

Proceedings of the Commercial Tax Officer-I, Illrd Circle, Thrissur

Present:-Sri.P.K.Krishnanunni

Sub:- KVAT Act, 2003:-Registration granted in respect of Sri. P.Premkumar, Prop: Sai Trading Company at Mulamkunnathukavu, Thrissur-violation of Act & Rules under KVAT Act & CST Act-RC Cancelled under KVAT Act 2003 & CST Act 1957-Orders passed-reg

Read:- 1) This office proceedings No.32080750918C/12-13 dated.17/11/12
2) WP(C) No.28627/2012 dated 04.01.2013 of the Hon'ble H.C of Kerala.
3) This office notice No. 32080750918/12-13 dated.19-1-2013
4) WP(C)No.2189/2013(W) dated 06.02.2013 of the Hon'ble H.C of Kerala.
5) Reply of the dealer dated:-16.02.2013

Sri. P.Premkumar, Sai Trading Company, Mulamkunnathukavu, Thrissur was a registered dealer under KVAT and CST Acts on the rolls of this office holding Reg.No. 32080750918/C having dealings in in coconut shell, Tamarind seed powder, charcoal etc. Subsequently in October 2011, the dealer had applied for inclusion of ply wood and veneer sheet also in his RC and accordingly the dealer was authorized for dealing in plywood also with effect from 20-10-2011 Plywood and veneer.

As per order cited as 1st paper above the registration of the dealer under KVAT and CST Act were cancelled on the ground that the dealer failed to furnish the additional security demanded as per this office notice dated 20-10-2012.The Addl.Security was demanded on the facts and circumstances of the case that there is reason to believe that the dealer would default payment of tax. The circumstances that justifying the above conclusion was that:-

- During the year 2011-12 the dealer had reported a total and taxable turnover of Rs. 733.83 lakhs (including purchase Turnover) which includes interstate sales turnover of Rs. 390.46 lakhs. Out of the total interstate sales amounting to Rs 390.46 lakhs the dealer had filed "C" forms only for an amount of Rs. 354.79.
- The conceded total and taxable turnover during 2012-13 up to September 2012 was Rs 744.77 lakhs (including purchase turnover) which includes an interstate sales turnover of Rs. 407.56 lakhs. During the 1st quarter of 2012-13 the conceded Interstate sales was Rs 130.33 for which concessional rate of tax have been claimed. But against the said claim the dealer had filed "C" Form to the tune of Rs.91.37 lakhs only.
- For the 2nd quarter of 2012-13 the total and taxable turnover conceded up to September 2012 was Rs 499.40 lakhs (including purchase turnover). The interstate sales turnover during these periods is Rs 277.23lakhs.
- From October 2012 the dealer started downloading online delivery notes for interstate transport. On verification of the **KVATIS** it came to notice that for the period from 01.10.12 to 18.10.12 the assessee has downloaded 125 numbers of delivery notes for interstate sales. A comparative analysis of the volume of business done by the dealer with that of previous month showed an abnormal increase in the volume of business.
- On enquiries at his registered place of business and shop it was found that the shop remained closed and on enquiry conducted locally it is revealed that the shop was

remained closed all time and so had reason to suspect that the dealer is not doing business or else doing sham business.

- Moreover, the assessee has mainly effecting 6(2) purchase from unregistered dealers at Perumbavoor and selling those goods by interstate sales using online delivery notes and paying advance tax@2% in respect of the consignment dispatched to the outside the state. On verification of the purchase list / statement filed by the dealer it was found that the assessee had purchased plywood's for **crores of rupees** from unregistered dealers at Perumbavoor who are fictitious or are not genuine as the address of sellers are either in the name bogus or unidentifiable person.
- On a perusal of all the relevant records there is reason to believe that the dealer is a benami of Perumbavoor based plywood smugglers .It is significant to note that in his statement he has stated that he has commenced the business with an initial capital of Rs.20000/- which is not sufficient even for single load of plywood. So it is very clear that someone else was doing business at his pretext. On enquiry further revealed that he has no independent source of income for conducting such business.

