

26. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM
Present:- Paul Antony.IAS

Sub:- KVAT Act 2003- Clarification U/s.94- Rate –works contract- orders issued- reg:
Read:- Application dated 17.01.07 from M/s. Kunnel Imperial Realtors, Kochi

ORDER No.C3.3656/07/CT Dated.. 14..05..07

M/s. Kunnel Imperial Realtors, Kochi has preferred an application under section 94 of KVAT Act, 2003 seeking clarification as to whether a dealer entering into a sub-contract in relation to a contract to which section 8(a)(iii) applies is eligible to get exemption under Rule 9(m)(ii) of the KGST Rule if the principal contractor pays compounded tax on the entire contract.

The applicant was given an opportunity of being heard and the authorized representative was heard. The contentions raised were examined with reference to relevant statutory provisions.

In VAT scenario, all value addition up to final delivery of goods is liable to be taxed. So basically sub contractor cannot be exempted from levy.

As per explanation II to section 8(a) of KVAT Act, the “whole contract amount” for the purpose of clause (a) of Section 8 shall not include that portion of a contract which represents amount paid to sub-contractors for execution of works contract provided that the sub-contractor is a dealer liable to pay tax under the Act and the contractor is filing a certificate issued in Form 20H, by the sub contractor.

This explanation is applicable to all sub-clauses of clause (a) to Section 8.

Sub clause (iii) to clause (a) of section 8 provides only for application of a tax rate on par with the rate under KGST Act in the VAT scenario to a particular class of works specified in the said clause and no continuance of procedure under KGST Act is envisaged. In order to be eligible for payment of tax under the said clause the procedure prescribed under the KVAT Rules, 2005 has to be complied with.

Statutory provision being so, the sub-contractor is not entitled for any exemption on the strength of the certificate issued by the principal contractor as envisaged in Rule 9(m)(ii) of KGST Rules, 1963.

The point sought for is clarified accordingly.

Commissioner