

## **23. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM**

**Present: Sri. P.Mara Pandiyan I.A.S**

Sub: KVAT Act 2003- Clarification U/s 94 - Application filed by M/s CBM Industries Ltd., New Delhi- Clarified orders issued \_ Reg

Ref: 1. Application in form no. 24 dated :21.06.2008  
2. Hearing Notice No. C3.24680/2008 Dtd. 6.9.2008.

### **ORDER No.C3/24680/2008/CT Dtd.26.11.2008**

1) M/s CBM Industries Ltd., New Delhi has preferred an application under section 94 of the KVAT Act. on the basis of the following points:

(1) The applicant, M/s CBM Industries Ltd., New Delhi has entered into contracts with the Southern Railway for the manufacture, fabrication and supply of Inorgo Polymeric Ancillary items and other passenger amenities in Thiruvananthapuram Division. The items 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 the factory outside the state of Kerala to the worksites at different parts 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 @10% has to be deducted by the Railway from the payments made to them since the applicant is not a dealer registered under the provisions of the KVAT Act. Hence it is requested to issue clarification on the following points;

(a) Whether, with reference to the order in question, the applicant is liable to pay any tax under the Kerala Value Added Tax for the supply of the items mentioned in the supply order, made by the applicant to the Railways from the factory of the applicant situated outside the State?

(b) If not, whether the applicant is liable to get registered as a dealer under the KVAT Act?

(c) 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?

(2) In the application and the points in the 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 in detail with reference to the statutory provisions.

**Point no 1**

In this instant case, the nature of transaction is covered under section 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 transactions. Hence the issue will not come under the ambit of KVAT Act 2003. So the applicant has no liability to pay tax under section 6 of the KVAT Act 2003.

**Point no 2**

As per section 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 contractor's material is used in installation process, then on such goods work contract tax is payable on its transfer value. According to section 15(2) of the KVAT Act. 2003, every contractor is liable to take registration irrespective of the turnover.

**Point no 3**

As per section 10 of the KVAT Act, Railway has to deduct tax on the basis of tax liability certificate issued by the Assessing Authority of the contractor.

The points sought for clarification are clarified as above.

Commissioner.