

No.C2-15221/09/CT

Office of the Commissioner of
Commercial Taxes
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Dtd.26-07-2013

CIRCULAR No.13 / 2013

Sub:- CTD – Reckoning the floor rate fixed for advance tax for the purpose of assessment / enforcement action in intra-state trade – Certain instructions issued – reg.

Ref:- Govt. Lr.No.27276/B3/2012/TD dtd.19-07--2013

It has been brought to the notice of the Department that the assessing authorities and intelligence wing are pursuing action under the Act on intra-state trade, for undervaluation of evasion prone commodities, solely on the basis of the Circulars issued fixing the floor rate of these commodities.

Advance tax as per Section 47(16A) is levied on those commodities which the department in its experience identifies as evasion prone. To prevent under valuation of these commodities the Department also fixes a floor rate considering the market conditions, on certain such commodities. If such goods are declared at the check post below the floor rate, then the floor rate is reckoned for the calculation of advance tax. Floor rates are fixed based on market conditions and considering the ultimate sale value to retail consumer, so as to capture the tax. The advance tax paid is given credit when the dealer files his returns and pays tax in accordance with the return.

The Division Bench of the Kerala High Court in KMP Timbers & Saw Mills v. Commercial Tax Inspector and another [(2012) 50 VST 195 (Ker)]. upholding the validity of the statutory provision, i.e. Section 47(16A), as also the circular issued under the said provision, the Court held:

"Further, advance tax is only a provisional deposit towards tax and nothing in the Act requires the appellant or any party to pay tax except on actual sale price. The value fixed under the circular for payment of advance tax does not reflect the basis

for actual liability. In fact, tax is payable only on actual sale price and the appellant is absolutely free to claim refund of advance tax paid, if it is in excess over tax liability. If there is allegation of under-invoicing, it is for the assessing officer to establish the same in adjudication proceedings".

Whenever the dealer to consumer invoices are detected at a rate which is much below the actual market rate / floor rate, especially so in the case of evasion prone commodities timber, granite, tiles and marble, plywood, chicken etc., the department obviously should make enquiry to identify as to whether there is any under evaluation resulting in evasion of tax. Bills at a rate lower than the floor rate / prevailing market rate may be justifiable in case if it is between dealer to dealer provided no other incriminating circumstances exist, but not in the case when it is between dealer to consumer.

Hence, while initiating assessments/ enforcement action of dealers for their intra-state trade, the assessing authorities shall bear in mind the above judicial pronouncement and the assessment/enforcement action should be based, not only on the floor rate fixed alone, but also on other materials gathered on enquiry, which would stand the test of judicial scrutiny.

Hence all assessing authorities / intelligence wings are directed to adhere to these instructions.


COMMISSIONER