The additional security was demanded in accordance with provisions under section 17(1) & (2) of the KVAT Act and its proviso and section 7(3A) of CST Act. The said provision authorises the assessing authority to demand additional security of an amount not exceeding half of the tax payable on the turnover for the year as estimated by the assessing authority, if the assessing authority has reason to believe that the dealer is likely to default in payment of tax.

The irregularities mentioned supra lead to the inevitable inference that the dealer would make default in payment of tax due to government. Therefore the turnover for the year was estimated based on the records available on record.

The turnover of the dealer from April, 2012 to September, 2012 as disclosed in the monthly return was Rs.407.54 lakhs. This figure was taken as a basis for the estimation of the annual turnover of the dealer for the purpose of demanding additional security. Based on the above figure the average monthly turnover would come to Rs.67.92 lakhs and taking this as this the base figure the annual turnover was estimated at Rs.815.07 lakhs, the tax effect of which would come to Rs.110.03 lakhs. So in accordance with said provision 50 % of this tax amount would come to Rs.55.07 lakhs for which security can be demand. The dealer had already furnished security to the tune of Rs.5.75 lakhs and so the balance amount of Rs.49.26lakhs which was rounded to 50 lakhs was fixed as the additional security and accordingly the dealer was advised to furnish this amount as additional security as per this office notice dated 20-10-2012. But the dealer failed to furnish the said addl.security which eventually lead to cancellation of registration of the dealer both under the KVAT Act and CST Act as per the order cited as 1st paper above.

Subsequently the assessee filed writ petition challenging the above cancellation order and the Hon'ble High Court as per order dated 4-1-13 in WP(C)No. 28627/12 had set aside the said cancellation order and let it open to the assessing authority to initiate fresh proceedings if so require and pass orders on such proceeding within 6 weeks.

On a fair appreciation of the circumstance, facts and material available on records it is clear that the assessee had defied the statutory requirement as provided under the CST Act by not filing the statutory declaration in Form "C" in support of the interstate sales for which concessional rate have been availed of. The statute require that the "C" form in respect of interstate sales for which concessional rate have been availed have to be filed within three months after the end of the period to which the declaration relates or latest at the time of assessment by the first assessing authority. This statutory requirement had not been complied with.

Further on detailed verification it is found that some of the C form declarations filed in respect of previous quarters are prima-facia found to be bogus as there are patent defects as detailed below for egs;

C form No.	TIN of issuing dealer	Name of issuing dealer	Defects noticed
731147	27780141818	Jaiphole plywoods	The TIN relates to M/s. Changowala plywood and Hardware Centre
868935	277858055442	M R Agencies Pvt.Ltd	The registration number doesn't match with the status of the issuing dealer
6594118	2760034645	Princy Ply	The registration No.is bogus as it contains only 10 digits instead of 11 digits
0231548	24722204159	Shree sai plywood	TIN furnished is bogus since it relates another dealer
2540120	26001000954	Uma ply &Hardware	The TIN mentioned the C Form is relates to Dadra& Nagar Haveli(UT)but the seal affixed in the C form is State of Gujarat.
359801	2714031580	Amajulah plywood	The TIN furnished in the c form is bogus as it relates to some other dealer

The dealer is stated to have been effected purchase of plywood from unregistered dealers at perumbavoor, a sneak in harbor in plywood sector. The plywood being a manufactured product cannot be procured from a common layman. The source of procurement disclosed by the dealer is found to be not genuine on enquiry conducted in this regard. In order to ascertain the genuineness of the so called sellers to the dealer, notices have been issued on the declared addresses which were returned by the postal authorities with remarks "Not Known/No such addressee". Also local enquiry conducted revealed that the details furnished in respect of the sellers of the goods the dealer are fictitious and nonexistent.

