

COMMISSIONER OF COMMERCIAL TAXES CIRCULAR NO. 11/2009-10

Sub: KST Act, 1957 and KVAT Act, 2003-civil works contracts – deductions allowable in computation of turnover and consideration liable to tax– reg.

It has come to the notice of this office that there is confusion among the departmental officers in determining the deductions allowable while computing turnover and consideration liable to tax in civil works contract cases under the provisions of both the KST Act, 1957 and the KVAT Act, 2003, leading to lack of uniformity in assessment of tax in such cases and also resulting in avoidable disputes.

2. The matter is examined and it is considered necessary that suitable instructions should be issued in this regard to the departmental officers for expeditious correct assessment and recovery of tax in these cases. Accordingly, the following instructions are issued:

(1) Composition tax scheme: Where a builder or developer has opted for payment of tax on his turnover relating to transfer of property in goods involved in execution of works contract under the composition scheme as provided under section 17 of the KST Act, 1957 or section 15 of the KVAT Act, 2003, the total consideration on which such dealer is liable to tax would not include the amount received from the customers towards their undivided share in land. However, as explained earlier, in the case of joint development projects this exclusion would not be applicable.

. Further, deduction is allowable towards amounts paid to sub-contractors under the explanation to section 17(6) of the KST Act, 1957 and from 1.4.2006 under section 15(5)(b) of the KVAT Act, 2003. Further, even during the period from 1.4.2005 to 31.3.2006 deduction towards amounts paid to sub-contractors would be available in view of the judgment of the Hon'ble Supreme Court in the case of State of Andhra Pradesh and Others v/s.Larsen & Toubro Ltd. and Others (reported in 17 VST page 1).

It may be noted that where a builder or developer or contractor has opted for composition, all works executed by him during the year would be covered by the composition scheme and no deduction other than the one discussed above, is allowable towards any one of such works on any ground as held by the Hon'ble Karnataka High Court in the case of Karnataka Construction Corporation Limited (reported in 138 STC page 322).

(2) Carrying forward of unadjusted deductions: Rules under both KST Act, 1957 and KVAT Act, 2003 provide for carrying forward of unadjusted deductions towards labour and other like charges to the next year and to the next tax period respectively. However, it must be noted that any unadjusted deduction under the KST Act, 1957 as on 1.4.2005 cannot be carried forward for consideration under the KVAT Act, 2003.

(3) Deductions towards labour and other like charges: As held by the Hon'ble Supreme Court in the case of Gannon Dunkerley & Co. and Others (reported in 88 STC, page 204), the cost of incorporation of the goods in the works contract cannot be made a part of the taxable turnover relating to transfer of property in goods involved in execution of goods civil works contract. However, transportation charges for transport of goods to the place of works and other similar expenses would be a part of such taxable turnover. Accordingly, actual expenses incurred towards labour charges including provident fund, gratuity, bonus, etc. relating to the execution of works contract and charges incurred for erection, installation, fixing, fitting out or commissioning of the goods used in the execution of the works contract are deductible from the total turnover. Labour and other like charges include charges for obtaining on hire or otherwise machinery and tools used in the execution of a works contract, charges for planning, designing and architects fee and cost of consumables used in the execution of the works contract, cost of establishment to the extent relating to supply of labour and services and other similar expenses relating to supply of labour and services. Only where these labour and other like charges are not ascertainable from the books of account maintained, the same shall be arrived at by adopting the standard rate prescribed in the table provided under rule (6)(4)(n)(v) of the KST Rules, 1957 and Rule 3(2)(m) of the KVAT Rules, 2005. It may be noted that while allowing deductions towards labour and other like charges actually incurred and ascertainable from the books of account, the gross profit margin earned by the builder or developer on such charges are also allowable as deduction. However, where deduction is allowed at standard rates, no further deduction towards profit margin is allowable.

Further, if the works contract has been executed partly or wholly through a sub-contractor, then not only the profit earned by the sub-contractor on account of labour and like charges is allowable as deduction, even the gross profit earned by the main contractor on such charges shall also be allowable as deduction.

(4) Amounts collected as BWSSB and KPTCL deposits, stamp duty, etc.: Most of the builders and developers collect amounts from customers towards BWSSB and KPTCL deposits, stamp duty, registration fee, service tax, etc. These amounts collected cannot be taken as part of the total turnover or total consideration relating to transfer of property in goods involved in the execution of civil works contracts by the builder or developer. Hence, these amounts should be kept out of total turnover or total consideration of any builder or developer.

3. All the concerned shall note and follow the above instructions in all the applicable cases. It is to be noted that the above instructions are based on the terms of the general agreements and contracts relating to the civil works contracts and current binding judgments of the Hon'ble High Court of Karnataka and Supreme Court and would be applicable wherever the facts and circumstances are similar. In the circumstances unless any term or condition of a contract or agreement relating to execution of a civil works contract makes it totally different from the transactions discussed above, the above instructions shall be followed in all cases of civil works contracts.



(Pradeep Singh Kharola)
Commissioner of Commercial Taxes.

To:

All the Departmental Officers in the State for necessary action.