

**CIRCULAR No.03 / 2010**

Sub:- KVAT Act, 2003 – Works Contract – Decision of the Hon'ble Supreme Court in K. Raheja Development Corporation Vs. State of Karnataka – Certain instructions issued – reg.

(1) The Supreme Court in K. Raheja Development Corporation Vs. State of Karnataka [2005]5 SCC 162, relying upon the provisions of Section 2(1)(v-i) of the Karnataka Sales Tax Act, 1957, interpreted the definition of works contract and held that, *“the definition of works contract was very wide and was not restricted to a works contract as commonly understood, viz., a contract to do some work on behalf of someone else It also included any agreement for carrying out either for cash or for deferred payment or for any other valuable consideration, the building and construction of any movable or immovable property. The definition took within its ambit any type of agreement wherein the construction of a building took place either for cash or deferred payment or valuable consideration. Though the applicant was not the owner, it claimed a lien on the property and it had the right to terminate the agreement on account of any breach of the agreement by the purchaser. So long as there was no breach of the agreement, the construction was for and on behalf of the purchaser and the agreement remained a works contract.”*

(2) The provision relating to works contract in KVAT is identical to that of Karnataka Act. Hence, the above decision is squarely applicable in the KVAT scenario also.

(3) Now, it is noticed that certain major builders are practicing tax evasion by entering into agreement with prospective buyers, couched the agreement in such a way as to appear into be one for sale of immovable property with corresponding undivided share in the land and an undivided share in the common areas. Such agreements should not deter the officers from examining the matters in the light of the decision in Rahejas' case. In view of the above ruling, such transactions will also amount to works contract and exigible to tax. So all assessing authorities are hereby directed to take immediate action to assess such transactions including penal actions for filing incorrect returns.

(4) It is further noticed that certain builders are bringing goods from outside the State under the guise of own use, under Form 16 incorporation in the work of the above nature. We have introduced a penal provision as Sec.70B whereby bringing goods for own use and using the same for commercial purpose is liable to penalty at thrice the amount of tax due thereon. Immediate action has to be taken to impose penalty in such cases.

Sd/-

COMMISSIONER