

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. C. Lalappan.

*Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. T.K. Ziavudeen.

*Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. Dr. A. Bijikumari Amma.

*Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub : KVAT Act, 2003 – Clarification U/s 94 – Taking over of a proprietorship concern by a Company and the eligibility to pay tax under Section 8(f) of the Act – Orders issued.

Read : Application from M/s. CDB 24 Carat International Jewellers Pvt. Ltd., Kozhikode dtd. 12/9/2014.

ORDER No.C3/28316/14/CT DATED 23/4/2015.

1. M/s. CDB 24 Carat International Jewellers Pvt. Ltd., Kozhikode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the takeover of a proprietorship concern by a Company and the eligibility to pay tax under Section 8(f) of the Kerala Value Added Tax Act, 2003.

2. The applicant has been paying compounded tax U/s 8 of the Act for the last five years. The applicant proposes to take over another proprietorship business having several branches, all of which have been paying compounded tax for more than two years, as a going concern. Since the proprietorship branches are taken over by the Private Limited Company as a going concern, the former will no more be in existence. But for the change in constitution, both businesses had continued under the compounding scheme for more than two years.

3. The applicant placing his reliance on clause (f) of Section 8 of the Kerala Value Added Tax Act, 2003 would contend that *Explanation 1* of clause (f) denies permission to a dealer to opt for payment of tax under this clause only if he had not conducted business up to a full year as on the first day of April of the year to which the option relates. The applicant, as well as the proprietorship business proposed to be taken over, have been paying compounded tax under Section 8

of the Act for more than two years. So Explanation 1 of Clause (f) will not have any application to the applicant when it takes over the proprietorship concern. Since both businesses had paid tax U/s 8 for more than two previous years, there will not be any problem to apply Explanation 2 therein.

4. The applicant contends that as such, he will be eligible to opt for payment of compounded tax under Section 8 even after it takes over the proprietorship business and has requested to clarify the issue.

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

6. Taking over the branches of a proprietary concern by a Private Limited Company would amount to starting of new branches by the Private Limited Company, since the proprietorship concern cease to exist. Hence such branches can only be treated as new branches started by the Company during the current year. As such, as per the existing compounding provision, they cannot pay tax at compounded rates for the first financial year.

The issues raised above are clarified accordingly.

C. Lalappan
Joint Commissioner(A&I)

T.K. Ziavudeen
Joint Commissioner(General)

Dr. A. Bijikumari Amma
Joint Commissioner (Law)

To

M/s. S. Anil Kumar, K.S.Hariharan & K. Umamaheswar,
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