

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 - Applicability of KVAT and Works Contract Tax on imported equipments - Orders issued.

Read:- Application from the Deputy Chief Engineer & Project Manager with full powers of Chief Engineer, Civil Circle, Meencut (Pallivassal Extension Scheme), Idukki dated 31/10/2011.

ORDER No. C3/28212/11/CT DATED 19/12/2011.

1. The Deputy Chief Engineer & Project Manager with full powers of Chief Engineer, Civil Circle, Meencut (Pallivassal Extension Scheme), Idukki has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the applicability of Value Added Tax and Works Contract Tax on imported equipments.

2. The applicant submits that an agreement was executed between Kerala State Electricity Board and M/s ESSAR - DEC - CPPL Consortium of which M/s ESSAR Power Ltd. is the Lead Partner for the implementation of the Pallivasal Extension Scheme, a hydro electric project in Idukki. The Gross Contract Value is ` 268,01,89,417/- which includes ` 182,54,27,163/- for Civil Works and ` 85,47,62,254/- for supply and erection of power equipments. This contract includes all civil works, supply, erection, testing of all generating, hydro mechanical and electrical equipments with commissioning of the entire project as a single package. 50% of the work has been completed. The power equipments are being supplied by a Chinese company called Dong Fang Electric Corporation (DEC) and it is the responsibility of the lead firm to ensure that the required equipments are being supplied as per schedule. As an awarder, Kerala State Electricity Board is making all correspondences and payments only to the lead firm i.e. M/s ESSAR Power Ltd.

3. The applicant contends that as per the terms of agreement, reimbursement of taxes and duties will be done only on production of documentary evidence to prove that the contractor has actually remitted such taxes and duties. The agreement further states that whenever concessional rates of duties or taxes are applicable to the project, the contractor shall avail such benefit and only such reduced rates of taxes and duties shall be applied

during the course of the contract. The contractor had produced a liability certificate in Form No.1EE and works contract tax is not being recovered on the basis of that certificate. Now the contractor is demanding reimbursement of KVAT by submitting Form No. 10J & 10B. 4. The applicant has requested to clarify the following points:

- i. Whether KVAT is applicable for import of power equipments?
- ii. If so, whether there exist any concessional rate that can be availed by the supplier and how can it be availed?
- iii. Since the equipments are landed at Chennai Port and transported to power house site, will it attract CST ?
- iv. If so, can concessional rate be availed by the supplier, how can it be availed and whether C Form can be issued?
- v. Which forms can be taken as documentary proof as evidence of remittance of KVAT?
- vi. Since the work is awarded as a single package, whether works contract tax can be applied on whole amount including supply of E & M equipments?
- vii. Since KSEB is not making any direct supply, could it be treated as a purchase contract for tax purpose?
- viii. Is the contractor entitled for reimbursement of KVAT if any already paid by them from Commercial Taxes Department.

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

6 (a). **Points (i) to (iv):-** As per the terms of the Contract and the Consortium Agreement, it is seen that the contractor is importing the power equipments at Chennai Port, and transporting it to the Kerala State Electricity Board site at Pallivassal. Import of equipment by the contractor from a foreign country cannot be taxed under Central Sales Tax Act or Kerala Value Added Tax Act.

Up to the time of successful installation, the awarder has the right to reject the goods and so the ownership lies with the contractor. When it is successfully installed, the sale will conclude and would attract tax under the Kerala Value Added Tax Act. As such, there is no Central Sales Tax transaction and hence the question of 'C' Form and concessional rate does not arise.

(b). **Point (v):-** In Value Added Tax, the contractor takes out registration and files his returns including the receipts from the contract, and calculates his actual tax liability and

remits the tax. If the assessing authority feels that the return is incorrect, or there are materials pointing to tax evasion, he can assess the dealer. Payment to the contractor has to be effected on the basis of Form 20B (Liability Certificate) or Form 20E (without TDS) issued by the assessing authority. The awarder has to insist the contractor to produce the same and on that basis tax has to be deducted.

(c). **Points (vi) to (viii):-** The said issues are also covered under the Tax Liability Certificate, as discussed above.

The issues raised above are 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