

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

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

3. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Works contract and liability to deduct tax at source
– Orders issued.

Read : 1. Application from M/s. Annai Infra Developers Pvt. Ltd., Erode, dtd. 27/12/2014.
2. Judgment of the Hon'ble High Court of Kerala in WP(C) No.22116 of 2015 (L) dtd. 3/8/2015.

ORDER No.C3/40582/14/CT DATED 28/9/2015.

1. M/s. Annai Infra Developers Private Limited, Erode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether materials which moved from the State of Tamil Nadu to the State of Kerala for the purpose of using in the execution of the works contract is liable to be taxed under Kerala Value Added Tax Act, 2003.

2. The applicant is a company registered under the Companies Act, 1956 and is registered with the Public Works Department and Highways Department as Class-I Contractor and undertakes irrigation and highways projects in Tamil Nadu. The company is registered under TNVAT Act, 2005 and CST Act, 1956 and is paying tax under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The applicant submits that tenders were invited by the Chief Engineer, Kerala State Rural Roads Development Agency under the Prime Minister Gram Sadak Yojana (PMGSY) for building rural roads and the applicant applied for the same through bidding process and was awarded the contract for construction of roads in various places in Palakkad District. Based on this, the applicant registered themselves with the Kerala Commercial Taxes Department solely for the purpose of executing the contract.

4. The applicant submits that in order to construct the roads, they purchased raw materials from various suppliers in the State of Tamil Nadu who were supplying the said materials on payment of Central Sales Tax at full rates and were delivering the goods so purchased to the applicant in the State of Kerala and post the same, it is used in the works contract by the applicant which is deemed as a sale in terms of the fiction created in the concept of sale by the 42nd Amendment to the Constitution. The applicant would contend that for the purpose of making the above said deemed

sale pursuant to execution of works contract, the applicant is purchasing the goods from various suppliers located in Tamil Nadu and this deemed sale pursuant to execution of works contract by them has occasioned the movement of goods from the State of Tamil Nadu to the State of Kerala.

5. The applicant would further contend that the Finance Act of 2002 substituted the definition of 'sale' in Section 2(g) of the Central Sales Tax Act, which included 'transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract'. This amended definition was given effect from May 11th, 2002. This was followed by another amendment in 2005, i.e., addition of a proviso to the definition of 'sale price' contained in Section 2(h). The definition and proviso reads as under:

Sec. 2(h): 'sale price' means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged:

Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause".

The applicant would further submit that one more amendment was made in 2005 in Section 13 of the Central Sales Tax Act by which the Rule making power was conferred on the Central Government to provide for the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to clause (h) of Section 2. By these amendments to the Act, the position became clear that there can be an inter-state deemed sales in works contract and once a contract is held as an inter-state contract, there is no tax liability on such sale in the State of Kerala and hence TDS cannot be made.

6. The applicant contends that while making payment to the applicant, TDS is made by the awarder, despite the provision in law which lays down that there cannot be any tax in the State of Kerala when the contract is an inter-state works contract.

7. The applicant would contend that the Punjab & Haryana High Court in Thomson Press (India) Ltd. Vs. State of Haryana (1996) 100 STC 417 (P&H) held that *if the inter-state movement of goods arises due to a pre-existing contract then inputs and goods involved in the execution of the works contract shall also be deemed to have moved and the State Government cannot levy tax on deemed sales of such goods*. The applicant would submit that in East India Cotton Mfg. Co. Ltd. Vs. State of Haryana (1993) 90 STC 221 (P&H) the assessee received gray fabric from outside the State to process into dyed and printing fabric and after processing, it dispatched the same to the dispatching State. It was held that *movement of cloth is occasioned by the contract of sale within the meaning of section 3 of the CST Act and the transaction amounts to an interstate sale*. The applicant would also contend that in the case of Sundaram Industries Ltd. Vs. State of Tamil Nadu (2002) 128 STC 373 Tribunal, it was held that *when tyres are received for re-threading from the State of Kerala and the rethreading was done in Tamil Nadu, the sale is a local sale*. This decision was appealed against in

the Hon'ble High Court of Madras and the Court set aside the decision [(2002) 128 STC 358 Mad] and hence the position that is established is that rethreading of tyres received from one State and sent back to that State is an inter-state works contract. The petitioner has also relied upon the decision of the Hon'ble High Court of Kerala in OTA No. 8 of 2012 to support his contentions.

8. The applicant would submit that in as much as the goods required for the contract is procured from the State of Tamil Nadu as is evidenced by the purchase bills, the Authority may clarify that Value Added Tax is not applicable for the said contract and therefore TDS need not be made by the Chief Engineer, Kerala State Rural Roads Development Agency. The applicant has requested to clarify the issue.

9. The Hon'ble High Court of Kerala vide the judgment read as paper 2nd above has directed this Authority to consider the clarification application *within a period of two months*.

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

11. A perusal of the contractual document entered into between the applicant and the awarder would show that there are no stipulations regarding the supply of materials to be used in the work. The applicant can procure the materials either from the State of Kerala or from any other State. In the absence of any such stipulation, it cannot be said that the movement of goods from the State of Tamil Nadu to the State of Kerala was occasioned on the basis of a pre-determined contract, merely for the reason that certain goods were procured from the State of Tamil Nadu. As such, it is hereby clarified that the works contract in question is a local works contract and the awarder has to deduct tax at source.

12. The issues raised above are clarified accordingly and the direction of the Hon'ble High Court in WP(C) No. 22116 of 2015 (L) is dated 3/8/2015 is hereby complied with.

N.Thulaseedharan Pillai
Joint Commissioner (General)

Dr. A. Bijikumari Amma
Joint Commissioner (Law)

V.J. Gopakumar
Deputy Commissioner (General)

To

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