

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	03.01.2020
Appeal no	:-	KVATA(ALPY)213&214/19
From the order of the	:-	AIT&STO, Alappuzha
Year of assessment	:-	2009-10&2010-11
Name of appellant	:-	Sri.Sathyavan, M/s.Highness Engineering Works,Pollathai
Instituted on	:-	28.06.2018
Date of hearing	:-	15.11.2019
Present for appellant	:-	Sri.P.H. Riyas, Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeals are filed against the assessment orders of Agrl. Income Tax & State Tax Officer, Alappuzha, Order No.32041397722/2009-10 and 2010-11 dated.28.06.2018. The assessing authority completed the assessment based on the CR file received from Intelligence Officer(IB), Alappuzha. The Intelligence Officer(IB) revised the reduced original penalty order as per the revision order of the Deputy Commissioner, Alappuzha. Aggrieved by the above orders, the appellant defend the cases on the following grounds.

2009-10

1. The appellant is an assessee under KVAT Act on rolls of the AIT & Commercial Tax Officer, Alappuzha bearing TIN No.32041397722. The appellant is engaged in fabrication works, engineering works and manufacturing of mechanized wooden matting looms, accessories, machineries etc., taxable @ 4% & 12.5% respectively. For the year 2009-10 appellant had e-filed annual returns conceding total and taxable turnover of Rs.36,77,122/- through Kerala Value Added Tax Information System.
2. It is the allegation of the assessing authority that the dealer has suppressed sales turnover on verification of extracts collected from Coir Board, Alappuzha. The extracts collected from the Coir Board has been treated as true and correct without verifying sale invoice or

conducting proper verification of books of accounts, CBI report and other evidences available with the dealer.

3. The assessee is running an Engineering unit approved by KKVI Board and Coir Board having registration CB/RO/KNR/HLM-03 dated.23.01.09. The Central Government has introduced a program namely REMOTE in order to rejuvenate Small Scale Coir Units. Accordingly the beneficiaries were directed to collect quotations from approved fabricators of Coir Board to supply mechanized Power Looms. Since the dealer is an approved machine manufacturer of the Coir Board, he has given quotations to supply, erect and construct power loom machinery. The Coir Board sanctioned a particular amount with a direction to commercial banks to grant loan under REMOTE scheme. The banks were disbursed loan based on the quotations given by the petitioner after deducting margin of loanee's contribution, directly by way of Demand Draft. The dealer issued sale invoice and returned loan amount as agreed after deducting an amount ranging from 16,000/- to 33,000/- by way of cheque. On the basis of a complaint to the CBI, they have conducted proper investigation and submitted a final report before the Hon'ble CBI Court, Ernakulam. A copy of the final report dated.06.11.2013 furnished before Hon'ble CBI Court, Cochin is produced herewith for your perusal and record.
4. Being this is the factual position of the findings of the CBI Officials, the Intelligence Officer(IB), Alappuzha imposed penalty alleging suppression of actual turnover u/s.67(1) of the KVAT Act, which are contrary to the fact, untrue and incorrect.
5. The assessing authority solely on the basis of such penalty proceedings issued notice u/s.25(1) proposing to complete the assessment for 2009-10 without verifying quotations, invoices, Bank statements, connected documents and evidences before re-opening the assessment. A detail reply filed by the appellant against proposal notice has been summarily rejected by the assessing authority simply stating that it is not convincing. Corroborative evidences were not examined by the assessing authority in order to establish a case. It is submitted that while completing assessment, quasi judicial authorities are bound to satisfy and establish that the offender has committed an offence based on the evidences. In the absence of

detection of any evidences or deliberate or contumacious action of the assessee, the quasi judicial authorities have no jurisdiction or power to make assessment. As stated in the final report of CBI, Cochin, appellant has received an amount ranging from Rs.16,000/- to Rs.33,000/- from alleged transactions and who have given sale invoice higher than the consideration received and paid tax due thereon properly.

6. In the above circumstances it is humbly submitted that the assessee has never acted with an intention to evade payment of tax legitimately due to the Government. The appellant has conceded a sales turnover of Rs.36,77,122/- during the year 2009-10 remitted a sum of Rs.2,13,655/- as KVAT after availing input tax credit of Rs.16,106/-. The 1st revision authority, the Deputy Commissioner while disposing the R.P No.A1-58/16 and 59/16 dated.23.08.16 has observed that the dealer has returned a substantial amount through bank after retaining a portion of such amount already collected. If the relevant documents, Bank statement and CBI report are considered in a quasi judicial manner, entire liability created by the assessing authority will go forever. It is also submitted that the books of account for the year 2009-10 had been seized by the CBI authorities in connection with a case stated supra, hence the assessee is producing herewith available documents as demanded in the notice except books of account. Therefore it is submitted that, direction may be given to the assessing authority to re-consider the matter after considering documentary evidences such as Bank statement, Statement prepared by the appellant showing complete details of transaction through bank account, Copy of annual return, Copy of final report submitted before the Hon'ble CBI Court, by the CBI unit, Cochin and Trading and Profit and Loss Account by the dealer.

2010-11

1. The appellant is an assessee under KVAT Act on rolls of the AIT & Commercial Tax Officer, Alappuzha bearing TIN No.32041397722. The appellant is engaged in fabrication works, engineering works and manufacturing of mechanized wooden matting looms, accessories, machineries etc., taxable @ 4% & 12.5% respectively. For the year 2010-11 appellant had e-filed annual returns conceding

total and taxable turnover of Rs.19,38,289/- through Kerala Value Added Tax Information System.

