

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

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

Sub:- KVAT Act, 2003 – Clarification u/s 94 – Applicability of  
Section 40 A - Clarified order issued – reg.

Ref:- 1. Application in Form 24 filed by M/s Amway Indian  
Enterprises Private Limited, Vyttila , Kochin.  
2. Hearing Notice No. C3-19244/2008/CT dtd.28.10.2008

**ORDER No.19244/2008/CT dated 10-12-2008**

(1) In the application read 1<sup>st</sup> paper above, M/s Amway India Enterprises Private Ltd., Vyttila, Kochin has requested for clarification U/s 94 of the KVAT Act '03 , regarding their following queries;

- (i) Since none of Amway's distributors are liable to get registered under KVAT Act, because their turnover is below the threshold limit, whether Amway is liable to pay tax on MRP as per section 40 A of the Act and whether the declaration from the distributors that they are not liable to be get registered can be obtained on the reverse of the sales invoice to avoid tax on MRP?
- (ii) Since Amway's distributors are not registered dealers, whether Amway should issue the sales invoice in Form no 8 or Form no 8B?
- (iii) Is Amway liable for payment of tax on MRP as per section 40A of the KVAT Act and surcharge on VAT as per the Kerala Surcharge on Taxes Act together?

(2) The authorized representative of the applicant was heard on 15.11.2008 and the issue has been examined in detail with reference to the statutory provisions. According to section 6, which is the charging section of KVAT Act, there is no provisions to levy and pay tax ,except the dealers who are dealing with 'Medicine and Drugs' which are falling under section 3<sup>rd</sup> to KVAT Act , at the option of the dealer under the scheme of compounding as per section 8(e), which is in lieu of payment tax under section 6(1).

(3) Section 40 A of the Act is an enabling provision to collect tax at MRP rate with regard to the dealers who are issuing bills without full

details of the purchaser willfully to disturb the VAT trail and thereby causing loss of revenue to the State. So, if the sale is to a person having no liability to take registration, requirement to furnish full details with address is made with a view to locate and monitor the purchaser clearly.

(4) If a distributor's turnover exceeds 5 lakhs in a year, then only he is compulsorily liable to take registration under KVAT Act 2003. If the distributor's turnover does not reach the stipulated limit to take registration as prescribed, bill has to be issued in Form 8B showing full address and relevant details so that the person effected purchases can be easily located.

(5) As per KVAT Act 2003, the dealer who can collect tax on MRP, is only those dealers who are dealing with 'Medicine and Drugs' falling under section 3<sup>rd</sup> schedule to KVAT Act and opted for the scheme of compounding under section 8(e). So Amway is not liable to pay tax on MRP.

(6) But with regard to the sale effected to distributors, who are liable to be registered under KVAT Act and pay tax, if it is found later that the applicant has willfully failed to furnish full details in the bills issued so as to facilitate such distributor to evade payment of tax on value addition and then penal action will be attracted apart from the fact that the applicant has to pay tax on the value addition also.

The points sought for are clarified accordingly

COMMISSIONER