract entered into by the applicant with M/s. KSEB Ltd., Tvpm. for the installation and commissioning of 700 kwp Grid tied solar PV power project by procuring material from outside state as specified in the agreement is an inter-state works contract or not?
- 2) whether the provisions of TDS under the KVAT Act is applicable in this case?

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

11. 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.

12. Through a catena of clarificatory orders, and decisions rendered by various High Courts and the Supreme Court of India, the principles underlying 'interstate works contract' have been well-established. These principles are as follows:

- (a) There must be a works contract agreement.
- (b) The movement of goods, by way of inter-state trade, must be in pursuance of the conditions and / or as an incident of the contract between the parties.
- (c) The goods must be of specific quality and description for being used in the works contract, and there should not be any possibility of such goods being diverted by the contractor for any other purpose.

13. If the facts of the dispute on hand corresponds to the salient features of 'inter-state works contract' stated above, then the transaction may be termed as inter-state works contract and no local tax under KVAT Act are leviable.

The issues raised above are clarified accordingly.

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

N. Thulaseedharan Pillai
Joint Commissioner (General)
O/o CCT

Harindranath K.R
Deputy Commissioner (Internal Audit)
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To

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