

**Circular No.24/06**

Sub: K.G.S.T. Act 1963 –Association of photographers – works contract legal position – communicated.

Consequent to the decision of the Hon'ble High Court of Kerala in *Bavans Vs Union of India* ( 97 STC 161 ) and the decision of the Hon'ble Supreme Court of India in *Rainbow Colour Lab Vs State of Madhya Pradesh* ( 118 STC 9) there exists some doubts about the exigibility to sales tax on photography business. In the aforesaid decisions it was held that the photography business cannot be assessed to sales tax, since the predominant component in the contract is work and labour.

The Hon'ble Supreme Court of India in *Associated Cement Company Ltd Vs Commissioner of Customs* ( 124 STC 59 SC ) explained the dictum of the decision in *Rainbow Colour Lab* case and held that the conclusion arrived at in *Rainbow Colour Lab* case ( [2000] 118 STC 9 [sc]) runs counter to the express provision contained in Art. 366(29(A)) and the constitution bench decision of the Supreme Court in *Builders Association of India Vs union of India*. ([1989] 73 STC 370).

Hon'ble Supreme Court of India in *BSNL Vs Union of India* and other ( 145 STC 91) has again explained the dictum laid down in the above decisions and held that after the 46<sup>th</sup> constitution amendment, the state legislatures were empowered to bifurcate goods element involved in the execution of works contract by a fiction of law and to bring to sales tax and the observation made in *C.K.Jidhesh Vs Union of India* ([2005] 8 SCALE 784) is not good law.

From the above it is clear that in a photographic business the goods involved in the execution of works contract, notwithstanding that the value may represent a small percentage of the amount paid for the works contract, can be assessed under K.G.S.T. Act / KVAT Act.

All the assessing officers are directed to complete the assessments in the light of the above decisions. They should also take steps to reopen the assessments if already completed ignoring the above position of law.

Sd/  
Commissioner