

**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 - Fumigation services and tax liability under the Act - Orders issued.

Read :- Application from M/s. Fumigation Services, Kochi dtd. 5/8/2011.

**ORDER No. C3/31006/11/CT DATED 24/1/2012.**

1. M/s. Fumigation Services, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the tax liability under the Act on providing fumigation services.

2. The applicant contends that they are carrying out fumigation services mainly for export cargo, having Head Office at Chennai, and having branches in various States including Kerala. Fumigation is done mainly on the cargos for export. Certain domestic industries are also utilizing the service of the application. The applicant is registered as a Fumigating Agency with Govt. of India, Ministry of Agriculture. Agriculture Department, Government of Kerala has issued license to the applicant to stock and use restricted insecticides for Commercial Pest Control operations.

3. The applicant contends that fumigation is done to destroy pests. Fumigation of cargo becomes very essential since there are possibilities of hidden infestation in the cargo. Export procedure prescribe for fumigation service by approved person. Mostly the material used for fumigation is Methyl Bromide. Aluminium Phosphate is also used for fumigation. The material used is exhausted in fumigation. The applicant would also contend that there is no transfer of material during the process.

4. The applicant would further contend that they are only providing services. As such they are registered under the Service Tax Act and is filing prescribed returns.

5. The applicant would also contend that they are maintaining the stock records required for the storage and use of methyl bromide, which is purchased from outside the State without availing any concessional rate under the Central Sales Tax Act. Often the consignments are detained at check posts for the reason that the applicant is not a registered dealer.

6. The applicant contends that as the material used during fumigation is exhausted in the process, there is no transfer of any material to the customer, and hence there is no sale of any material. Since there is no sale involved, there is no transaction exigible to tax under the Kerala Value Added Tax Act. When materials are purchased and transported from outside, the consignment is covered by Invoices issued by the sellers. The applicant would also

contend that there is no prohibition for purchase from outside the State by persons not registered under the Act.

7. The applicant has requested to clarify the following points:-

- i. Whether the fumigation done by the applicant is liable to tax under the Act?
- ii. Whether unregistered persons are eligible to bring goods from outside the State after paying the full rate of tax provided under the CST Act?
- iii. What are the documents, other than Invoice, to accompany the goods when unregistered persons bring the same after paying full rate of tax provided under the CST Act?

8. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

9. With respect to the first and second issues raised by the applicant it is seen that in the impugned fumigation process, methyl bromide is used and it cannot be termed as a consumable from the process as explained by the applicant. Though the transfer of the material is invisible, in fact there is transfer of property in goods as laid down by the Hon'ble Supreme Court in ACC's case. Such transfer is exigible to tax however negligible the material may be. Hence the applicant is liable to take out registration under the Kerala Value Added Tax Act, 2003 and also to pay tax on the transfer value of material involved. The third issue raised by the applicant does not fall within the ambit of section 94 of the Kerala Value Added Tax Act, 2003 and hence declined.

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,

M/s. Vijayaraghavan & Devi,  
Advocates,  
High Court Road, Kochi - 682 031.