

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. T.K. Zivudeen.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. Dr. A. Bijikumari Amma.
Joint Commissioner (A & I),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. N. Thulaseedharan Pillai.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Whether loading, unloading, stacking and transportation charges will form part of the taxable turnover – Orders issued.

Read:- Applications dtd. 05/07/16 & 14/07/16 from M/s. Kothamangalam Aggregates, Kothamangalam

ORDER No.C3/22584/16/CT DATED 21/01/2017

1. M/s. Kothamangalam Aggregates, Kothamangalam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether loading, unloading, stacking and transportation which are billed separately will form part of the turnover.

2. The applicant firm is a registered dealer under the rolls of Special Circle, Perumbavoor and is engaged in manufacturing and supply of PSC poles to Kerala State Electricity Board Ltd. The applicant firm has submitted that the firm procures raw materials including steel, cement, coarse aggregates, fine aggregates etc. and manufacture the PSC poles in its own factory and transport the same to various destinations in own vehicles as per the specific contract executed with KSEBL.

3. The applicant would contend that as per section 2(l) taxable turnover means

the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed:

From the definition of taxable turnover it is clear that only after making deductions from the total turnover, taxable turnover can be arrived.

4. The applicant would also contend that from the definition of taxable turnover read with Rule 10(e) of the KVAT Act it is clear that transporting charges, loading, unloading and stacking charges will not come within the definition of taxable turnover. Rule 10(e) is extracted below.

Rule 10. Determination of taxable turnover:- In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer.

(e) all amounts falling under the following heads, when specified and charged for by the dealer separately, without including them in the price of goods sold:

- (i) freight*
- (ii) charges for delivery*
- (iii) cost of installation*

5. The applicant would further contend that they are supplying their goods to KSEB by way of a specific contract. The transportation charges and unloading & stacking charges received from KSEB is not a part of taxable turnover as they have charged transporting charges, loading, unloading and stacking charges separately. These expenses will come within the ambit of Rule 10(e) of KVAT Rules.

6. The applicant has also referred to the judgement of Hon'ble Supreme Court in Board of Revenue vs. Moideenkutty wherein it is held that "freight or transporting charges separately charged without including the same in the price of goods is an allowable deduction under Rule 9(f) of the KGST Act. Rule 9(f) of the KGST Act and Rule 10(e) of the KVAT Act are similar and hence the above mentioned decision of the Apex Court is binding.

7. The applicant has also contended that the Commissioner of Commercial Taxes has already clarified KSEB vide letter No. C4-2937/16/CT dtd. 17.06.16 that there is no tax liability for KSEB as purchaser of poles on account of transportation and delivery charges of poles and hence KVAT need not be paid on transportation and delivery charges to the pole manufacturers.

8. The applicant has requested to consider the following points while evaluating the matter.

a. As per the contract with KSEBL, the manufactured poles are tested by the KSEBL in the factory itself and accepted to their stock. The sale is concluded inside the factory itself. This is referred in clause 11 of purchase order as Pre-dispatch inspection and testing.

b. TDS is deducted on transportation and other delivery charges given. If transportation, loading, unloading and stacking charges were part of taxable turnover and part of sale bill, TDS would not have been deducted.

c. The ownership of pole is transferred to KSEBL by pre despatch inspection and testing. Thus the sale bill contains only basic price and applicable taxes. Transportation, loading, unloading and stacking charges etc. is a separate limb in the

contract and that is separately shown in the purchase order. Hence the same is billed separately. The order of the KVAT Appellate Tribunal, Palakkad in Order No. TA(VAT) Nos. 292/14 and 293/14 relied on a judgement issued by Hon'ble Supreme Court of India which discussed about a TNGST case and the Tribunal compare rule 10(e) of KVAT Act with rule 9(f) of TNGST Act. This should not be taken as bench mark for this matter as there is a decision of Hon'ble Supreme Court of India in the case – Board of Revenue vs. Moideenkutty.

d. The same subject matter was considered in detail by the STAT, Kochi and Hon'ble High Court of Kerala in KGST period has directed the assessing authority to decide on the matter “untrammled by the observations of the tribunal and with an open mind after considering the contract and hearing the petitioner.”

e. The request of the applicant to allow them to purchase trucks, tippers etc. in CST as the said trucks/tippers/dumpers/tractors etc are capital goods was rejected by the assessing authority and was also not allowed to take input tax credit for the same. It was rejected because the transportation, unloading and stacking charges were exempted as per rule 10(e) of KVAT Rules.

9. The request of the applicant is to clarify

- a) whether loading, unloading, stacking and transportation which are billed separately will form the part of the taxable turnover.
- b) whether they are eligible to purchase the trucks and tippers under CST.

