

**43. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL  
TAXES, THIRUVANANTHAPURAM**  
Present:- Paul Antony.IAS

Sub:- KVAT Act 03- Clarification U/s.94 – M Sand (crusher sand) produced by Metal crushing units - whether taxable at the hands of dealers opted for compounding under section 8(b) - Clarified - orders issued-Reg:

Read:- Application in form No. 24 Dt. 07.08.06 filed by Smt.D.Suma Devi, Mallelil industries –Konni

ORDER No. C7.34155/06/CT Dt. 02..08..07

Smt.D.Sumadevi, Mallelil Industries, Konni, Pathanamthitta has filed an application under section.94 of KVAT Act 2003 to clarify whether tax is leviable on "small sized crushed metal" produced by the crushing units, when the crusher unit had opted for payment of tax under section 8(b) of the said Act.

The applicant was given an opportunity of being heard in person. Even though the case was posted for hearing on three occasions the applicant did not turn up and so the application is disposed of on merits.

The applicant runs a crushing unit and is producing granite metal of different sizes. The applicant had exercised option under section 8(b) of the said Act for payment of tax at compounded rate. According to the applicant assessing authorities are treating granite metal of low sizes like 2 mm as 'sand' and levying tax on the turnover of the said item. The applicant contends that the items classified by the assessing authorities, as 'sand' is low size metal and so not liable for separate assessment.

The contentions of the applicant were examined with reference to the statutory provisions.

Section 8(b) of KVAT Act provides for paying tax at compounded rate in lieu of tax payable U/s.6(1) by a dealer producing 'granite metal' with the aid of mechanized crushing machine at different rate.

The small sized crushed metal referred ibid is the commercially known "Crusher sand or M-Sand). In commercial and common parlance the M-sand is treated as a separate commodity. The crusher units are producing this commodity. Merely for the reason that the crusher units are producing M-sand along with granite metals, by no stretch of imagination can these commodities be classified and treated as one and the same. M-sand is a distinct commodity having separate identity. On a plain reading of Section 8(b) of KVAT Act, it is clear that the legislative intention is to allow the compounding facility under the said section only on 'granite metals' produced with the aid of mechanized crushing machine and other commodities if any produced by such dealer will not fall within the ambit of the said section.

Further as per the Kerala Finance Act, 2007, section 8(b) of the KVAT Act, 2003 has been amended re-fixing the rate of compounded tax payable under the said section and by inserting a proviso to the said section to provide exemption on the turnover of M -sand in the case of dealers who had opted for compounding under this section. This amendment makes it clear that the legislative intention prior to this amendment was to tax M-sand at the hands of the dealers who had opted for compounding under the said section treating it as a separate commodity.

For the reasons detailed above dealers producing granite metals with the aid of mechanized crushing machine who had opted for payment of tax under Section 8(b) of KVAT Act, 2003 would be liable to pay tax under section 6(1) of the said Act on the turnover of the M-sand (Crusher sand) produced by such units for the period up to 31<sup>st</sup> March, 2007.

The points raised are clarified accordingly.

Commissioner