

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

Present: Sri.Paul Antony.IAS

Sub:- KVAT Act 03- Clarification U/s. 94- Application filed by M/s. Kerala State Construction Corporation Ltd- Kochi-Clarified orders issued- Reg:

Read:- 1. Application in Form No. 24 Dt. 11.11.05
2.Hearing Notice No. C7.51586/05/CT Dt. 23.02.06

ORDER No.C7.51856/05/CT Dt. 24.03.06

M/s. Kerala State Construction Corporation Ltd, Kochi has sought for clarification under section 94 of KVAT Act 03 regarding the tax liability of the corporation in connection with works contract executed both on sub-contract system and on consultancy basis on the following points.

1. Whether M/s. KSCC Ltd is entitled to get refund of Rs. 1600/- as illustrated in the example, under KVAT Act 03.
2. Whether the refund due can be set off against the amount recovered from sub-contractor.
3. Whether the sub-contractor is liable for tax on his turnover in case where the subcontractor furnishes the certificate in Form 20E.
4. Whether M/s. KSCC Ltd empowered to issue TDS certificate under KVAT Act 03 to the sub-contractors in cases where KSCC Ltd. has deducted the VAT from sub-contractors bill and obtained a set-off as in point 2 above.
5. Whether VAT is applicable to consultancy charges.

The authorized representative of the applicant was heard. The point sought for by the applicant is clarified as follows:

1. M/s. KSCC Ltd is entitled to get refund since section 8 of the KVAT Act envisaged that the whole contract amount shall not include that portion of a contract which represents amount paid to sub-contractors for execution of works contract provided that the sub-contractor is a registered dealer liable to tax under section 6

2. All amounts deducted from the contractors by way of tax should be paid over to Government. Eligible refund if any will be given by the assessing authority.
3. Certificate in Form No. 20E is for effecting payment by the Awarder to the contractor without deducting tax at source. But it does not mean that the sub-contractor has no liability to pay tax. On the strength of form 20 E, the awarder can effect payment to contractor without deducting tax at source.
4. M/s. KSCC Ltd is bound by law to issue TDS Certificate.
5. If the agreement executed is inclusive of consultancy charges, then consultancy charges will form part of taxable turnover as it has been specifically excluded from taxation. On the other hand if it is on separate agreement not forming part of works contract agreement, then no liability to tax.

Sd/
Commissioner