

No.C3.60240/03

Office of the Commissioner
Commercial Taxes
Thiruvananthapuram
Dated. 30.12.05

CIRCULAR. No. 37/05

Sub: - [KGST Act, 1963- Association of Photograph dealers-
under works contract- legal position- communicated.](#)

Consequent on decision of the Hon'ble High Court of Kerala in *Bavan Vs Union of India* (1995) and others reported in 97 STC 161 (Ker) there exists serious doubts among the dealers in the photography sector with regard to their liability for tax when they engage in taking photography of the customers, developing such negatives and supplying positive prints to their customers. The decisions of the Hon'ble High Court was that the works involved in the photography sector may be divided in to three categories:

- (1) the category where the photographer take the photograph of his customers, develop the negative and supply the positive print to the customer, in the desired size, (2) categories where the exposed films received from the customers are developed for taking positive prints and supply the prints along with the negatives and (3) category where the negative prints brought by the customers are developed in to positive prints and supply the prints along with the negative. In these, the first category of work is not exigible to tax where as the other categories are liable to tax.

However, in the aftermath of the 46th amendments of the constitution of India where by sub-clause (29A) was inserted in Article 366 as a result where of tax on sale or purchase of goods was to

include a tax on the transfer of property in goods (where as goods or in some other form), involved in the execution of work contract. And the Constitution Bench decision in Builders Associations of India Vs Union of India (1989) 73 STC 370 SC (1989) 2 SCC and Supreme Court in ACC Ltd Vs Collector of Customs reported in (2001) 124 SIC 59 (SC) in regard to tax liability for works contract, all dealers engaged in the activity of taking photographs of customers developing such negatives and supply positive prints to customers are also liable to pay tax under section 5(i) (iv) of the KGST Act and under section 6(e) of the VAT Act even if the material portion is negligible.

All Assessing authorities are directed to complete the pending assessment in respect of the dealers in photography in view of the legal position stated above.

Sd/-
Commissioner