

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

PRESENT : P. MARA PANDIYAN, I.A.S.

Sub:- KVAT Act 03- Clarification U/s.94- Application filed by
M/s. Nippon Signage India Pvt. Ltd, New Delhi- Clarification-
orders issued-Reg:

Read:- 1.Application by M/s. Nippon Signage India Pvt. Ltd
2. Hearing Notice No.C3.24679/08/Dt. 06.09.08

ORDER No.C3.24679/08/CT Dated.08.01.2009

M/s. Nippon Signage India Pvt. Ltd, has preferred an
application U/s. 94 of KVAT Act on the following points.

The applicant has entered into contract with the Southern Railway for the manufacture, fabrication and supply of retro reflective engineering indicators. The indicators will be manufactured as per the specifications given by the Railway at the factory of the applicant situated outside the State of Kerala and the boards so manufactured will be sent to the Railway directly from their factory outside the state to the worksites at different part of the State. The goods will be taken delivery of by the authorized officers of the railway. The installation of the boards is not entrusted to the applicant. The Railway hold the view that since the work is executed as per specifications given by the Railway and the payments are made from Kerala, works contract tax has to be deducted by the Railway from the payments made to them at 10 % since the applicant is not a dealer registered under the provisions of the KVAT Act.

Hence it is requested to clarify the following points.

1. Whether, with reference to the orders mentioned above, the applicant is liable to pay any tax under the Kerala Value Added Tax for the supply of the retro reflective indicators made by the applicant to the Railways from the factory of the applicant situated outside the state.
2. If not, whether the applicant is liable to get registered as a dealer under the KVAT Act?
3. Whether, the Railway is required to make any deductions from the payments made to the payments in respect of

the said contracts under section 10 of the Act and if so, at what rate?

In the application and the points in argument note filed by the applicant it is stated that the goods, in question are manufactured in the factories of the applicant situated outside the state of Kerala and the goods are manufactured as per the specifications given by the Railways. Here the goods move from the manufacturing state as finished goods and the Railway is the consignee. The arguments raised by the applicant have been examined with reference to the statutory provisions.

Point No.1 In this case, the nature of transaction is covered U/s. 3 of the CST Act 1956, that is, there is a movement of goods from the manufacturing State to Kerala in pursuance of the sale and is therefore an interstate sale from the manufacturing state. Under section 9 of the CST Act, the state which has jurisdiction to levy tax on such transaction is the state from which the movement of the goods commenced. So the state of Kerala does not have jurisdiction to levy tax on the transaction. Hence the issue will not come under the ambit of KVAT Act 03 so the applicant has no liability to pay tax U/s. 6 of the KVAT Act 03.

Point No.2- As per sec. 6 of the KVAT Act, liability to pay tax under the Act is only on the taxable turnover. Since the applicant is not having any sale in the State of Kerala, the goods covered under point 1, there is no tax liability. But if the contractors material is used in installation process, then on such goods works contract tax is payable on its transfer value. According to Sec 15(2) of the KVAT Act 03- every contractor is liable to take registration irrespective of the turnover.

Point No.3- As per Sec.10 of the KVAT Act, Railway has to deduct tax on the basis of the liability certificate issued by the assessing authority of the contractor.

The point sought for is clarified as above.

Commissioner.