

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

**2. N. Thulaseedharan Pillai.**  
**Joint Commissioner (General),**  
**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, tax liability and eligibility for exemption– Orders issued.

Read : Application from M/s. S & G Engineers, Thiruvananthapuram dtd. 25/5/2015.

**ORDER No.C3/18378/15/CT DATED 5/10/2015.**

1. M/s. S & G Engineers, Thiruvananthapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on works contract.

2. The applicant undertakes sub-contracts awarded by principal contractors who undertake major works awarded by the Govt. of Kerala. The principal contractor opts to pay tax at compounded rates U/s 8 and issues Certificate in Form 20F to the applicant. On the basis of the said Form 20F, the applicant claims exemption in respect of the contract amount received from principal contractor. Similarly, the applicant also awards part of the works awarded to them to another sub-contractor and issues Form 20F to the latter.

3. The applicant would contend that irrespective of the contractor executing the works contract either by himself or through his sub-contractor, the property in the goods vests to the owner on accretion principle. This is based on the Supreme Court Judgment in Builders Association of India Case (1989) 73 STC 370 where the Hon'ble Court held that it is only the sub-contractor who effects transfer of property in goods as no goods vests in the principal contractor so as to be the subject matter of a re-transfer. By virtue of Article 366 (29A) (b) of the constitution, once the work is assigned by the contractor, the only transfer of the property in goods is by the sub contractor and once the work is assigned to the sub contractor, the contractor ceases to execute the works contract in the sense contemplated by Article 366 (29A)(b) because property passes by accretion and there is no property in goods with the contractor which is capable of a re-transfer whether as goods or in the

some other form. Again in the case of State of AP Vs Larsen & Toubro Ltd reported in (2009) 17 KTR 1 (SC) the Hon'ble Supreme Court held that while the contractor assigned part of the works, to sub contractor who purchased goods and incorporated in the works, the title of the goods passes from the sub contractor to the awarder of the contract. The Court has also rejected the view of the Department that one as a sale by sub contractor to the main contractor and the other as a sale by the main contractor to the awarder and observed that there vests no title of goods on the main contractor so as to make a re-transfer to the awarder and the tax incidence vests on the sub contractor. The main contractor is not liable to pay tax on the turnover of the sub contractor. The property passes by accretion from the sub contractor to the awarder and the main contractor ceases to execute the works.

4. The applicant would also contend that the works executed by the sub contractor is not on the property of the principal contractor but exclusively on the property of the Government of Kerala as per the works awarded by the Government of Kerala. All the materials are purchased and incorporated in the works by the sub contractor and the title of the goods is transferred to the Government of Kerala, the awarder of the contract by the sub contractor. Therefore in view of the Court decisions the sub contractor is legally entitled and bound to pay tax at the rate of 5% only as specified in the proviso to Section 8(a)(i) of the Act for the works executed in respect of works contract awarded by Government of Kerala, Kerala Water Authority or Local Authorities even if there is no privity of contract between the contractor (awarder) and sub contractor, that would not do away the principle of transfer of property by the sub contractor by employing the same on the property belonging to the contractor. This reasoning is based on the principles of accretion of property in goods. Thus in such a case the works executed by a sub contractor results a single transaction and not as multiple transactions and any other thinking would be contrary to Article 366(29A) (b) and Article 14, 19(1)(g) and 265 of the Constitution of India, the Supreme Court said in Dhruv Agarwal, Manoj Saxena and Others Vs the Sub Contractors.

5. The applicant has requested to clarify the following points:

- I. Is the applicant entitled to claim exemption on the strength of Certificate issued in Form 20F issued by the principal contractor?
- II. Is the applicant's sub-contractor entitled to claim the exemption on the strength of Certificate in Form 20F issued by the applicant?
- III. In both the above cases, if the principal contractor concerned is not eligible to claim exemption, what will be the rate of tax payable?
- IV. Whether the awarder in each case is required to make any deductions from the payments made to sub-contractor U/s 10?

- V. Since Government deducted tax from whole contract amount, how can principal contractor issue Form 20F to sub-contractor and on what basis?

6. The applicant was heard in the matter and the contentions raised were examined.

7. As per Section 8(a) of the Kerala Value Added Tax Act, 2003 separate rates of tax are prescribed for contractors executing Government works and private works. The rate of compounded tax applicable in respect of works awarded by the Government done by contractors having Central Sales Tax Registration is 5% and for private works, it is 7%. From the above it is clear that the Legislature has intended separate rates for Government and other works. When a work originally awarded by the Government to a contractor is done by another contractor by way of a sub-contract, such work does not lose its identity of Government works.

8. As such, it is hereby clarified that such Government works as stated supra even if done through sub-contractors would attract compounded tax at the rate of 5%. The principal contractor can claim exemption on sub-contract works awarded by him on the strength of Form No. 20H issued by the sub-contractor and countersigned by the assessing authority of the sub-contractor. Exemption cannot be granted to the sub-contractor simply for the reason that the principal contractor has paid tax in full by way of TDS on the whole contract amount.

The issues raised above are clarified accordingly.

**Dr. A. Bijikumari Amma**  
**Joint Commissioner (Law)**

**N.Thulaseedharan Pillai**  
**Joint Commissioner (General)**

**V.J. Gopakumar**  
**Deputy Commissioner (General)**

To

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