

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. *Abdul Jabbar.V.K, Joint Commissioner (General), O/o. CCT, Tvpm.*
2. *T.V. Kamala Bai, Joint Commissioner (Law), O/o. CCT, Tvpm.*
3. *S.K. Suchala Kumar, Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.*

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Interstate works contract and liability to deduct tax at source - Orders issued.

Read :- Application from M/s. Hyderabad Industries Ltd., Thrissur dtd. 13/7/2011.

ORDER No.C3/24336/11/CT DATED 28/3/2012.

1. M/s. Hyderabad Industries Ltd., Thrissur has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on interstate works contract and the liability to deduct tax at source.

2. The applicant is a company registered under Kerala Value Added Tax and Central Sales Tax Acts, engaged in the manufacture and sale of Asbestos Cement Sheets. In order to facilitate the movement of goods the applicant has purchased forklifts and the maintenance of the forklifts are done by M/s. Godrej & Boyce Manufacturing Co. Ltd., Mumbai, a company registered under Maharashtra Value Added Tax Act and also under the Central Sales Tax Act with no place of business in Kerala. The maintenance is carried out through a Comprehensive Maintenance Contract entered into between the applicant and M/s. Godrej & Boyce Manufacturing Co. Ltd., Mumbai. The service contract provides separate charges of components and services.

3. On the basis of the comprehensive service contract, M/s. Godrej & Boyce Manufacturing Co. Ltd., Mumbai raises separate invoices on quarterly basis towards Service Charges (40% of the Contract Value) and Spare Components (60% of the Contract Value). On the service invoice, Service Tax at 10.3% is charged and on the invoice for spare components interstate Sales Tax (Central Sales Tax) is charged at 12.5%.

4. The applicant has requested to clarify whether they will be liable to deduct tax U/s. 10(1) (Deduction of Tax at Source) especially in view of the fact that cost of spare parts charged for the maintenance are specifically moved from outside the State against specific requisition placed by the site engineer.

5. Sri. V. A. Simon, Asst. Manager - Taxation, the authorised representative of the applicant was heard in the matter and the contentions raised were examined.

6. The nature of a contract is to be verified on the basis of the totality of its terms and conditions [Cradle Runways India Vs Commissioner of Commercial Taxes, Karnataka (2006) 144 STC 465 (Kar)]. The applicant produced a copy of the comprehensive maintenance contract with M/s. Godrej & Boyce Manufacturing Co. Ltd., Mumbai before the Authority for Clarification. In pursuance of this contract, spare parts are moved from Maharashtra to be affixed at the applicant's site in Kerala. The price of spare parts and service element are separately billed on quarterly basis.

7. If there is movement of goods from one State to another in pursuance of an agreement to execute a works contract, it is an interstate sale and the State from which such movement of goods commenced is the only State authorised to levy tax on such deemed sale. The State where works contract was executed has no authority to levy tax or make law to deduct tax upon it. In the instant case, the movement of goods are from outside the State of Kerala, in pursuance of an agreement for the execution of a works contract. As such there is an interstate sale as per section 3 of the Central Sales Tax Act, 1956 and such sale has occurred at the State where the goods were situated at the time of appropriation of such goods to the contract as per section 4(2) of the Central Sales Tax Act, 1956. Tax shall be collected by the Government in the State from which the movement of goods commenced as per section 9(1) of the Central Sales Tax Act, 1956.

8. The proviso to Rule 42(2) of Kerala Value Added Tax Rules, 2005, states that no amount shall be deducted under sub-section (1) of section 10 where the payment relates to that portion of a contract which relates to transfer of goods involved in the execution of works contract other than those executed in the State of Kerala.

9. The Supreme Court of India in the case Union of India Vs. K.G. Khosla and Co. Ltd. (43 STC 457) had held that what is really decisive is whether the sale is one which has occasioned the movement of goods from one State to another. The questions regarding interstate sale is to be answered on the basis of section 3 of the Central Sales Tax Act. The law requires that it should be levied and collected in the State from which the movement of goods commences. The movement of goods in pursuance of the agreement is the main criteria for fixing the situs of taxation [Bharat Heavy Electricals Vs. Union of India 102 STC 382]. A sale is an interstate sale under section 3, if there is a contract of sale preceding the movement from one state to another and the movement must be the result of this covenant [Indian Oil Corporation 47 STC 5]. In the present issue for clarification, spare parts are moved

after specific requisition is placed by the site engineer. In Builders Association of India Case [73 STC 394], it was held that if in the process of executing a works contract, a transfer of property in the goods take place outside the State, the State would have no power to levy sales tax on such a transfer. In Larsen and Toubro Ltd. Vs. Commissioner of Commercial Taxes (2003) 132 STC 272 (AP) it was held that, if movement of goods from outside the state was occasioned by contract and Central Sales Tax is paid in the State of origin, no local taxes are leviable.

10. From the facts and circumstances of the issue under consideration and in view of the statutory position and the case laws detailed supra, it is clarified that the impugned transaction is an interstate works contract and hence there is no tax liability under the Kerala Value Added Tax Act, 2003; as such, the provision with respect to deduction of tax at source is also not applicable.

The issues raised above are clarified accordingly.

Abdul Jabbar.V.K.
Joint Commissioner (General)
O/o CCT

T.V. Kamala Bai
Joint Commissioner (Law)
O/o CCT

S.K. Suchala Kumar
Joint Commissioner (A&I)
O/o CCT

To,

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