

No. C1/520/06/CT

Office of the Commissioner,
Dept of Commercial taxes
Thiruvananthapuram
Dated.30/12/2006

CIRCULAR No.54/2006

Sub:- KVAT Act, 2003 – Presumptive Tax Payers – un authorized collection of Tax- instructions- issued –reg

Sub-section (5) of Section 6 of KVAT Act, 2003 provides option for payment of presumptive tax, instead of paying tax under sub-section (1) of Section 6, at the rate of half percent of the turnover of taxable goods by any registered dealer other than an importer or a dealer liable to tax under sub-section (2) of Section 6 or a dealer effecting first taxable sale of goods within the State, whose total turnover for a year is below fifty lakhs rupees. As per sub-section (1) of section 11 of the said Act such dealers are not eligible for in put tax credit. Sub-section (2) of Section 30 further stipulates that dealers who have opted for payment of presumptive tax under sub-section (5) of Section 6 shall not be eligible to collect any tax under this Act.

According to the Standards of Weights & Measures Act (Packaged Commodities' Rules) it is mandatory for all manufacturers to print the maximum retail price, inclusive of all taxes on the package of any goods, at which such goods may be sold to the ultimate consumer. This system has ensured that, by and large, there is no over-charging by retailers under the guise of local taxes. The manufacturer normally prints the price prevailing in the market with the highest tax rate. Taxes for this purpose mean taxes such as central sales tax and value added tax. In addition to taxes, another factor which determines maximum retail price is the accepted retail margins. Consequently, the manufacturers build in a margin normally equivalent to the higher required margin. Thus, the maximum retail price printed on the packages actually includes in addition to the higher required margin, an element of built-in tax.

It is now brought to the notice that some presumptive tax payers while effecting sales to the consumers are collecting price inclusive of taxes by charging them MRP, which such

dealers are not eligible to collect by virtue of sub-section (2) of Section 30 of the said Act.

Since dealers paying tax under sub-section (5) of Section 6 are not entitled to collect tax from customers, such dealers cannot collect the element of tax built in the maximum retail price printed on the package. While effecting sales to customers such dealers are liable to deduct the element of tax built into the MRP printed on the package. So the realization of price of such goods by presumptive tax dealers at rates printed on the package i.e. at the maximum retail price (inclusive of taxes) tantamount to illegal collection of the tax.

So all officers are directed to review such cases based on the above findings and ensure that those dealers opting for paying tax under sub-section (5) of section 6 are not collecting any tax under the guise of maximum retail price from customers. If any tax is seen unlawfully collected by such dealers, the amounts so collected are liable to be recovered from such dealers in accordance with the provisions of the Act.

COMMISSIONER