

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND
ADVANCE RULINGS, BENGALURU**

Present : 1 Sri. R. Jagadeesh Prasad,
Additional Commissioner of
Commercial Taxes,
(Goods and Service Tax), Bangalore

..... Chairman

2 Sri. S.A. Manvi,
Additional Commissioner of
Commercial Taxes,
(Intelligence & Co-ordination), Bangalore

..... Member

3 Sri. Sayeed Ahmed Khan,
Additional Commissioner of
Commercial Taxes,
(Head Quarters)-1, Bangalore

..... Member

No.AR.CLR.CR-28/2013-14

Date: 24-04-2015

Name and Address of the Applicant	M/s. FLSmidth Pvt Ltd., Garden Road, Gulbarga.
TIN	29540810247
Jurisdictional LVO on whose files of the Applicant is borne	LVO - 525, Gulbarga
Nature of activity of the Applicant	Manufacturer & Works Contractor
Represented by	Sri. L.B. Bannikoppa Advocate & Tax Consultant.

ORDER UNDER SECTION 12-C OF THE KTEG ACT, 1979

1. The applicant M/s. FLSmidth Pvt Ltd., Garden Road, Gulbarga is registered under the provisions of the KVAT Act 2003 with TIN: 29540810247 & KTEG Act 1979 borne on the files of LVO-525, Gulbarga. The applicant has submitted that he is a manufacturer of machines and also engaged in undertaking works contract. On the goods obtained from outside the local area the applicant himself has been paying tax on the landed value as he is the first dealer causing entry of

goods into the local area. The goods thus brought in to the local area are either used in execution of works contract or resold within the State. While effecting sale to the other dealer, the applicant issues declaration in Form-40 as provided under Rule 9-A of the Karnataka Tax On Entry Of Goods Rules,1979 certifying therein that the goods already have been subjected to entry tax in his hand

2. The facts being so, it has been further submitted by the applicant that some of his purchasers are insisting him to pay entry tax on the sale value mentioned in the sale invoice issued by him. Under the above circumstances, the applicant would like to know whether under the Act the liability is cast upon him to discharge entry tax again on the goods which have already been subjected to tax in his hand despite issuing declaration in Form-40 as required under the statute.
3. Therefore, the applicant is before this authority to obtain clarification as to whether the stand taken by his purchaser is legally tenable or not.
4. The applicant has averred that he is the first and the earliest dealer to cause entry in to the local area of the taxable goods and goods have suffered tax in his hand. When the same goods are sold to other dealers, he is not liable to pay entry tax again on the sale value of the goods as evident in the sale invoice issued by him to his purchasers. To substantiate this, he has issued Form-40 to his purchasers as mandated under the relevant statute certifying that the goods sold by him have already been suffered entry tax and any subsequent entry to another local area is exempt from tax.
5. Sri. L.B. Bannikoppa - Advocate & Tax Consultant has appeared and argued the case on the above lines and he was heard.
6. For the purpose of the KTEG Act, 1979, the taxable event as provided under section 3 of the Act is entry in to the local area of notified goods from outside the local area. The tax is leviable on the value of goods as defined under section 2(8-a) of the Act which is the purchase value of goods including cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and like or if such goods have been procured other than by way of purchases, the prevailing market price of such goods. Therefore, the Act does not envisage tax on value addition which might accrue on subsequent entry in to another local area consequent upon sale by the earlier dealer.
7. Section 3(1) Levy of Tax: There shall be levied and collected a tax on entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein, at such rates not exceeding five percent of the value of the goods as may be specified retrospectively or prospectively by the State Government by

Notification, and different dates and different rates may be specified in respect of different goods or different classes of goods or different local areas.

8. Section 3(2) The tax levied under sub-section (1) shall be paid by every registered dealer or a dealer liable to get himself registered under this Act of the Central Government or a State Government other than the State Government of Karnataka who brings or causes to be brought into a local area the goods whether on his own account or on account of his principal or any other person or who takes delivery or is entitled to take delivery of such goods on its entry into a local area.
9. Section 3(4) the provisions of sub-section (3) shall not apply unless the dealer preferring claim under the said sub-section furnishes to the assessing authority declaration in the prescribed form issued by the dealer who is liable to pay tax on such goods under this Act.
10. Section 3(4-A) Notwithstanding anything contained in sub-section (2) and (3), where a dealer purchases any scheduled goods within the same local area from another dealer having more than one place of business in two different local areas, he shall not be eligible for preferring claim under sub-section (3) of the Section 3 unless such dealer furnishes to the assessing authority a declaration in the prescribed form obtained from the selling dealer.
11. As per rule 9-A (1) (c), 9-E & 9-F the Local registered dealer who has caused entry of such scheduled goods into local area will have to issue Form 40. It is a declaration wherein the dealer will confirm for having sold scheduled goods with quantity, description and sale value along with bill no, date etc.

