

**17. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES  
THIRUVANANTHAPURAM**

Present:- Paul Antony. IAS

Sub:- KVAT Act 2003- Clarification U/s. 94 – Fabrication and erection of Rolling shutters- compounding rate – Reg:

Read:- Application from Ernakulam District Rolling Shutter Fabricators Association, Cochin.

ORDER No.C3.45384/07/CT Dated. 21.04.08

The Ernakulam District Rolling shutters Fabricators Association, Cochin has preferred an application u/s 94 of KVAT Act 2003 seeking clarification on the tax liability of fabrication and erection of Rolling Shutters.

The applicant was given an opportunity of being heard. It is argued that notwithstanding the judgments in Kone Elevator case and Hindustan Shipyard case, Rolling Shutter is a works contract and is not transfer in the form of goods attracting tax @ 12.5%. The contentions raised were examined.

As per Sec. 6(e) of the KVAT Act it is specifically provided that in the case of transfer of goods involved in the execution of works contract where the transfer is in the form of goods the rate leviable is the rate specified for such goods in clauses (a) or (d) as the case may be.

In the case of Rolling Shutter as per specific order according to the specification design was prepared and fabrication made. In such cases skill and labour employed for installation is only incidental to the supply of the rolling shutter. Fact being so since transfer of goods being are in the form of goods the rate applicable to the same is the rate of goods and so not compoundable U/s. 8(a)(i)-, as it stood then.

As laid down in the Kone Elevators case the predominant object of the contract, the circumstance of the case and the custom of the trade provide useful guide in determining the nature of contract. In KVAT Act there is a specific provision in case where the transfer is in the form of goods ie the rate applicable to the goods. Here though as per the order it is for designing, fabrication and installation the installation part is only incidental to the main part of the contract and the amount involved regarding the same is negligible when the total contract amount is taken into consideration. In this case rolling shutters are designed as per specific order and fabricated and so that they are not a generally saleable item but only to the person who actually gave the order. So it is not a sale simplicitor but one of works contract coming under transfer in the form of goods. The installation portion as only incidental to the main

contract and the amount involved for the same is negligible when the total value of the contract is concerned and so the same can be ignored. Fact being so the rate applicable to such contract is ie “transfer in the form of goods” and hence the rate applicable to the goods. No labour charges can be deducted in such contracts. The dealer is eligible for input tax credit on purchase of goods used in the works provided the same is from local registered dealers supported by bill. The rate applicable to the rolling shutter is 12.5%.

Since the transaction involved is “transfer in the form of goods” it is not a compoundable work.

In order to claim the compounded rate at 2 % in relation to rolling shutter works as per works order the materials purchased from registered dealers have to be brought to site and the fabrication and allied works shall be done there; this is not the practice prevalent. As per the work order the measurement and designs were confirmed and prefabricated rolling shutter which were in a ready to install state are brought to site and installed there. In such cases installation is only incidental to main contract and the transfer of property in goods in the work is in fact in the form of goods. So in such cases compounding is not possible and the rate applicable is 12.5% rate and input tax claim on registered purchase can be taken.

The issue raised is clarified accordingly.

Commissioner.