

Indirect Tax Updates

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Under section 64 of the KVAT Act, the Additional Commissioner is empowered to suo moto call for and examine the record of any order passed or proceeding recorded and if he considers that any order passed therein by any officer is erroneous in so far as it is prejudicial to the interest of the revenue, he can stay the operation of such order for such period as he deems fit.(Section 64(1) of the KVAT Act).

In the recent case of M/s Satya Sai Constructions Vs Additional Commissioner of Commercial Taxes Bangalore 2021- VIL- 147-KAR dated 18.2.2021 the powers under section 64(1) of the KVAT Act are examined as follows.

Facts of the case

- The appellant is engaged in development of residential projects based on JDA with landowner.
- The appellant formed the residential layout by laying roads, sewage lines, water lines etc.
- The appellant entered into construction agreement with buyer for constructing villas/residential units.
- The entire construction activity was undertaken by engaging a sub-contractor who charged VAT to the appellant.
- The appellant filed its return under the provisions of the Act after adjusting turnover pertaining to sub-contractor.

Submissions by the Respondent

- The department held that VAT paid on the purchase of material for formation of the road, laying sewerage lines, pipelines etc is not eligible for input tax credit.
- They also disallowed the deduction of payment made by the appellant to the sub-contractor from the total turnover on the ground that the appellant has not produced any documentary evidence.
- It also stated that appellant has not deducted Tax at Source on purchase of sand, stone, timber, plywood etc.

- It is submitted that the order passed is just and legal and they have rightly invoked Section 64(1) of the Act as the appellant failed to file the revised return as provided under Section 35(4) of the Act.

Submissions by the Appellant

- The order passed by the Additional Commissioner is not sustainable in law and the second Revisional Authority erred in law in revising the order passed by the first Appellate Authority.
- The order passed by the first Appellate Authority is neither erroneous nor prejudicial to the interest of the revenue.
- The power under Section 64(1) of the Act has wrongly been invoked only on the ground of non-filing of revised returns and the second appellate authority failed to appreciate that once tax is levied by the authority prescribed, there is no discovery of any omission or error by the appellant and the question of filing the revised return does not arise.

Conclusions

- The condition precedent for invocation of power under Section 64 (1) of the Act having not been satisfied, the impugned order cannot be sustained in the eye of law.
- The Revisional Authority has reversed the order of the first Appellate Authority on the ground that the appellant has not filed the revised return under the KVAT law. Section 64 of the KVAT Act deals with the Revisional powers of Additional Commissioner and Commissioner. It can be invoked only if the order is erroneous and it is prejudicial to the interest of the revenue.
- The condition precedent for invocation of power under Section 64 (1) of the Act was not satisfied and accordingly the impugned order was quashed.

II) M/s Midcon Polymers Pvt limited No KAR.ADRG 48/2020 dated 16/09/2020

- Under the GST regime, there are no specific deductions from Rental Income as specified under law. In the above case, it is held that the notional interest on security deposits is excludible from the value of taxable supply for computation of GST subject to the condition that the

consideration received by way of rental is not influenced by the security deposits given by the lessee.

- Under the earlier regime, the property taxes like municipal taxes can be deducted from gross rent that is collected by the landlord. Under the GST Regime, it is held in Advance Ruling that the property tax is not deductible from Rental Income, as the Ruling refers to section 15(2) of the GST Act which state that except CGST, SGST, IGST and compensation cess, no other statutory levy can be deducted from the value of supply. Therefore, the Ruling holds that property tax cannot be deducted from the monthly rental income for arriving the value of supply.

The Notification under service tax law specifically provides for abatement of property tax paid to local bodies from value of taxable service of renting of Immovable Property. Such notification would have been introduced in GST law also so that the taxes on statutory levies will not be imposed. It is also held in one of the Advance Ruling that the statutory charges received by real estate developer forms part of taxable value which are recovered by the applicant from the buyers and paid to respective Government Authorities. Therefore, there should be an amendment in the GST law holding that the statutory levies should be excluded from the levy of the GST which are regulated and controlled under the respective law.