Even though the assessee started the business in a small scale the investment of Rs.20000/- the turnover has skyrocketed to the tune of Rs.4 crores plus with in span of 10 months as detailed below;

Month	Sales Turnover(Rs.in lakhs)
November 2011	33.58
December 2011	135.50
January 2012	171.81

March 2012	49.55
April 2012	44.47
May 2012	26.92
June 2012	58.93
July 2012	71.58
August 2012	19.78
September 2012	185.86

The dealer's financial status is not in commensurate with his present volume of business as he has no independent source of income for conducting such a huge business and also there is no evidence of any financial assistance availed from any financial institutions or otherwise.

On a perusal of all the relevant records there is reason to believe that the dealer is a benami of Perumbavoor based plywood smugglers who was doing business at his pretext.

The CST assessment in respect of the dealer for the 2nd quarter of 2012-13 have been completed and the outstanding demand is Rs.33,15,641/- . The dealer had not remitted the outstanding dues.

As per the ongoing procedure introduced with effect from September, 2012 the dealer can download as many delivery notes according to their requirements from the KVATIS and no check measures are there to control excessive downloading of delivery notes and considering the track record of the dealer, misuse of the forms for interstate sales at concessional rates cannot be ruled out. The abnormal increase in interstate transaction by downloading delivery notes directly from KVATIS recorded since the introduction of the system of downloading delivery notes directly from KVATIS justifies the above inference. The antecedents of the dealer leads to the inevitable conclusion that he will not submit the declaration in accordance with the provisions of CST Act in respect of his CST sales and future accumulating liabilities that may arise owing to the non-filing of the declarations cannot be recovered from the dealer due to the poor financial position of the dealer which may ultimately lead to loss of revenue and undue enrichment to the dealer.

For the forging reason the continuance of the registration of the dealer under the KVAT Act and CST Act is found to be prejudicial to the interest of revenue and so in exercise of the power conferred under section 16(10) of the KVAT Act and under section 7(4) (b) of the CST Act 1956 it is proposed to cancel the registration granted to Sri P.Premkumar, Prop: Sai Trading Company Mulamkunnathukavu, Thrissur both under KVAT Act,2003 and CST Act,1956 bearing No. 32080750918 C with immediate effect.

The above proposal was duly served on the dealer on 07/02/2013 as per the direction of the Hon'ble High Court in its judgement read 4th paper above with direction to file objections if any to the said proposal with supporting evidence within 7 days of the receipt of the said notice. The assessee was also given an opportunity of being heard in person within the said time.

In response to the notice the assessee was appeared and he was heard. The dealer filed his objection to the said notice as per reference read as 5th paper above. The main contentions put forth were the following;