2. It is the allegation of the assessing authority that the dealer has suppressed sales turnover on verification of extracts collected from Coir Board, Alappuzha. The extracts collected from the Coir Board has been treated as true and correct without verifying sale invoice or conducting proper verification of books of accounts, CBI report and other evidences available with the dealer.
3. The assessee is running an Engineering unit approved by KKVI Board and Coir Board having registration CB/RO/KNR/HLM-03 dated.23.01.09. The Central Government has introduced a program namely REMOTE in order to rejuvenate Small Scale Coir Units. Accordingly the beneficiaries were directed to collect quotations from approved fabricators of Coir Board to supply mechanized Power Looms. Since the dealer is an approved machine manufacturer of the Coir Board, he has given quotations to supply, erect and construct power loom machinery. The Coir Board sanctioned a particular amount with a direction to commercial banks to grant loan under REMOTE scheme. The banks were disbursed loan based on the quotations given by the petitioner after deducting margin of loanee's contribution, directly by way of Demand Draft. The dealer issued sale invoice and returned loan amount as agreed after deducting an amount ranging from 16,000/- to 33,000/- by way of cheque. On the basis of a complaint to the CBI, they have conducted proper investigation and submitted a final report before the Hon'ble CBI Court, Ernakulam. A copy of the final report dated.06.11.2013 furnished before Hon'ble CBI Court, Cochin is produced herewith for your perusal and record.
4. Being this is the factual position of the findings of the CBI Officials, the Intelligence Officer(IB), Alappuzha imposed penalty alleging suppression of actual turnover u/s.67(1) of the KVAT Act, which are contrary to the fact, untrue and incorrect.
5. The assessing authority solely on the basis of such penalty proceedings issued notice u/s.25(1) proposing to complete the assessment for 2010-11 without verifying quotations, invoices, Bank statements, connected documents and evidences before re-opening the assessment. A detail reply filed by the appellant against proposal

notice has been summarily rejected by the assessing authority simply stating that it is not convincing. Corroborative evidences were not examined by the assessing authority in order to establish a case. It is submitted that while completing assessment, quasi judicial authorities are bound to satisfy and establish that the offender has committed an offence based on the evidences. In the absence of detection of any evidences or deliberate or contumacious action of the assessee, the quasi judicial authorities have no jurisdiction or power to make assessment. As stated in the final report of CBI, Cochin, appellant has received an amount ranging from Rs.16,000/- to Rs.33,000/- from alleged transactions and who have given sale invoice higher than the consideration received and paid tax due thereon properly.

6. In the above circumstances it is humbly submitted that the assessee has never acted with an intention to evade payment of tax legitimately due to the Government. The appellant has conceded a sales turnover of Rs.19,38,289/- during the year 2010-11 remitted a sum of Rs.1,56,231/- as KVAT after availing input tax credit of Rs.13,663/- and special rebate Rs.28,347/-. The 1st revision authority, the Deputy Commissioner while disposing the R.P No.A1-58/16 and 59/16 dated.23.08.16 has observed that the dealer has returned a substantial amount through bank after retaining a portion of such amount already collected. If the relevant documents, Bank statement and CBI report are considered in a quasi judicial manner, entire liability created by the assessing authority will go forever. It is also submitted that the books of account for the year 2010-11 had been seized by the CBI authorities in connection with a case stated supra, hence the assessee is producing herewith available documents as demanded in the notice except books of account. Therefore it is submitted that, direction may be given to the assessing authority to re-consider the matter after considering documentary evidences such as Bank statement, Statement prepared by the appellant showing complete details of transaction through bank account, Copy of annual return, Copy of final report submitted before the Hon'ble CBI Court, by the CBI unit, Cochin and Trading and Profit and Loss Account by the dealer.

Sri.P.H. Riyas, Advocate, appeared and heard the case and argued based on the grounds of appeal and also submitted certain documents for

my perusal in connection with the case. The subject matter of the appeal cases are same. Hence these are disposed in a common order.

I have gone through the cases and examined in detail. The authorized representative argued that the allegation levied against the appellant is not immaterial. The alleged transaction is properly accounted and reflected in the books of accounts, the quotation signed by the appellant and all bank transaction statement in connection with the case, summary of the case and certain documents obtained from CBI court and the hearing note before the Deputy Commissioner, Alappuzha are submitted at the time of hearing. The authorized representative prayed that a direction may be given to consider and examine the matter by the assessing authority. In the facts and circumstances above, and also observing the documents and arguments submitted/represented at the time of hearing, I am of the view that, most of all the documents in connection with the case have been submitted and are perused. In this case the assessment order is not a speaking order. I have not ascertained the genuineness of the case. However on perusal of most of all documents, it is ascertained that the appellant/dealer performed the transactions for the above years and the tax amount in connection with the cases for each years are remitted, and the remaining portion of turnover will be an unused portion of the business turnover. Hence a detailed verification is warranted in this case. But I am not in a position to ascertain whether the records are returned to the appellant/assessing authority. If not so the assessing authority is directed to return back the documentary evidences from that end, verify the case in detail with reference to all documents and revise the order after getting concurrence from the CBI Court and according to law. Order accordingly.

Result: Modified

ASSISTANT COMMISSIONER (APPEALS)
ALAPPUZHA

To The Appellant through a/r

Copy submitted to Joint Commissioner(Law)

Copy submitted to Deputy Commissioner,CT,Alappuzha

Copy to AIT&STO,Alappuzha/File