

True Copy of the Extracts of the final report of the CAG for the year ended 31<sup>st</sup> March 2015 (Commercial) – Transaction Audit observations on Malabar Cements Ltd

Important audit findings emerging from test check of transactions made by the State Government companies/ corporations have been included in this chapter.

Malabar Cements Ltd

3.2 Avoidable loss

Loss due to delay in payment of deferred KVAT- Rs. 2.84 crore

Malabar Cements Limited (Company) is a manufacturer of Cement (Portland Pozzolana Cement) using Fly ash as raw material. It has two units at Walayar and Cherthala. Government of Kerala exempted (August 2004)<sup>21</sup> industrial units owned by PSUs manufacturing cement using fly ash as raw material from payment of Kerala General Sales Tax (KGST) for a period of nine years from the date of commencement of commercial production or until full utilisation of exemption of 500 *per cent* of the fixed capital investment in the unit whichever was earlier. Accordingly, the Company being a Public Sector Undertaking (PSU), got exemption from payment of sales tax with effect from August 2004.

The exemption notification issued under KGST Act became inoperative w.e.f 01/04/2005 consequent to the introduction of the Kerala Value Added Tax (KVAT) Act, 2003. However, section 32(1) of the KVAT Act empowered the Government to issue notification permitting industrial units which were enjoying tax exemption under KGST Act to defer payment of the unavailed portion of the exemption granted under KGST Act. Accordingly, Government issued (October 2007) notification permitting the Company to defer the unavailed portion of sales tax exemption sanctioned under KGST Act for a period up to 06 August 2010. The amount of tax deferred was {20.08 crore. The KVAT Act stipulated for remittance of the tax so deferred on the date of the expiry of the period of such deferment. The Company, however, instead of remitting the amount on due date of 06 August 2010, requested (03 August 2010) the Government to grant further deferment for a period of two years stating that the Board of Directors (BoD) had approved a capital expenditure budget of {80 crore for Plant modernisation/ Upgradation which was to be implemented in a time-bound manner. Government rejected (February 2011) the request stating that on 6 August 2010, the Company was liable to pay tax. The Company remitted the amount only on 2 August 2011 after a delay of almost one year. As a result, the Assistant Commissioner (Assessment) Special Circle, Palakkad levied (February 2013) interest from 7 August 2010 as per KVAT Act 2003. The Company remitted the interest amount of Rs. 2. 84 crore on 9 March 2013.

Audit scrutiny revealed that as on 6 August 2010, i.e. the due date for remitting the amount of tax deferred, the Company had funds aggregating to {75.94 crore in short/long term deposits with different banks/Government treasury. Thus, non remittance of statutory dues by the Company despite having surplus funds, resulted in avoidable payment of interest of Rs. 2.84 crore.

The Government replied (August 2014) that after providing financial assistance of Rs.38 crore to six PSUs as per its direction (June 2010 to July 2010), the balance fund available with the Company was only sufficient for its modernisation projects. The reply was not acceptable as the Company was bound to remit statutory dues on due date and plan its modernisation projects with the funds available after payment of statutory taxes.

Thus, failure of the Company to remit the deferred tax on due date despite having surplus funds resulted in avoidable payment of interest amounting to Rs. 2.84 crore.

<sup>21</sup> S. R. O.No.859 /2004 dated 9/08/2004 under Kerala General Sales Tax Act.