

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. C. Lalappan.
Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. T.K. Ziavudeen.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. Dr. A. Bijikumari Amma.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of flex –
Orders issued.

Read : Application from M/s. Akbar Publicity, Kollam dtd. 19/11/2014.

ORDER No.C3/35119/14/CT DATED 23/4/2015.

1. M/s. Akbar Publicity, Kollam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of flex.

2. The applicant is a registered dealer borne on the rolls of the Office of the Commercial Tax Officer (Works Contract), Kollam. The applicant started flex printing work from May, 2012 onwards and had taken out registration under works contract. The applicant prior to the starting of said business was running a publicity agency in the same name of Akbar Publicity in the same premises. The nature of business involved in this business was only labour contract work. No material transaction as deemed sale was involved in this business and as such it was not at all liable to be got registered under the Kerala Value Added Tax Act.

3. The Intelligence Officer (Investigation Branch) – II, Kollam visited the place of business of the applicant and seized certain records on 13/9/2012. A notice for production of accounts was served on the petitioner. Subsequently the Intelligence Officer issued a notice U/s.67(1) of the Act proposing a penalty equivalent to double the amount of tax sought to be evaded during the years 2009-10, 2011-12 and 2012-13, assessing tax due at 12.5% and CESS for the first two years and tax due at 12.5% for the financial year 2012-13 i.e., the third year.

4. The applicant would contend that as per Section 6(1)(e) of the Kerala Value Added Tax Act, the rate applicable to the transfer of goods involved in the execution of works contract, where the transfer is in the form of goods, is at the rate specified for such goods. In the instant case, even if it is treated as transfer executed in the form of works contract, it is a distinct product named as printed article incorporated in item (5) to Serial No. 100 of Third Schedule as ***Other printed matter, including printed pictures and photographs*** chargeable only at 4% upto 2011-12 and at 5% from 2013-14 onwards.

5. The applicant has relied on the judgments of the Hon'ble Supreme Court of India in Rainbow Colour Lab Vs. State of Madhya Pradesh dated 2/2/2000, State of Karnataka Vs. Pro Lab & Ors. dated 30/1/2015 and the Clarification Order No. C7-55663/05/CT dated 25/9/2006 to support his contentions.

6. The applicant has requested to clarify the rate of tax of the commodity flex.

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

8. The decision in Rainbow Colour Lab Case and the latest Supreme Court judgment in State of Karnataka Vs. Pro Lab & Ors. relates to printing and photography *vis-a-vis* works contract.

9. But in the Kerala Value Added Tax Act scenario, there are specific entries in the Schedule with respect to printed materials, photographs etc. taxable at the appropriate on sale value. As such, it is clarified that printed material including flex would be taxable at the rate of 5% by virtue of Entry 100 of the Third Schedule to the Kerala Value Added Tax Act, 2003 upto 31/3/2015 (Printed banners, hoardings and leaflets of Poly Vinyl Chloride/Polyethylene and other plastic sheets would be taxable at the rate of 20% by virtue of clause (a) of sub-section 1 of Section 6, w.e.f. 1/4/2015).

The issues raised above are clarified accordingly.

C. Lalappan
Joint Commissioner(A&I)

T.K. Ziaudeen
Joint Commissioner(General)

Dr. A. Bijikumari Amma
Joint Commissioner (Law)

To

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