

No.C5-18985

Office of the Commissioner of
Commercial Taxes
Thiruvananthapuram
Dtd.....15.05.2008

CIRCULAR No.21/08

Sub:- KVAT Act, 2003 – Assessing Officers to ensure remittance of tax by dealers irrespective of whether registered under the Act or not – Reg.

Ref:- W.P.(C) No.12442 of 2008 dtd.10th April, 2008.

In the judgment under reference Hon'ble High Court of Kerala has pointed out that assessing officers have a duty under the statute to initiate action for collection of tax, irrespective of the fact that a dealer is registered under the Act or not. Hon'ble High Court in the above judgment observed as follows: "This is certainly a lapse on the part of the Officer, who has the duty to arrange for collection of tax irrespective of whether dealer is registered under the Act or not. In fact, it is seen in several cases coming to this Court that Officers do not ensure filing of returns and payment of tax during pendency of application for registration, or even thereafter, because tax liability remains irrespective of registration".

2. Attention is invited to Sec.20(1) of the Act. Going by this provision every dealer liable to be registered under the VAT Act, 2003 shall submit to the assessing authority, returns before the appointed dates accompanied by the documents prescribed under the relative rules. Only registered dealers are allowed to collect tax under Sec.30 of the Act. Registered dealers whose total turnover in a year is below Rs.10 lakhs and dealers who are eligible for exemption at the point of sale by such dealer (eg:- units of Khadi & Village Industries and Kudumbasree) can opt for collection of tax in respect of the sale of taxable goods. However, they are bound to exercise an option. Any dealer overlooking these mandatory provisions would certainly fall under Sec.67(1) (a) of the Act and be liable for action under Sec.71 of the Act.

3. Thus liability to pay tax remains irrespective of the fact that registration has been granted or not. Statutory position being so, a duty is cast upon the assessing officers to ensure prompt filing of return and remittance of tax due to the State exchequer in respect of dealers whose application for registration is pending / rejected or turned down.

4. Any officer who fails to implement the statutory provisions for collection of tax due and enforcement of filing of returns would invite exemplary disciplinary action.

Commissioner

To

All Concerned