Members present are:

1. T.K. Ziavudeen
   Joint Commissioner (Law)
   Office of the Commissioner of Commercial Taxes, Thiruvananthapuram

2. Dr. Bijikumary Amma
   Joint Commissioner (A & I)
   Office of the Commissioner of Commercial Taxes, Thiruvananthapuram

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

Sub:- KVAT Act, 2003 – Clarification u/s.94 – Applicability of compounded tax on works contracts for aluminium fabrication of doors, windows, false ceiling etc. – Orders issued.

Ref:- 1) Petition u/s.66 of KVAT Act, 2003 received from Bose K. Abraham, Kunnel Aluminium Works, YMCA Lane, M.C. Road, Kottayam on 05-08-2016
2) Clarification Order No.C3-23011/13/CT dtd.27-11-2013

ORDER No.C3-1216/2016/CT Dtd.15 / 10 / 2016


2) The applicant would contend that he is a registered dealer undertaking works contracts of fabricating and fixing windows, doors, ventilators, false ceiling etc. of buildings as per the designs, drawings, specifications and dimensions prescribed by the awardee and locally purchasing all the required materials and executes works at the site, as per the work orders in this regard and gets payment according to the square meter rates specified and agreed in the work order.

3) The applicant would contend that work orders in respect of all the works executed by them contains similar stipulations for the supply and installation of door, window etc. and not for purchase of any particular item. The assessee is not collecting any tax, in as much as it has been paying tax at compounded rates.

4) The question raised for clarification and considered in the clarification order as per reference 2 nd cited were as follows:

   (i) Whether the transfer of goods involved in the execution of works contract of fabricating and fixing of windows, doors, ventilators, panels, ducts, false ceiling etc. carried out by the assessee fall within the
purview of Section 6(1)(f) of the Kerala Value Added Tax Act, 2003; and

(ii) Whether the assessee is entitled to make payment of VAT at the compounded rate of 3% prescribed under Section 8(a)(i) of the Kerala Value Added Tax Act, 2003.

5) The clarification authority clarified the questions in the following lines:

“The nature of the work awarded to the petitioner has to be analysed in toto so as to arrive at a finding as to the nature of work awarded. Admittedly, as per the specifications and measurements given by the awardee, pre-fabricated materials are brought to the site and is installed in the premises. Since these fabricated materials were made for the specific requirements of the awardee, it is an item that cannot be sold generally. Hence it is works contract coming within the category in the form of goods. The installation part represents only a negligible portion of the work awarded since it involves mere fixing with screws. As laid down by the Hon’ble Supreme Court in Kone Elevators’ case, when goods in knocked down condition are brought to the site and mere assembling alone is done, it is a case of transfer in the form of goods and no labour charges can be deducted. Also, in the instant case, since it involves transfer in the form of goods it is not eligible for compounding.”

6) Now the applicant preferred an application u/s.66 of the KVAT Act, 2003 for rectifying the said clarification issued earlier.

7) The authorized representative of the applicant was heard on 31-08-2016 in the matter and the contentions raised were examined.

8) The applicant would content that there occurred some mistake in appreciating the evidence furnished by him before the clarification authority regarding the nature of the works undertaken. It is contented that he never brought pre-fabricated doors and windows to the work site, after manufacturing the same in his work shop as observed by the clarification authority while issuing the clarification. He would claim that he execute the said works in site after purchasing the prescribed raw materials in required quantities and after incurring various direct and indirect over heads. He used to visit the site with his skilled labours and verify the exact measurements required for each and every windows, doors and frames etc. and only accordingly the materials are cut and worked using incidental materials like screws, beadings etc. and consumable like gums and sealants. He would content that he never supply ready-to-fix doors and windows etc. to the site, but manufacture at the site in the required measurement using the raw materials. The applicant contented that in the original application, clarification was sought for in a case where channel beams of 12 feet length is brought to site and was cut in the work site and then fixed to result in doors, windows etc. Nowhere in the application, the applicant has ever stated that pre-fabricated materials were brought in the site. Therefore, he would submit that the
fact submitted is wrongly considered and it is a mistake apparent on the face of the record.

9) As stated earlier the present petition u/s. 66 of the Act, 2003 has been filed for rectifying the original clarification order issued as per reference 2nd cited. In the said clarification, after verifying the facts and nature of work undertaken by the petitioner, the clarification authority clarified that it was a works contract where the transfer of property is in the form of goods and therefore not eligible for compounding system of payment of tax u/s 8 of the Act. The petitioner challenged the clarification order before the Hon’ble High Court of Kerala in OTA No.2/2014 and the same was upheld by the Hon’ble Court dismissing the appeal filed by the petitioner. It is to be noted that the petitioner had never raised the above contention before the Hon’ble High Court of Kerala regarding the factual error. Since the Hon’ble High Court of Kerala upheld the clarification order, this authority is not in a position to rectify the factual error now raised by the applicant.

10) The decision of the Hon’ble Supreme Court in the 2nd Kone Elevators case was rendered only after the issuance of the clarification under challenge. It is open to the petitioner to approach the assessing authority to prove his case, if the decision of the Hon’ble Supreme Court in the 2nd Kone Elevators case is applicable to him.

Accordingly the petition filed u/s.66 of the KVAT Act 2003 is rejected as it is not maintainable.

Join Commissioner (Law)  Joint Commissioner (General)  Joint Commissioner (A&I)

To

Sri. Bose K. Abraham
Kunnel Aluminium Works
YMCA Lane
M.C. Road
Kottayam.