

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

Present: Paul Antony. IAS

Sub:- KVAT Act 03-Clarification under section 94- Application filed by M/s. CBM Industries Ltd, New Delhi-clarified orders issued-Reg:

Read:- 1 Application in Form 24 Dt. 17.02.06

2.Hearing Notice No. C7.8864/06/CT Dt. 02.03.06

ORDER No.C7.8864/06/CT Dt. 04.04.06

M/s. C.B.M.Industries Ltd, New Delhi has filed an application under section 94 of the KVAT Act 03 on the following. The applicant M/s. CBM Industries Ltd has received a contract from Southern Railway for the fabrication and supply of caution/ speed warning boards to Southern Railway. The point sought for clarification is a follows:

1. Whether any tax is payable under KVAT Act 03 for the fabrication and supply of caution/speed warning boards to Southern Railway.
2. If any tax is not so payable, whether any tax is deductible by the buyer under section 10 of the KVAT Act from the payment due to the applicant.

The applicant was heard. The contentions of the applicant is that they had entered into a contract with Southern Railway for the fabrication and supply of caution/ speed warning boards, and the boards were fabricated in their factory at Himachal Pradesh and were sent to the Railways by road and Railways issues 'D' form prescribed under the CST Rules 1957 and hence it is a sale falling under clause (a) of section 3 of CST Act and is therefore outside the purview of KVAT Act 03, and are not liable to pay any tax under the KVAT Act.

The applicant further argued that, in the instant case there is no sale taking place inside the state of Kerala and hence no amount is deductible by the buyer under session 10 of the KVAT Act 03 from the sales price payable to the applicant.

The contentions of the applicant were analysed in detail. In the absence of any erection or installation at the property of the awarder, mere fabrication and supply of materials does not come under the purview of work contract. In the instant case, the contractor in Himachal Pradesh entered a contract with Railway in Kerala for fabrication and supply of Boards against "D" form; this

is an interstate transaction liable to tax under the CST Act in the state where the goods are made. This particular transaction does not come under the ambit of KVAT Act 03 and hence M/s. CBM Industries Ltd, New Delhi has no liability to pay tax under section 6 of the said Act.

If there is any fixing or installation of the boards at the property of the Railway by the contractor, then only the transaction will amount to works contract and the awarder is liable to deduct tax as specified in section 10 of the KVAT Act 03.

The point sought for is clarified as above.

Sd/-
Commissioner