

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. *Abdul Jabbar.V.K, Joint Commissioner (General), O/o. CCT, Tvpm.*
2. *T.V. Kamala Bai, Joint Commissioner (Law), O/o. CCT, Tvpm.*
3. *S.K. Suchala Kumar, Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.*

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Liability to pay tax on the amount received for providing clearing and forwarding services - Orders issued.

Read :- Application from M/s. Lizy Enterprises, Kanjiramkulam, Thiruvananthapuram, dtd. 28/2/2011.

ORDER No.C3/8242/11/CT DATED 2/2/2012.

1. M/s. Lizy Enterprises, Kanjiramkulam, Thiruvananthapuram, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on whether they will be liable to get registered and to pay tax under the Kerala Value Added Tax Act, 2003, where the applicant acts as clearing and forwarding agent for M/s. India Cements Limited, Chennai, provides go-down facility and required manpower and receives service charges in respect of which the applicant pays Service tax under the Finance Act, 1994 providing for the levy of Service Tax and India Cements Limited, Chennai pays Value Added Tax in Kerala on the entire transactions done by it in Kerala utilizing the facility provided by the applicant.

2. The applicant contends that as per the agreement entered into between the applicant and India Cements Limited, Chennai, the applicant is expected to provide the following services to the Company:

- i. Arrange for unloading of cement from lorry and loading the cement sold by India Cements Limited to their customers in the trucks.
- ii. Arrange to de-stack the cement brought from the plant of the Company as per the instructions of the representative of the Company.
- iii. Provide go-down facilities for stocking cement at various places approved by the Company for which rent will be paid by the Company.
- iv. Ensure safe storage of the cement in the go-down in a scientific and damp proof manner.
- v. Provide the required manpower for loading and unloading.
- vi. Release the cement sold by the Company from the go-down following first-in first-out basis so as to avoid ageing of stock in the go-down on proper acknowledgement. The sales of the cement are made by the staff of the Company. The Company, which is registered as a dealer,

accounts for the sales of the cement and pays the tax due under the Kerala Value Added Tax Act.

3. The applicant has referred section 6 of the Kerala Value Added Tax Act, 2003 and contends that the liability to pay tax is on the taxable turnover. Taxable turnover is defined to mean the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover in the prescribed manner. As per rule 9, the total turnover of a dealer for the purposes of the rules shall be the aggregate of the amount for which goods are sold by a dealer and the turnover of purchase taxable under sub-section (2) of section 6 of the Act. Sale price means the amount of valuable consideration received or receivable by a dealer for the sale of any goods. The term purchase price has to be construed from the words sale price. The term sale is defined to mean any transfer, whether in pursuance of a contract or not, of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or for other valuable consideration.

4. The applicant would contend that going by the definitions of the various terms mentioned supra, none of the amounts received for the various services rendered by the applicant to India Cements Limited, Chennai will come under the definition of turnover, not to say about taxable turnover. As such the amounts received by the applicant from India Cements Limited for various services rendered by it, will not come under the purview of the Kerala Value Added Tax Act.

5. The applicant placing reliance on the judgment in *Imagic Creative (P) Ltd. Vs. Commissioner of Commercial Taxes and Others (2008) 2 SCC 614* would further contend that where the applicant pays Service tax under the Finance Act, 1994 which provides for the levy of Service Tax and India Cements Ltd. pays Value Added Tax in Kerala on the entire transactions done by it in Kerala utilizing the facility provided by the applicant, the amount received by the applicant from India Cements Limited for the services rendered by it, will not come under the purview of the Kerala Value Added Tax Act.

6. The applicant has requested to clarify whether the applicant will be liable to get registered and has to pay tax under the Kerala Value Added Tax Act, 2003 where the applicant acts as clearing and forwarding agent for India Cements Limited, Chennai, provides go-down facility and required manpower and receives service charges in respect of which the applicant pays Service tax and India Cements Limited pays Value Added Tax in Kerala on the entire transactions done by it Kerala utilizing the facility provided by the applicant.

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

8. As per the copy of the contract between the applicant and India Cements Limited, Chennai, produced before the authority for clarification, the applicant (clearing and forwarding agent) would provide certain services such as go-down facility, loading and unloading, and transportation facility to India Cements Limited, Chennai. There is no transfer of property between India Cements Limited, Chennai and the applicant, according to the contract. As there is no transfer of property, there is no sale effected between the applicant and India Cements Limited, Chennai. As such, there is no taxable turnover arising from this transaction between the applicant and India Cements Limited, Chennai. The amount received by the clearing and forwarding agent i.e. the applicant, for the services rendered to India

Cements Limited, Chennai is only a *quid pro quo* for the service only. Hence, it is clarified that the amount received by the applicant from M/s. India Cements Limited, Chennai, in pursuance of the contract produced before the authority for clarification, cannot form the taxable turnover under the Kerala Value Added Tax Act, 2003.

The issue raised above is clarified accordingly.

Abdul Jabbar.V.K.
Joint Commissioner (General)
O/o CCT

T.V. Kamala Bai
Joint Commissioner (Law)
O/o CCT

S.K. Suchala Kumar
Joint Commissioner (A&I)
O/o CCT

To,

M/s. S. Anil Kumar & K.S. Hariharan,
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