

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)**

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

<b>Date of order</b>	<b>:-</b>	<b>16.01.2020</b>
<b>Appeal no</b>	<b>:-</b>	<b>KVATA(ALPY)197/18</b>
<b>From the order of the</b>	<b>:-</b>	<b>Intelligence Officer, Squad No.II, Commercial Taxes, Alappuzha at Chengannur</b>
<b>Year of assessment</b>	<b>:-</b>	<b>2015-16</b>
<b>Name of appellant</b>	<b>:-</b>	<b>K. Sasidharan, M/s.Metaguard Engineers and Contractors, Kaliyikal, Ponakam, Mavelikkara</b>
<b>Instituted on</b>	<b>:-</b>	<b>16.09.2017</b>
<b>Date of hearing</b>	<b>:-</b>	<b>07.01.2020</b>
<b>Present for appellant :-</b>		<b>Sri.V.K.Mukundan Nair, Sales Tax practitioner</b>

**APPELLATE ORDER AND GROUNDS OF DECISION**

This appeal has been filed against the penalty imposed U/s.47(6) of the Act by the Intelligence Officer, Squad No.II, Commercial Taxes, Alappuzha at Chengannur, vide Order No.OR.183/16-17 dated.16.09.2017. The Intelligence Inspector intercepted the goods with vehicle transporting goods (Cement) stating the reason that "*On verification of the vehicle it is seen that it is carrying 420 Bags of cement. On verification of the accompanying documents it is seen that the delivery note, in the place to which goods are consigned in Mavelikkara. There is no nexus between the place where vehicle is intercepted and consigned place. The dealer has also not filed return from July 2015 till date, thus failing to remit the collected tax to the Exchequer. Hence Security Deposit demanded on the value estimated suspecting evasion of tax. Value estimated Rs.147000/-*". The Intelligence Inspector demanded and collected security deposit for the above offence. Thereafter the Enquiry Officer conducted an enquiry and confirmed the findings of the Intelligence Inspector and converted the Security Deposit as penalty. Aggrieved by the order, the dealer defend the case on the following grounds.

- The order of penalty is highly arbitrary and excessive.
- The intelligence officer has failed to afford effective and reasonable opportunity to the appellant to prove the genuineness of the transport of the goods. He has therefore violated the principles laid down in the following cases.
- 12 KTR 360C.K Sunny Vs. Addl STO
- 19 KTR 614 Suzion infra structure Service Ltd Vs. CTO

- Johnson & Johnson Ltd vs. AC (2011 (2) KHC 506
- The Intelligence Officer has suspected evasion of tax and demanded security deposit alleging that ***“Vehicle intercepted at Punavoor. On verification of the vehicle it is seen that it is carrying 420 Bags of cement. On verification of the accompanying documents it is seen that the delivery note, in the place to which goods are consigned is Mavelikkara. There is no nexus between the place where vehicle is intercepted and consigned place. The dealer has also not filed return from July 2015 till date, thus failing to remit the collected tax to the Exchequer. Hence Security Deposit demanded on the value estimated suspecting evasion of tax value estimated Rs. 147000/-”.***
- He ought to have found that (a) the appellant is a dealer registered under the VAT Act having TIN: 32599080415 that (b) the delay in filing the return is not a reason to suspect evasion of tax and that the goods are owned by him and covered by valid delivery note issued by the assessing authority.
- The Commercial Tax Officer ought to have found that the appellant has neither evaded nor made attempts to evade tax due to the government. He is not justified in levying penalty in the instant case in view of the decision rendered by the High Court of Kerala in Sunitha Diesal Sales & Services Vs. State of Kerala (102 STC 448 ) Which runs as follows.

***“ In order to attract the provisions of section 29A of the Act, it is necessary for the assessing authority to establish that there is an attempt at evasion of tax on the part of the assessee. In the instant case, if the transaction is an Inter- State transaction or a sale in transit, as contended by the assessee, there is no question of any tax being exigible under the provisions of the Kerala General Sales Tax Act. We have already found that the transaction in question is an inter-state transaction and/or a sale in transit. As such, there is no question of any tax being exigible under the provisions of the Kerala General Sales Tax Act. A fortiori it follows that the provisions of section 29A of the Act are not attracted in the instant case.”***

For these and other reasons that may be raised at the time of hearing the amount of Rs.42630/- illegally collected by the Intelligence, Squad No. VI, Nedumangad as per Receipt No.5278477-dated.26.03.2016 may kindly be ordered to be refunded on merits.

Sri.V.K Mukundan Nair, Sales Tax Practitioner, appeared and argued the case based on grounds of appeal.

He has averred that levy of penalty is unsuitable since evasion or attempt of evasion has not been established by the Inspecting officer as well as enquiry officer. His request is to direct the Assessing authority to refund the amount illegally realized.

Verification of the records revealed that the Intelligence Inspector

has suspected the transport of 420 bags of Cement covered by Invoice no. 1436 dated.24.03.2016 on the following grounds.

***“Vehicle intercepted at paravoor. On verification of the vehicle it is seen that it is carrying 420 Bags of cement. On verification of the accompanying documents it is seen that the delivery note, in the place to which goods are consigned is Mavelikkara. There is no nexus between the place where vehicle is intercepted and consigned place. The dealer has also not filed return from July 2015 till date, thus failing to remit the collected tax to the Exchequer. Hence Security Deposit demanded on the value estimated suspecting evasion of tax. Value estimated Rs.147000/-”.***

Failure to file the return is the main reason relied on for the realization of Security Deposit. The authorized representative has produced returns for the quarter ended 30.06.2015, 30.09.2015, 31.12.2015, and 31.03.2016. Audit report in form No. 13A has also been filed along with enclosures. Being a contractor, he is bound to execute works in other districts also for which goods were being transported from different places. Scrutiny revealed that during 2015- 16 the appellant has executed work awarded by Executive Engineer, Kollam, Pathanamthitta, Alappuzha etc places. So, the genuineness of the transport cannot be suspected in the absence of nexus between the place of business and place of Interception. The Inspecting Officer could not establish that the cement has been transported without valid documents and that the appellant has no works in other districts. Since the entire transactions were duly accounted, attempt of evasion cannot be established and the amount realized from the appellant is liable to be refunded.

In view of the fact stated above, the Intelligence Officer Squad No.II, Commercial Taxes, Alappuzha at Chengannur is directed to pass appropriate orders to refund the amount of Rs.42,630/- realized from the appellant as per receipt No.5278477 dated.26.03.2016. In the result the appeal stands allowed. Order accordingly.

Result: Allowed

ASSISTANT COMMISSIONER (APPEALS)  
ALAPPUZHA

To The Appellant through a/r  
Copy submitted to Joint Commissioner(Law)  
Copy Submitted to Deputy Commissioner(I),CT,Thiruvananthapuram  
Copy submitted to Deputy Commissioner,CT,Alappuzha  
Copy to Intelligence Officer, Squad No.II, Commercial Taxes,  
Alappuzha at Chengannur/File