

**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Works Contract, tax liability and eligibility for exemption – Judgment of Hon’ble High Court of Kerala - Clarification withdrawn - Orders issued.

Read : 1. Application from M/s. S & G Engineers, Thiruvananthapuram dtd. 25/5/2015.  
2. This Office Order of even No. dtd. 5/10/2015.  
3. Judgment of the Hon’ble High Court in WP(C) No. 30537 of 2015(N) dated 8/10/2015.

**ORDER No.C3/18378/15/CT DATED 18/11/2015.**

1. M/s. S & G Engineers, Thiruvananthapuram vide paper 1<sup>st</sup> above had preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the tax liability on sub-contracts awarded by principal contractors who undertake major works awarded by the Government of Kerala. Accordingly, this Authority vide order read as paper 2<sup>nd</sup> above clarified as follows:

*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.*

2. Now, Hon’ble High Court of Kerala in an identical case, wherein M/s Thoppil Contractors (India) Pvt. Ltd., had undertook certain works for the Kerala State Construction Corporation Ltd.,

under a sub-contract wherein the original awarder was the Government of Kerala; vide it's judgment read as paper 3<sup>rd</sup> above, observed as follows:

*The issue that arises for consideration in the writ petition is as regards the rate of tax, that is applicable for payment of tax by the petitioner, at compounded rates. The said issue arises in the context of the deduction made by the awarder of the contract at the time of making payments to the petitioner. It is the case of the petitioner that the awarder of the contract namely, the Kerala State Construction Corporation Ltd., had deducted tax at the rate of 7% while effecting payments to the petitioner. The learned counsel for the petitioner would submit that this deduction is erroneous as, under Section 8 of the KVAT Act, a concessional rate of 5% is contemplated for payment of tax on compounded basis, when the tax is payable in respect of works contract awarded by the Government of Kerala, Kerala Water Authority, or local authorities.*

Hon'ble Court, in the operative portion of the judgment held that:

*On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that it is not in dispute that the contract in the instant case was undertaken by the petitioner for the Kerala State Construction Corporation Ltd., which is a wholly owned Government company. The said fact however, will not entitle the petitioner to claim the concessional rate of tax of 5%, that is envisaged in respect of compounded tax payable by a works contractor in respect of works contract awarded by the Government of Kerala, Kerala Water Authority, or local authority, inasmuch as the Kerala State Construction Corporation Ltd., cannot be equated with the Government of Kerala for the purposes of the concessional rate of tax. It is trite that an exemption provision in a fiscal statute has to be strictly construed against an assessee and when so construed, the concession envisaged in the instant case cannot be extended to Government Companies. Thus, I see no reason to interfere with Exts.P2 to P6 liability certificates issued in relation to the works undertaken by the petitioner. The writ petition in its challenge against the deduction of tax at 7% therefore fails and is accordingly, dismissed.*

3. Since the issue raised by the applicant herein stands judicially settled as per the decision stated supra, the clarification order read as paper 2<sup>nd</sup> above is hereby withdrawn.

<b>Dr. A. Bijikumari Amma</b>	<b>N.Thulaseedharan Pillai</b>	<b>V.J. Gopakumar</b>
<b>Joint Commissioner (Law)</b>	<b>Joint Commissioner (General)</b>	<b>Deputy Commissioner (General)</b>

To

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