

PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
UNDER SECTION 94 OF THE KERALA VALUE ADDED TAX ACT, 2003
DEPARTMENT OF COMMERCIAL TAXES, KERALA.

Members present are:

- 1. B.S Thyagarajababu, Joint Commissioner (General),*
- 2. A. Nazurudeen, Joint Commissioner (A & I),*
- 3. M.I. Mansur,, Deputy Commissioner (Internal Audit), Thiruvananthapuram.*

Sub:- KVAT Act, 2003 – Clarification U/s 94 – Application put in by M/s.Sreerosh Properties (P) Ltd., Kannur – Orders issued- reg.

Read:- 1.Application dated 04-02-2013 M/s.Sreerosh Properties (P) Ltd., Kannur
2. Final Hearing Dt.25-10-2018.

ORDER No.C3/3450/2013/CT DATED 27-03-2019

M/s.Sreerosh Properties (P) Ltd. is engaged in the civil construction of building. The petitioner carries on the business of real estate development and enters into tripartite agreement with land owners for developing and selling their property for which the petitioner is given a power of attorney through registered documents. The petitioner requested clarify the following:

01. Whether VAT is payable on the value of undivided share of land shown separately as in agreement of sale?
02. If the petitioner opts for regular payment of tax as provided u/s.6(1)(f) of the KVAT Act, 2003. whether value of land is to be included in the total contract receipt, and if included, can it be deducted from the total contract receipt for the purpose of calculation of taxable turnover?
03. If the petitioner opts for payment of compounded tax as provided u/s.8(a)(i) of the Act, whether value of land is to be included in the contract amount for the purpose of payment of compounded tax?


The authorized representative of petitioner was heard and it is stated that the petitioner on the basis of the power of attorney enters into agreement with prospective purchasers for sale of undivided share of land which they intend to purchase with the right for construction of an apartment free from all encumbrances for an amount mutually agreed between the petitioner and prospective purchasers. On the basis of agreement of sale, the petitioner enters into a builders agreement with the prospective purchaser for construction of residential apartment. After the

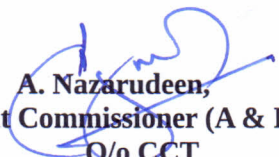
construction of apartment is over, the entire payment as per builders agreement is made by the purchaser, a sale deed is executed for sale of apartment along with undivided share of land in favour of the purchaser by the petitioner as power of attorney holder of the land owner. The sale of undivided share of land to the sale of apartment along with undivided share of land reveals that there are separate agreements for sale of undivided share of land on which construction of the apartment is done and also for execution of the work of construction of the apartment. The consideration received for each of the above is also separately ascertainable from the agreements.


The Hon'ble High Court of Mumbai in Maharashtra chamber of Housing Industry and Ors. Vs. State of Maharashtra (2012) 51 VST 68 held that deduction of value of land for computation of turnover under works contract is valid. Therefore the value of land will not form part of turnover for the purpose of levy of tax in a case of construction of apartments as per agreements executed with prospective buyers.

The matter was examined in detail. It is clarified that the immovable property is excluded from the definition of "goods" under Sec.2(xx) of the Kerala Value Added Tax Act, 2003. Definition of "total turnover" and "turnover" under the Kerala Value Added Tax Act pertains to transaction in goods only. So, land being immovable property will not come within the purview of goods either under the definitions 'total turnover' or 'turnover' as per the Kerala Value Added Tax Act. As such, consideration received for the transfer of land is not amenable to taxation under the Kerala Value Added Tax Act, whether under Sec.6(1)(a) or under Sec.8(a) of the Kerala Value Added Tax Act if evidence is available for the same.

The issues raised above are clarified accordingly.


B.S Thyagarajababu,
Joint Commissioner (General),
O/o CCT


A. Nazarudeen,
Joint Commissioner (A & I),
O/o CCT


M.I. Mansur,
Deputy Commissioner
(Internal Audit), O/o CCT

To

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Ennes Enclave, 1st Floor,
Near Asoka Hospital,
South Bazar, Kannur.