

**22. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM**

Present: Sri.P. Mara Pandiyan, I.A.S

Sub:- KVAT Act, 2003 - Clarification U/s 94 – Metal Crusher Unit –
Compounded tax liability – Clarified orders issued- Reg.

Ref:- 1. Application put in by K.J.Paul, M/s Amity Rock Products (P)
Ltd. Chunkappara (P.O), Kottangal, Patahnamthitta dated. Nil

2. Notice No. C3-27878/08/CT. Dtd.15.09.2008

ORDER No. C3-27878/08/CT Dtd 9.12.2008

(1) K.J.Paul, M/s Amity Rock Products (P) Ltd. Chunkappara (P.O),
Kottangal, Patahnamthitta has preferred an application seeking clarification
on the following points;

- (i) Whether a dealer liable to remit the entire amount of compounded tax due for the financial year even if he starts the business afresh after the commencement of the financial year.
- (ii) Whether a dealer is liable to remit the entire amount of Compounded Tax due for the financial year if it is proved that till date of starting new business by him, the dealer who was previously doing the very same business with the very same machines in the very same premises remitted tax due on his turnover till the date of stopping of business by him
- (iii) A crusher machine which has been used by one dealer for a particular fraction of the financial year has remitted the tax due thereon (either as compounded tax payer or otherwise) and the very same machine is used by another dealer for the remaining fraction of the very same financial year. In that case whether the second dealer is liable to remit the entire amount of compounded tax fixed for the machine for the whole financial year or whether the second dealer is liable to remit the proportionate CT due for the remaining period of the financial year.

(2) The applicant was heard in detail and contentions raised were examined in detail with reference to the statutory provisions. Regarding a dealer who is paying tax as per section 6, section 36 is squarely applicable which is as under:

Recovery of tax when business is transferred.- Where the ownership of the business of a dealer liable to pay tax or other amount is transferred, any tax or other amount payable under this Act

in respect of such business and remaining unpaid at the time of the transfer and any tax or other amount due up to the date of transfer, though unassessed may, without prejudice to any action that may be taken for its recovery from the transferor, be recovered from the transferee as if he were the dealer liable to pay such tax or other amount:

Provided that the recovery from the transferee of the arrears of tax due for the period prior to the date of the transfer shall be limited to the value of the assets he obtained by transfer.

(3) But with regard to compounded tax, since compounded tax payable is for a year, tax is to be paid for the entire year under compounding scheme under section 8 of the KVAT Act 2003. But in the case of a metal crusher unit the compounded tax payable is fixed by taking into consideration of the machinery as a unit.

(4) As per section 8B of the KVAT Act, 2003, the compounded tax payable in respect of a metal crusher unit is fixed by taking into consideration of the size of the machinery used and tax payable is for the machinery taking it as a unit. So if all the machinery originally compounded stands transferred to a new owner, he need to pay compounded tax for the remaining period only. Since the compounded tax for the prior period is covered by the payment made by the transferor.

Issue raised is clarified as above

COMMISSIONER