

29. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM

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

Sub: KVAT Act 2003- Clarification U/s 94-Works Contract -
Claim of exemption in Special Economic Zone - Clarified
order issued - reg

Read: Application put in by M/s E.M.Mani Constructions (P),
Ltd., Ravipuram, Ernakulam Dtd. . 22.01.2008.

ORDER No.C3/3551/2008/CT Dtd. 24.11.2008

(1) M/s E. M Mani Constructions (P), Ltd., Ravipuram, Ernakulam has preferred an application U/s 94 of KVAT Act 2003, seeking clarification on the claim of exemption in Special Economic Zone. The applicant is a registered dealer engaged in the contract works of "civil nature". They have opted for payment of tax at compounded rate under section 8 of the KVAT Act 2003. In connection with the execution of contract work for construction of building at Special Economic Zone at Kakkanad , Cochin and following points by way of clarification are sought for.

- i.) Whether full exemption for the amount received in the works contract U/s 8 of the KVAT Act 2003 is admissible
- ii.) Whether form 43 covers the entire turnover be exempted under KVAT
- iii.) Whether any certificate to the effect that compulsory non deduction of tax deduction at source under KVAT Act or whether assessing Authority shall issue Form 20 B certificate

(2) The applicant was heard in person by my predecessor in office on 02.04.2008 and contentions raised were examined in detail with reference to the statutory provisions. Among the points sought for mentioned above, point no 2 and 3 are not entertainable U/s 94 of the KVAT Act2003.Hence statutory clarification is confined to point no.1 alone.

Point no. 1

This point is as to whether full exemption for the amount received in the works contract under section 8 of the KVAT Act 2003 is admissible for construction of building at Special Economic Zone. As per section 6(7)(B) of the KVAT Act 2003, sale of building material to SEZ unit are exempted from tax. What is assessable in works contract is the transfer value of building materials incorporated in the contract work. The labour element is not exigible to tax. Dealers opting for payment of tax at compounding rate agreeing to pay tax on the whole contract receipts including labour portion.

(3) As per the scheme of the Act, since sale of building material to SEZ unit is exempted from tax and the labour portion being exempted, simply for the reason that the dealer who has undertaken the work being a compounded dealer exemption cannot be denied to him. The tax payable under section 8 is by option in lieu of tax payable under section 6. So, if there is no tax liability under section 6, naturally there is no tax liability under section 8. So the dealer paying tax under section 8 is also eligible for total exemption provided he produces certificate in Form 43 for proving the sale of material element alone.

The point is clarified accordingly

Commissioner