10. The applicant was heard in the matter. But to proceed further, it seems essential to hear the part of KSEBL also.

11. KSEBL has submitted that as per the terms and conditions of the purchase orders, the basic price and transportation charges are listed separately in the schedule of prices. Hence, on a conjoint reading of Rule 10(e) and section 2(l) it is obvious that neither the manufacturer nor the Board is liable to pay the tax on transportation charges as the transportation, loading, unloading, stacking charges do not come under the purview of taxable turnover. Further, Rule 9(f) of the KGST Act and Rule 10(e) of the KVAT Act are similar in nature and the apex court in Board of Revenue vs. Moideenkutty observed that “freight or transporting charges separately charged without including the same in the price of goods is an allowable deduction under Rule 9(f) of the KGST Act.

12. KSEBL contends that the findings of the AG's audit is totally unfounded and illegal as the same is lacking bonafides. The same is a pulsating contrast to what has been enumerated in the statute.

13. KSEBL has further submitted that any detrimental decision in the matter will definitely be mutated into a potential protracted legal tussle between the Board and the manufacturer.

Further, the Board files the Aggregate Revenue Receipts and Expected Revenue from Charges before the Kerala State Electricity Regulatory Commission and get it approved for the smooth sailing of this organization. Hence, any undue burden by way of a retrospective tax liability will absolutely jeopardize the accounts of the Board. Moreover, the Commissioner of Commercial Taxes assured that the said transaction is not amenable to KVAT on transportation charges.

14. For the reasons stated supra, KSEBL has requested that the impugned assessments may be quashed.

15. The contentions raised by both the applicant and KSEBL were examined.

16. The applicant has entered into a contract with KSEBL for the manufacture and supply of 8m and 9m poles to Electrical circles of Perumbavoor and Thodupuzha for a period of two years. The scope of the contract agreement is clearly mentioned in the Annexure II of the Purchase Order. The agreement covers the design, manufacture, inspection, testing at supplier's works and delivery including unloading at site as per the technical specification and schedule in the tender, and its guarantee for satisfactory performance for a period of 18 months from the date of acceptance by the consignee. The clause dealing with 'price details' states that

"the rate is for the delivery of poles any where within the Electrical Circle concerned on intimation from the consignee concerned. The rates are inclusive of all expenses on account of all operations required for the scheduled supply of poles.

In case of necessity, the contractor shall be bound to supply poles to other circles also. In such cases, the supplier will be paid the transporting charges from the yard to the actual place of delivery.

The per pole per km rate would be arrived at by dividing the transporting charges for supply within the circle by the average distance of transporting from the yard to various sections within the circle.

In addition, loading, unloading and stacking charges also will be paid."

17. From the above, it is clear that the property of the goods passed on to the KSEBL only upon delivery of the same at the required site of the KSEBL and KSEBL's obligation to pay arose only after delivery had been so effected. The pre-dispatch inspection at the manufacturing yard of the applicant by the Engineer of KSEBL is only to confirm the quality of raw materials and its specification and nothing more. The ownership of the property is not transferred to the hands of the KSEBL at the time of inspection. This happens only at the time of delivery and stacking at required places. As per Sn. 2(xliv), sale price is inclusive of any sum charged for anything done by the dealer in respect of the goods or services at the time of or before delivery thereof. Hence it is clear that the transporting and other charges charged by the applicant would be taxable under the KVAT Act.

18. Moreover, the facts and circumstances of the case at hand are squarely covered by the decision of the Hon'ble Supreme Court of India in **India Meters Ltd. vs. State of TN** [(2011) 19 KTR 135 (SC)], which has been quoted with approval by the Hon'ble KVAT Additional Appellate Tribunal, Palakkad in **State of Kerala vs. M/s. Sivasakthi Engineering and Fabricators**. In both these decisions, it has been clearly stated that the rule permitting deduction of the cost on freight while determining the taxable turnover must be read in the context of definition of "turnover" as also the definitions of "sale" and "sale price" in section 2(lii), 2(xliii) and 2(xliv) of the KVAT Act respectively.

19. In the light of the above, the applicant would not be entitled to deduct loading, unloading, stacking and transporting charges even if shown separately in the invoice, from his total turnover, and the same would therefore, form part of the taxable turnover.

20. Regarding the second dispute raised by the applicant with regard to their eligibility to purchase trucks and tippers under the CST Act against 'C' forms, the same is not within the purview of sec. 94(1) of the Act, 2003 and, hence should be adjudicated by the assessing authority after considering the facts of the case.

The issues raised above are clarified accordingly.

T.K. Ziaudeen
Joint Commissioner (Law)
O/o CCT

Dr. A. Bijikumari Amma
Joint Commissioner (A&I)
O/o CCT

N. Thulaseedharan Pillai
Joint Commissioner (General)
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To

M/s. Kothamangalam Aggregates,
Ayroorpadam, Kothamangalam - 686 692

The Director (Finance),
Kerala State Electricity Board Ltd.