1. "The notice disclosing the proposal of cancellation of my registration certificate is without any proper reasoning. Your office hounding me , for closing down my business, one or other means. Earlier, the attempt of cancelling the registration in the name of non-furnishing of Rs. 50 lakhs additional security has cancelled by the order of the Hon'ble High Court by the judgement in Writ petition (C) No; 28627/2012 dt. 4.1.2013. When Hon'ble High Court cancelled the said order, I should have offered with the restoration of my registration. But without any reason, the matter kept till 19.01.2013 and served the present order of proposal to cancel the registration till the final orders are passed in this matter, I am entitled to get the registration restored in the meantime. But, even that the primary justice is denied to me.
2. Your notice containing two page contents which are more repetitions of the situations prior to the judgement of the Hon'ble High Court. And therefore does not deserve any explanation from my part. The main omissions /of laws alleged against me are not fully submitting the all the C forms, even after the passage of three months from the date of business. It is true that there are some omissions which happened in the situations of the purchasers not forwarding C- forms to me for producing the same before the department but that omission will not disqualify my business deal because, C-forms are intended only to get tax concessions and if not produced, it will only attract the payment of higher rate of tax@ 13.5 % and the assessment of my liability accordingly. In any stretch of imagination the failure to submit C- forms will not constitute any violation of rules.
3. Another allegation against to me is purchasing the plywood from unregistered dealers. Whatever business I am doing is only after paying the higher rate of tax@ 13.5 %/o, which is well evident from the records. So, the registered or unregistered status of the dealers against my purchase is no way putting my deals clandestine one, as the higher rate tax is paid even if they are not registered, I may not put in fault for their omissions.
4. The third allegation against me is my poor financial conditions. The personal financial positions is not a matter to be looked into by the department. There may be eversomany people who are prepared to help me in the business. my self-doing only whole sale interstate sale, there is no need to retain large stocks, as the items are purchased immediately as per the orders and the purchaser will pay the money. It is a matter of faith and confidence in the business which i am capable of utilizing it. So, there is no purpose in enquiring about my financial position. At this juncture, it is to be pointed out that I have furnished 5 lakhs rupees as additional security and an amount exceeding rupees 10 lakhs is due to me towards refunds but, withheld by the department only for the sake of revenue of the state.
5. The further allegation that I am downloading as many delivery notes. It is also pointed out that such a situation is due to the new policy. If that be so, I am justified in enjoying the benefit in its full extents. There is no case for the department, that the delivery notes are not accompanied by the proof of payment of due taxes at the check post. That being so, the allegation will not stand.

6. The last allegation is that I have not paid the due tax against the CST assessment of Rupees 3315671/- the statement is a factual error. As it is only the turn over and the tax due is only around four lakhs rupees only. I have already preferred appeal before the Assistant commissioner (appeals).And is pending there. I would be paying the tax in tune with the appellate order.
7. So in all circumstances the proposed action of cancelling the registration is unwarranted and against all statutory norms and sound principles of justice. Therefore I humbly request your kindness to drop further proceeding in this matter, and restore the present canceled status of registration at the earliest opportunity.”

I have considered the reply with reference to the materials available on record. On the facts and circumstances it is evident that the dealer is more inclined to defy the statutory provisions rather than complying it.

The dealers place of business is not presently functioning in the declared address. On enquiries at his registered place of business and shop it was found that the shop remained closed and on enquiry conducted locally it is revealed that the shop was remained closed all time. Thus in fact the dealer had no place of business at present.

Under 17(28) of the KVAT Rules, 2005 stipulate that “ no registered dealer shall keep his goods in any place or godown not mentioned in the registration certificate. But in this case on verification of the delivery Notes filed from November 2011 to October 2012 it is seen that the entire goods were consigned/despatched from Perumbavoor where the dealer has no business place.

The activity carried out by the dealer is that he is procuring plywoods from unidentifiable persons from Perumbavoor and effecting interstate sales at concessional rates. On an evaluation of the declared business activity of the dealer it is seen that during the year 2011-12 out of the total interstate sales amounting to Rs 390.46 lakhs the dealer had filed “C” forms only for an amount of Rs. 354.79. During the 1st quarter of 2012-13 the conceded Interstate sales was Rs 130.33 for which concessional rate of tax have been claimed. But against the said claim the dealer had filed “C” Form to the tune of Rs.91.37 lakhs only. For the 2nd quarter of 2012-13 the interstate sales turnover during these periods is Rs 277.23lakhs for which concessional rate of tax have been claimed. But against the said claim the dealer had not filed “C” Form till date.

Admittedly the dealer is a defaulter in filing C forms eventhough concessional rate of tax on turnover running crores of rupees have been claimed as above while filing returns. So it is the statutory obligation of the dealer to file the required statutory forms and if the required statutory forms are not filed as specified in the statute, evidently it is a violation of the provisions of the Act which would warrant further proceedings under the Act including best judgment assessment.

During the year 2012-13, in the absence of “C”Forms the following Best Judgement assessments were completed.

