

**1. PROCEEDINGS OF THE COMMISSIONER, COMMERCIAL TAXES
THIRUVANANTHAPURAM**

Present: - Sri.Paul Antony.IAS

Sub:-KGST Act 1963- Clarification under section 59A- whether CPWD is liable to pay ST for the supply of cement to Contractors purchased against D form from outside the state
Clarification issued- reg:

Read:- 1.Application in Form No,31D dt. 17.08.05 from the Exe.Engineer,Kottayam Central Divisions, CPWD.
2. Hearing Notice dt. 27.10.05

ORDER NO. C3.42837/05/CT Dt. 24.01.06

The Executive Engineer, CPWD,Central Division, Kottayam has sought clarification under section 59A on the following points,

1. Whether the CPWD is liable to pay KGST on the cement imported to the state on D form and supplied to contractor for works from the year 1997-98 onwards with retrospective effect on the contractors that the awarder is making TDS from the full contract amount from the contractors and remit it to the STO (WC<)
2. Whether Commercial Taxes Department is competent to make assessment after the statutory period of 4 years based on the fact that the Central Government is a dealer.
3. Whether Commercial Taxes Department can demand tax from CPWD for the supplies effected to contractor in cases where tax was deducted at source by the awarder the commodity being taxable at the point of 1st sale.
4. Whether the State Government is competent to issue notice to tax on the supply of goods by awarders after collecting TDS at a uniform rate from the contractor.

The above points are clarified below:

1. The major works under taken by CPWD- Construction of buildings, roads, bridges etc which are treated as civil works as mentioned in the explanation to sub section 7 of the KGST Act, 1963. The major item supplied by CPWD for construction to contractors are cement and Iron and steel which are taxable at the point of first sale in the State. So if those items are purchased from outside the state

against D form and supplied to contractor, the awarder is liable to pay tax if the supply is against consideration. The Hon'ble Supreme Court of India in Cooch Behar Contractors Association Vs State of West Bengal reported in (1996) 103 STC 477 SC and in Rastriya Ispat Nigam Ltd Vs State of AP reported in (1998) 109 STC 425 SC has held that when Cement, Iron and Steel and other materials are supplied by the contractee to the contractor and its value is deducted from the payments made to each construction in progressive bill the supply of materials by awarder to contractor constitutes a sale. This position was connected in the direct decision in Karya Palak Engineers CPWD Bikameer Vs Rajasthan Taxation Board and other reported in (2004) 136 STC 64 ISC also held that supply of barbed wire for fencing by CPWD to contractor is sale when the price is deducted in the bills. After the pronouncement of the above two classic judgments, the Accountant General (Audit) Kerala has started raising objections to the case that the officers failed to make assessment on the awarders viz CPWD, Kerala PWD etc. So the assessing authority have started assessment retrospectively to make good the loss of revenue pointed out by the Accountant General. So the CPWD is liable to pay tax on supplier. But interest is due on default of payment of tax as per the notice of demand in view of the Supreme court judgment in Philips India Ltd Vs Assistant Commissioner reported in (2004) 136 STC 636 SC deduction of tax at 2 % under section 7(7B) of the KGST Act 1963 in the liability of the contractor who transfer goods in the execution of works contract. This includes locally purchased goods on which the contractor has no liability and also labour and service. This is a hassle free method for which the contractor has to opt under section 7(7) compounding above in view of the tax payable under section 5(1)(iv) of the Act, 1963. The Kerala High Court in Symom Vs State of Kerala reported in (1995) 97 STC 283 Kerala has upheld the levy of tax on 2nd point transfer and labour and service. So the awarder CPWD is liable to pay Sales tax on supply of goods for which consideration is received in the sense that the value of materials is deducted from contractor and the contract is liable to pay tax under section 5(1)(iv) or under section 7(7) or 7(7A) etc.

2. Regarding point (2) on time bar, it may be noted that the time limit for completing the original enactment under section 17 is 4 years from the expiry of the year to which the assessments relates as per sub-section (6) of section 17. The time limit for escaped assessment under section 19 is 5 years from the expiry of the year to which the tax relates. But if the reopening of the assessment is necessitated as per the judgment of High Court or Supreme Court this time limit will not apply.

3. Regarding point (3) the CPWD is competent to levy 1st point tax under section 5(1)(iv) of the Act where transfer of materials from the awarder to contractor is involved and the amount is deducted in the bills towards costs of materials.
4. On point (4) it may be noted that collection of tax is made at the point of 1st sale by the awarders from contractors whom the cost is deducted in the bill and the contractor is also liable to payment of tax on the materials transfer under section 7(7A) (7B) etc.

Sd/
Commissioner