

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	01.01.2020
Appeal no	:-	KVATA(ALPY)212/19
From the order of the	:-	AIT&CTO,Alappuzha
Year of assessment	:-	2015-16
Name of appellent	:-	Sri.K.K. Manojkumar, Kannattumadam Traders, Near SBI,Kalavoor P.O., Alappuzha
Instituted on	:-	31.10.2017
Date of hearing	:-	15.11.2019
Present for appellent	:-	Sri.P.H. Riyas, Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of Agrl. Income Tax & Commercial Tax Officer, Alappuzha, Order No.32041360484/2015-16 dated.31.10.2017. The assessment completed based on irregularities found on audit visit conducted in the business premises. The defects found were non filing of annual return with enclosures, sales suppression of soft drinks, cleaning liquid, unaccounted purchase and excess claim of IPT. The assessing authority added back 50% turnover addition for non filing of annual return and its enclosures, added sales suppression of soft drinks for Rs.90432/- and cleaning liquid for Rs.673,427/- and again added back 10% gross profit on sales suppression detected for Rs.42714/-. Then the assessing authority added back equal addition for probable omission and suppression for the above suppressed turnover and also disallowed the IPT claim and levied tax plus interest. Aggrieved by the order, the dealer defend the case on the following grounds.

1. The appellent is an assessee under KVAT Act on rolls of the AIT & Commercial Tax Officer, Alappuzha bearing TIN No.32041360484. The appellent is engaged in whole sale and retail sale of biscuits, note books, detergents, snacks, soaps and baby foods. Petitioner had conceded total and taxable sales turnover of Rs.25,41,003.00/- during the year 2015-16. An audit visit u/s.24 of the KVAT Act have been conducted by the 1st respondent and his team on 19.05.2016 and detected some irregularities pertaining to the business of

petitioner. After completion of audit visit assessing authority issued a notice u/s.24 of the KVAT Act proposing to complete escaped assessments under the provisions of the KVAT Act. As against such proposal notice the petitioner had filed detail reply with evidence contenting the allegations raised by the assessing authority while audit visit.

2. It is respectfully submitted that, the order of the assessing authority is highly arbitrary, illegal and against the facts and circumstances of the case and it is liable to be set aside. The assessing authority has failed to evaluate the reply filed by the appellant in the correct perspective and in the light of the applicable legal provisions. The authority did not properly verified the books of account to ascertain the actual nature transaction in a quasi judicial manner. The assessing authority has grossly erred in law in not giving the appellant sufficient time and opportunity for personal hearing. Thus there is violation of natural justice and hence the order is against the law declared in the decision in *Suzion Infrastructure Services Ltd Vs Commercial Tax Officer(WC), Ernakulam* reported in (2010) (3) KHC 299.
3. The assessment by estimating the turnover is arbitrary and illegal. There is no basis for such huge estimation. The Officer has not established the reasoning for estimating the turnover in such a manner. No pattern of suppression has been proved or established. The authority ought have found that there was no provision in the KVAT Act for making an addition towards probable omission and suppression and the addition made was illegal and arbitrary and also no pattern of suppression was established. The principles of law declared in the case of *State of Karnataka Vs N.P. Bharmaih & Sons* reported in (2011) 41 VST 498 is squarely applicable in the instant case.
4. Without prejudice to the above submissions it is submitted that the Gross Profit adopted for the computation of turnover is not proper, fair and is far from the actual. There are no valid legal and factual grounds and circumstances for a reopening the self assessment returns and proceed with an audit assessment under the provisions of Section 24 of the KVAT Act 2003. No ingredients of Section 24 are satisfied in this case. The order is not a speaking one as there is no

individual finding of the assessing authority. The assessing authority has failed to meet with the contentions raised by the appellant. The order is therefore in violation of the ratio of judgment in Steel Authority of India Ltd Vs Sales Tax Officer, Rurkela-1 and Others [(2010) 18 KTR 143 (SC)]. Therefore, the appellate authority ought to have found that the levy of interest on a demand created based on mere assumption and presumption is also illegal and arbitrary. The liability of interest arises only on a failure to pay tax or any amount due within the time stipulated in the demand notice served with the assessment order. The levy of interest is illegal and against the dictum laid down by the Hon'ble High Court in 12 KTR 43, and 15 KTR 101.

5. It is respectfully submitted that the assessing authority had simply completed audit assessment u/s.24 of the KVAT Act without looking in to the factual position of purchase effected from registered dealers during the year. Such an action of the assessing authority is contrary to statement as well as clear violation of Circular No.29/2011 and 27/2015 both issued by the Commissioner Commercial Taxes. The audit assessment completed by the assessing authority is contrary to statutory provision u/s.22 of the KVAT Act. It is the legal and bounden duty of the assessing authority to verify the return within the time stipulated in the Act and Rules. Even without complying the statutory provision as provided u/s.22 of the KVAT Act r/w Rules 35 and 38. She had simply completed an audit assessment u/s.24 of the KVAT Act, which is contrary to the judicial precedent reported in Shamon Vs State of Kerala (2016) 24 KTR 100. Moreover the books of accounts for the year 2015-16 are required to be verified before initiating any assessment proceedings u/s.24 of the KVAT Act. It is reiterated in Circular No.29/2011 issued u/s.3(4) of the KVAT Act. Both the judgment and Circular issued by the Hon'ble Court and Commissioner Commercial Taxes are squarely applicable to the assessing authority and required to be followed.
6. Without prejudice it is submitted that, even though the assessing authority has made an assessment by adding equal amount towards probable omission and suppression without any reason. The evidences produced by the appellant were summarily rejected even without conducting proper enquiry or without verifying the reliability of purchases entered in the monthly return. Therefore the

assessment made on the basis of estimation is liable to be set aside in the interest of equity of justice.

Sri.P.H. Riyas, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. The assessment completed based on non filing of return and its enclosures as per Section 24 of the KVAT Act. On perusal of records, it is noted that the appellant had conceded total turnover of Rs.2541003/-. The assessment completed based on huge addition on the basis of non filing of return. The appellant filed the return and enclosures subsequently. As the offence is coming u/s.67 of the Act, the assessment is illegal and against natural justice and not sustainable. The appellant had subsequently filed the return and directed to verify the same and accept subject to scrutiny. Considering the facts and circumstances of the case, the 50% turnover addition adopted in the case of non filing of return and other irregularities in this case of assessment is deleted, because the appellant had conceded the turnover, below the audit limit. The assessing authority completed the assessment against Rule 38 of KVAT Act and Rule. Hence the assessing authority is directed to verify the books of accounts and relevant records and re-do the assessment according to law. Imposition of penalty is the discretion of the assessing authority. Order accordingly.

In the result the order modified as discussed above.

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

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