

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

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

Sub:- KVAT Act'03-Clarification U/s 94 -Works contract -
Application filed by M/s Sueksha Engineers, Bangalore - Clarified
orders issued - Reg.

Ref:- 1. Application in Form 24 Dtd.11.03.2008
2. Hearing Notice No. C3-10376/2008/CT. Dated: 19.03.2008

ORDER No. C3-10376/2008/CT. Dated 10.12.2008

1. In the application read 1st paper above, Sri.H. Rajagopla Shetty, Sureksha Engineers, Bangalore has requested to clarify whether he is liable to VAT under KVAT Act for the contract work for KLDB, TVM on the following:

The Applicant is a registered dealer with KVAT Act, 2003 and CST Act. In Karnataka State. He had entered into a contract work with Kerala Livestock Development Board, Thiruvananthapuram for providing solar power fence around the farm boundary at puthur in Thrissur. Agreement and schedule for the above said work were presented as Exhibit A and E. Applicant had purchased the material locally from Bangalore and fabrication works were carried out in Bangalore and transported to worksite in Thrissur on the support of departmental delivery note in Form No.39. Though the materials were brought to Thrissur the work was not commenced as instructed by KLDB. The materials transported were declared in the CST return for the year 2004 - 2005. Form No.3 under rule 6(b)(1) of the CST Karnataka Act 1957, accompanying statements and the copy of the CST Assessment order by Karnataka Sales Tax Authorities were also presented as Exhibit D. vide resolution dated 24.06.2006 of Kerala Livestock Development Board, it was decided to shift the worksite from Thrissur to Kulathupuzha in Kollam district, using the already transported materials from Bangalore. Work schedule and agreement for the work is presented as exhibit E and F respectively.

2. It is contented that the material in question were brought from the State of Karnataka for incorporating in the work site in Kerala and

was a sale in the course of interstate trade and have no tax liability in Kerala. The authorized representative of the applicant was heard in person by my predecessor on 02.04.2008 and contentions raised were examined in detail with reference to the statutory provisions.

3. The copy of the relevant agreement **relied** on is not forthcoming. Solar energy devices are taxable @ 4% in Kerala while it is exempted in Karnataka. In-order to constitute an interstate works contract, there must be predetermined contract on the basis of which the goods have to be moved from Karnataka to Kerala and the intention of the parties must be clear from the the agreement. As per the documents produced by the applicant, such an intention of the parties cannot be gathered and its nothing but a simple agreement for the execution of work which is governed by law of the **Situs** of sale, which is the place where actual incorporation of material has happened. So the law governing these transactions is local Kerala Value added Tax Act 2003.

4. Further the Honourable Supreme Court of India in Mahim Pataram Private Ltd. Vs. Union of India and other [16 KTR 75(SC) 2008] has held that as long as the Central Government does not made rates under CST Act 1956, for determination of turnover in relation to an interstate works contract, the determination of turnover may be carried out by the assessing authority in terms of rules framed by State Government.

The point sought for is clarified as above

COMMISSIONER