

24. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM
Present:- Paul Antony.IAS

Sub:- KVAT Act 2003 - Clarification under section 94 - M/s Palal Corporation, Kochi - Section 8(a)- rate of compounded tax applicable after surrendering CST registration – clarified-orders issued – reg:

Read:-Application dt. 22-1-2007 put in by M/s Palal Corporation, Arangath cross Road,Ernakulam, Kochi. 18

ORDER No.C3-3658/07/CT Dated 14-05-2007

M/s Palal Corporation, Arangath Cross Road, Ernakulam, Kochi. 18, has preferred an application under section 94 of the KVAT, 2003 seeking clarification on the following points;

(i) Whether the applicant is eligible for opting for payment of tax at compounded rate under section 8(a)(i) of KVAT Act, 2003 for the year 2006-07 in the context of surrendering the CST registration during 2005-06 and holding no taxable stock of materials.

(ii) Whether the applicant is eligible for opting for payment of tax at compounded rate under section 8(a)(i) for the year 2006-07 in respect of the works under taken prior to 1/4/2005 and a portion of which remains unexecuted as on 1-4-2006 in view of the amendments made vide proviso two and three to section 8(a)(i) of the Act, in the above said context and filing option before 30th November, 2006.

The applicant was heard in person. The contentions put forth was that the applicant had under taken some government contracts during 2005-06 and since the applicant was holding CST registration during the period the said works were compounded under section 8(a)(ii) of the KVAT Act, 2003 . In addition to above the applicant was also doing some works

started prior to 1-4-2005 for which tax was being paid under section 8(a)(iii) as well as under section 6(1) of the Act. Subsequently the applicant had properly surrendered his CST Registration Certificate in 2005 -06 and was not holding any taxable stock of materials purchased using CST registration or otherwise as on 31-3-2006. So by the amendments made vide proviso two and three to section 8(a)(i) the applicant is entitled for compounding under section 8(a)(i) of the Act with effect from 1-4-2006.

The contentions put forth were examined with reference to the statutory provisions and materials on record. Any works contractor not being a dealer registered under the provisions of the CST Act, 1956 or effecting first taxable sale in the state is entitled for payment of tax under compounded rate under section 8(a)(i) of the said Act. Contractors other than those explicitly excluded and holding registration under the provisions of the CST Act, 1956 are eligible to pay tax under compounded rate only under section 8(a)(ii) of the said Act at 4%. So the status of the contractor is the criteria for fixing eligibility for paying tax under sub clauses (i) and (ii) of clause (a) of section 8 of the Act.

In this case, in the context of surrendering the CST registration in 2005-06, the status of the applicant as on 1-4-2006 had been changed. Thereafter they are not a 'dealer registered under the provisions of the CST Act, 1956'. Since they are not holding any taxable stock of materials purchased using CST registration or otherwise as on 31-3-2006 they would not come under the category of a dealer effecting first taxable sale in the state.

So even though they were paying tax during 2005-06 under different streams of section 8(a) of the Act, in view of the change of eligibility status of the applicant as discussed above, they are entitled for compounding under section 8(a)(i) of the Act with effect from 1-4-2006 for all or any of the contracts.

The next issue to be examined is whether the applicant is entitled for compounding under section 8(a)(i) for the year 2006-07 in respect of the works undertaken prior to 1st April,

2005 for which tax has been paying under section 6(1) and also under section 8(a)(iii) of the Act.

As per the amendments made by inserting proviso 'two' and 'three' to section 8(a)(i) of the Act, vide Kerala Finance Act, 2006, work contractors are entitled for annual compounding in respect of all works undertaken by them during a year, subject to eligibility and for the year 2006-07 the date of filing of option for compounding had been fixed as 30th November, 2006. The eligibility for exercising the said option for 2006-07 will be that specified under sub clauses (i) and (ii) of clause (a) of section 8 of the Act as discussed *ibid*, as on the 1st day of April, 2006.

So the status of the applicant contractor, being not a dealer registered under the provisions of the CST Act, 1956 or effecting first taxable sale in the state as on 1st day of April, 2006 is entitled for paying tax for the year 2006-07 under section 8(a)(i) for all works done by them during the year 2006-07, provided they had filed option in this behalf before 30th November, 2006 covering all such works.

The points raised are clarified accordingly.

Commissioner