The documents provided by the applicant to explain the nature of transactions effected by it have been analysed:-

- a) Going by the documents furnished it has been observed that the applicant has its head office at "FLSmidth House, 34. Egatoor, Rajiv Gandhi Salai (Chennai), Kelambakkam, Tamil Nadu 603103. The applicant has declared to have purchased goods from his vendors and effected in transit sale to M/s NMDC Ltd Donimalai, Bellary District by endorsing documents of titles to goods. The applicant has filed return of turnover under KTEG Act, 1979 for the month of September 2013 and declared a taxable turnover of Rs 2, 63, 67, 612.00. The applicant has considered himself as the first person who have caused entry into the local area and discharged tax on purchase value of the goods including cost of transportation, packing, forwarding and handling charges etc as provided under section 2(8-a) of the Act. On verification of documents it has been noticed that there is considerable


addition to the value of goods compared to the value of goods at time of entry as evident from the sale invoice raised by the applicant on the purchaser. Admittedly, the applicant has sold goods to M/s NMDS Ltd in the course of interstate trade by effecting transfer of documents of title to goods in favour of its purchaser. Under such circumstances there should not be break in movement of goods as envisaged under Explanation 1 provided to section 3 of the CST Act, 1956.

- b) Whereas, in the instant case, the applicant claims that he is the first and earliest dealer causing entry into the local area of the notified goods and discharged tax on purchase value of the same. It necessarily implies that the applicant has taken delivery of the goods or the ownership continued to vest in its hands. In such a case the sale effected by the applicant to M/s NMDC Ltd should be held as local sale and VAT at applicable rate^s required to be paid by the applicant. In addition these transactions attract entry tax also.
 - c) Alternatively, if it is held that the sale of goods have been effected by transfer of documents of titles to such goods during their movement from one State to another constituting second and subsequent sale, then in such circumstances the onus of paying entry tax squarely rests on the person who has actually caused the entry into the local area and taken delivery thereof. In the instant case it is the purchaser of goods from the applicant i.e M/s NMDC Ltd who is exigible to discharge entry tax as it is the dealer who has caused entry of notified goods into the local area and took delivery of the same. To calculate the tax liability the sale price as evident from the sale invoice raised by the applicant on the purchaser requires to be adopted as it represents the actual value of goods (including cost of transportation, packing, forwarding and handling charges etc as provided under section 2(8-a) of the Act if any) prevalent at the time of entry into the local area.
12. It is true that Form-40 is a statutory declaration issued by the dealer who has already paid entry tax on the value of goods as a first dealer causing entry into the local area, provides exemption from payment of entry tax on subsequent entry into another local area. In the instant case it is to be determined that whether the applicant himself has caused entry of the goods in to the local area by taking delivery of the goods purported to have been sold as E-1 sale in the course of interstate sales or the ultimate physical delivery was taken by the purchaser of the goods. In the former instance there is clear break in the movement of goods and such transaction would not be held as second and subsequent sale in the course of interstate sales. When the applicant himself

claims to have caused entry in to the local area the onus of paying entry tax rests on him. But subsequent movement of goods from the applicant to the ultimate purchaser implies local sale on which VAT is attracted. On other hand, if the later presumption is held as correct the applicant has no liability under KTEG Act, 1979. The liability to pay entry tax rests on the purchaser of goods from the applicant and for this purpose the value of goods constitutes sale price including such expenses as enumerated under section 2(8-a) of the Act.

13. In view of the aforesaid discussion the Advance Ruling Authority clarifies that if the applicant agrees to have taken delivery of goods so as to claim as the first dealer, then Form-40 issued by him has relevance and applicant has clear tax liability cast upon him under KVAT Act as subsequent movement into the local area of the purchaser does constitute local sale. On the contrary, if the dealer holds that the transaction under question are E-1 sale in such a case the onus of paying entry tax rests on the purchaser who has taken delivery of the goods and thus caused actual entry of goods into the local area as provided under subsection (2) of section (3) of the KTEG Act 1979. The Form-40 issued by the applicant for a value constituting purchase price including other expenses is infructuous.


(R. JAGADEESH PRASAD)
Chairman


(S.A. MANVI)
Member


(SAYEED AHMED KHAN)
Member

Clarification & Advance Ruling Authority
Gandhinagar, Bangalore-9

Clarification & Advance Ruling Authority
Gandhinagar, Bangalore 9

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Copy to:

1. The Applicant.
2. The LVO - 525, Gulbarga.
3. Submitted to the Commissioner of Commercial Taxes (Karnataka), Bangalore for favour of kind information.
4. Office Copy.