

No.KSA.CR.121/09-10

Office of the  
Commissioner of Commercial Taxes,  
Gandhinagar, Bangalore,  
Dated: 7.12.2009.

**COMMISSIONER OF COMMERCIAL TAXES CIRCULAR NO. 13/2009-10**

Sub: KST Act, 1957 and KVAT Act, 2003-civil works contracts – correct  
position of applicable rate of tax – reg.

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It has come to the notice of this office that there is confusion among the departmental officers on the issue of correct rate of tax applicable on transfer of property in goods involved in the execution of civil works contracts 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) **Rate of tax applicable to goods involved in the execution of civil works contracts:** Generally, the goods involved in civil works contracts are cement, iron and steel, sand, grit (called as 'jalli') and bricks. The taxable turnover relating to transfer of property in such goods involved in the execution of civil works contract is liable to tax at the rates specified in entry serial number 6 of Sixth Schedule to the KST Act, 1957 as per the provisions of Section 5-B. However, the taxable turnover relating to transfer of property in declared goods namely, iron and steel involved in the execution of civil works contract is, however, liable to tax at the rate (of 4%) as specified in entry serial number 2 (a) of the Fourth Schedule to the KST Act, 1957. Similarly, the taxable turnover relating to transfer of property in goods involved in the execution of civil works contract is liable to tax at the rate of 12.5% as specified in Section 4(1)(b) of the KVAT Act, 2003 during the period from 1.4.2005 to 31.3.2006 and at 12.5% as specified in entry serial No.23 of Sixth Schedule to the KVAT Act, 2003 as per the provisions of Section 4(1)(c) from 1.4.2006 onwards. However, taxable turnover relating to transfer of property in declared goods namely, iron and steel involved in the execution of civil works contract is, however, liable to tax at the rate (of 4%) as specified in entry serial number 30 of the Third Schedule to the KVAT Act, 2003. It may be noted that in all cases, iron and steel would not be utilized and transferred by the contractor in the execution of civil works contract in the same form in which they were purchased and that only in a few cases it could be so.

The Division Bench of the Hon'ble High Court of Karnataka in its judgment dated 12.8.2004 in STRP No.34/2003 (B.V. Subba Reddy vs. DCCT (Assessment), Bijapur & Another) while dealing with this issue has held as follows:

“14. It is not in dispute nor it can be disputed by both sides that a contract had been awarded to the petitioner for construction of a bridge. For that purpose the dealer/contractor has purchased iron and steel and has utilised the same for the purpose of construction of the bridge. Iron and steel purchased by him are used not in the same form as iron and steel but are used for the purpose of construction of a bridge. Therefore, liability of the dealer would squarely come under Entry No.6 of the sixth schedule to the Act. Keeping this aspect of the matter in view, the Tribunal has accepted the reasoning of the Revisional Authority while confirming the order passed by the Revisional Authority.

15. In view of the law declared by the Apex court in *Gannon Dunkerley's case*, in our opinion, the Tribunal has not committed any error whatsoever which calls for our interference in this revision petition. Accordingly, the petition stands rejected. Ordered accordingly.”

Similarly, the Division Bench of the Hon'ble High Court of Karnataka in its judgment in STRP No.12 of 2006 (Larsen & Turbo Ltd. vs. State of Karnataka & Another) has held that, if iron and steel has been used in the manufacture or production of prefabricated structure, which are later used in the civil works contract executed, then the taxable turnover relating to such goods would not be taxable at the rate applicable to the declared goods.


In determining the rate of tax applicable to civil works contract, execution of which involves use of among other goods Iron and Steel, the principles laid down by the Hon'ble High Court of Karnataka in the above cases should be kept in mind apart from the factual position in each case as held by the Hon'ble High Court of Karnataka in the case of URC Construction (reported in 2006 (60) Kar. L. J 3). It is only in such cases where the facts of the case are different from the ones examined by the Hon'ble High Court of Karnataka in STRP No.34 of 2003 and 12 of 2006, the taxable turnover relating to iron and steel used in the execution of a civil works contract should be subject to the same rate as applicable to declared goods whether under the KST Act, 1957 or KVAT Act, 2003.

- (2) **Applicability of rate of tax on works contracts during the year 2005-06:** During the year 2005-06, in the absence of any schedule relating to works contracts in the KVAT Act, 2003, the taxable turnover relating to transfer of property in goods involved in the execution of civil works contract was liable to tax at the rates specified under clauses (a) and (b) of sub-section (1) of section 4 on the goods so transferred. However, it is to be noted that in most of the cases of works contracts including civil works contracts, the goods used in the execution of the works contracts do not get transferred in the same form in which they were purchased or manufactured by the contractor. Thus, as all the goods used in the execution of civil works contracts namely, cement, iron and steel,

sand, grit (called as 'jalli'), bricks, etc., do not get transferred in their original form, the taxable turnover relating to transfer of such goods would be taxable at 12.5% under section 4(1)(b) and not at the rate applicable to each of such goods. However, it may be noted that as discussed earlier only in such cases where iron and steel used in the execution of civil works contract get transferred in the same form in which they were purchased, their taxable turnover would be liable to tax at 4% under section 4(1)(a)(ii) read with entry serial number 30 of Third Schedule to the KVAT Act, 2003. The authorities accepting in any case such claim for levy of tax at 4% on iron and steel used in the execution of civil works contract shall give clear findings as to why the judgments of the Hon'ble High Court of Karnataka cited above are not applicable to such case.

Even after civil works contracts being specified in the Sixth Schedule with a rate of 12.5% from 1.4.2006, the above position of tax rate applicable to iron and steel transferred in the execution of such works contract continues to be valid.

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.