

33. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM

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

Sub: KVAT Act 2003- Clarification U/s 94-Application file by M/s India Gateway Terminal Pvt. Ltd .Cochin – Clarified order issued – reg

Read: 1.Application in Form 24 dtd.19.05.2008.

2.Notice No.C3 20525/2008 Dtd. Nil

ORDER NO. C3.20525/2008 / CT Dt. 21.10.2008

(1) M/s India Gateway Terminal Pvt. Ltd .Willington Island ,Cochin has preferred an application U/s 94 of KVAT Act.03 requesting to clarify the following points.

- (i). what are the KVAT and works contract tax exemptions available to contractors of unit in the SEZ.?
- (ii). If a portion of the work is awarded to a sub contractor by the contractor, would the sub contractor also be eligible for exemption of KVAT and WC taxes in respect of the work carried out for the unit in the SEZ.
- (iii). Rule 10 of the SEZ rule stipulates that the benefit of tax exemption will be available to the contractor , if the invoice are raised , stating the developer / Co -developer/ unit as the “Consignee” and contractor as the Co- consignee. Can the same procedure be followed in respect of the local purchases so that the purchases from with in the Kerala state are exempted from KVAT for Contractor and Sub contractor engaged in the unit of SEZ?
- (iv). For claiming the exemption KVAT exemption can the form 43 against the local purchase be issued by the contractor / subcontractor of unit in SEZ.
- (v). Post 19th March 2008 (when IGT was granted by unit approval) materials have been sourced locally by the contractor/ subcontractor for the unit in the Vallarpadam SEZ. What is the procedure for refund of the KVAT paid on this items of purchase?

(2) The applicant was given an opportunity of being heard but they did not appear. In this circumstance it is decided to dispose of the application on merits.

Point 1 :- As per clause (b) to sub section(7) of section 6, sale of any building material, industrial inputs , plant and machinery including components, spares, tools and consumable in relation there to any developer of industrial units or establishments situated in a SEZ . In the state for setting up the unit or use in the manufacture of other goods shall be exempted from tax, subject to conditions prescribed in Rule 12 C (2) of KVAT Rule 2005. When a contractor execute work on specific order from unit situated in SEZ from a developer and incorporated such materials in the work, it becomes a deemed sale which is in par with sales and eligible for exemption provided, the unit furnishes a certificate in Form 43 for the portion of materials used from the SEZ unit.

Pont 2 :- The exemption as per clause (b) to sub section(7) of section 6 is available only to sales effected by the contractor to any developer, industrial unit or establishment situated in the SEZ ,If there is subcontract work, then the principal contractor became an “awarder” and the subcontractor becomes “Contractor”. Section 6(7) (b) will not be applicable to sale by a contractor to another contractor, and such transactions are not eligible for exemption under the above provisions.

Point 3:- The exemption under section 6(7) (b) is applicable only in cases where there is direct sales to a developer, industrial unit or establishment situated in a SEZ. The transaction detailed by the applicant in point 3 is not a direct sale and hence no exemption can be granted U/s 6(7)(b) of the KVAT Act 03.

Point 4:- Form 43 as envisaged in Rule 12(c) (2) of the KVAT Rules 2005 is entitled to be issued only by a developer, an individual unit or by an establishment situated in any SEZ. A contractor or a subcontractor is not entitled to issue form 43 to claim exemption on the purchases.

Point 5: - As detailed in point 2,3, and 4 above no exemption can be granted for the purchases made by the applicant hence there is no question of refund claims arises.

The points sought for are clarified accordingly

Commissioner