Return Period	Date of order	Balance tax payable		Total due	Tax /Interest paid
April2012 to June 2012	25.10.2012	Tax	Interest	515553	N I L
		477364	38189		
July2012 to September 2012	18.01.2013	3188116	159405	3347521	N I L
	Total	3665480	197594	3863074	

Moreover during the return period October 2012 the assessee has effected local purchase from unregistered dealers and the goods were despatched to outside the state to the tune of Rs.27477342.00. But the purchase tax U/s 6(2) has not remitted sofar.

Considering the huge turnover of the dealer obviously the best judgment assessment owing to the non filing of statutory declarations would fetch high demands and in such circumstances the assessing authority is duty bound to foresee ensure that the dealer has the financial capacity to meet such demands and that revenue is not compromised on account of the continuation of business by such dealers. **Here the dealer is habitual in violating the requirements of filing statutory forms and even some forms filed by the dealer are prima-facia found to be bogus.** Eventhough these patent defects were placed before the dealer through the notice dated 19.01.2013 the dealer had not put forth any defense on that count.

Eventhough assessments have been completed at higher rates; the dealer had not paid the assessed taxes,

In order to ensure proper payment of tax Addl.Security was demanded as per this office notice dated 20/10/2012 which was not been complied.

The statute requires furnishing of correct and complete details in respect of their business transactions. These information are intended for fair administration of fiscal statutes and for effective tracking. The dealer in under statutory obligation to disclose the details of procurements of the high value goods dealt by the dealer, the turnover of which had fetched over crores of rupees. Here the information disclosed by the dealer through the monthly returns with regard to the source of purchase of the goods are found to be not genuine. The mere fact that the dealer had paid tax under section 6[2] of the Act would not absolve the dealers liability and obligation to file genuine information about the procurement of the goods in question as required under the statute.

The facility of downloading delivery notes are introduced for better convince of genuine dealers who comply the statutory requirements and it is not intended or cannot be permitted to be misused by unscrupulous dealers. In this case by not complying the statutory requirements and also by filing bogus documents the dealer himself had exposed his disentitlement to the privileges available to genuine dealers.

The dealer had further admitted that he had no independent source of income to run the business at the present volume and that he had not disclosed the source of income behind this business, and so there is reason to believe that the dealer is a benami of Perumbavoor based plywood smugglers.

The aforesaid facts and the antecedents of the dealer leads to the inevitable conclusion that he will not submit the declaration in accordance with the provisions of CST Act in respect of his CST sales and future accumulating liabilities that may arise owing to the non-filing of the declarations cannot be recovered from the dealer due to the poor financial position of the dealer and want of security which may ultimately lead to loss of revenue.

For the forging reason the continuance of the registration of the dealer under the KVAT Act and CST Act is found to be prejudicial to the interest of revenue.

Hence the following orders are issued.

ORDER No.32080750918C/12-13 DATED 22/02/2013

In exercise of the power vested upon me under section 16(10) of the KVAT Act and under section 7(4) (b) of the CST Act 1956, for having satisfied that it is essential in the interest of the Exchequer, the registration certificate granted to Sri P.Premkumar, Prop: Sai Trading Company at Mulamkunnathukavu, Thrissur both under KVAT Act and CST Act bearing No. 32080750918 C are hereby cancelled with immediate effect without prejudice to other proceedings under the Act.

The dealer is directed to surrender the Registration Certificate and all other statutory Form like delivery notes etc.

COMMERCIAL TAX OFFICER-I
IIIRD CIRCLE,THRISSUR.

To,

The dealer with a notice in Form No. 5 B

Copy submitted to the Deputy Commissioner, CT, Thrissur
" to the Deputy Commissioner (Int.), CT, Ernakulum / Kozhikode / Trivandrum
" to the Inspg.Asst.Commissioner, Thrissur
Copy to computer cell Trivandrum /All CTCP's