

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

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

<b>Date of order</b>	<b>:-</b>	<b>03.01.2020</b>
<b>Appeal no</b>	<b>:-</b>	<b>KVATA(ALPY)147,148&amp; 149/19</b>
<b>From the order of the</b>	<b>:-</b>	<b>State Tax Officer, Kayamkulam</b>
<b>Year of assessment</b>	<b>:-</b>	<b>2016-17(CST&amp;VAT W.C.)</b>
<b>Name of appellant</b>	<b>:-</b>	<b>Padmasuran.S, M/s.Molecules Envirocare, Kayamkulam</b>
<b>Instituted on</b>	<b>:-</b>	<b>25.01.2019&amp;29.01.2019</b>
<b>Date of hearing</b>	<b>:-</b>	<b>12.12.2019</b>
<b>Present for appellant</b>	<b>:-</b>	<b>Sri.M.N. Mohanan, Sales Tax Practitioner</b>

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appeals are filed against the assessment orders of State Tax Officer, Kayamkulam, Order No.32040919372/16-17 CST and VAT (W.C.) dated.25.01.2019 and 29.01.2019. The assessing authority completed the assessment based on irregularities found on KVATIS scrutiny, and OR file received from Intelligence Wing. The defects found that purchase and sales suppression (interstate and local) and excess claim of IPT. The assessing authority estimated the turnover, added back the above suppressed turnover at 10% and 15% gross profit and equal addition added for whole defects, disallowed the excess IPT claim and levied tax plus interest. Against the order, the dealer defend the cases on the following grounds.

**KVATA(ALPY)147/19**

1. The Appellant is a Registered Dealer borne on the rolls of the Office of the State Tax Officer, State Goods and Service Tax Office, Kayamkulam with TIN No.32040919372.
2. The Learned Assessing Authority had proposed assessment for the year 2016-17 alleging turnover escaping assessment. The Appellant could not file a Specific, effective and convincing reply containing factual position to the observations and objections to the proposals due to reasons beyond the control of the Appellant caused by medical issues. However, without appreciating the factual position and without any valid materials for assessment of non-taxable turnover, the Learned Assessing Authority had passed assessment orders as proposed as per assessment Order No.32040919372/2016-17 dated.25.01.2019.

3. The Orders passed by the Learned Assessing Authority is against facts and circumstances of the case for the following reasons.
  1. It has been observed that the Intelligence Officer, Intelligence Squad No.II, Commercial Taxes, Alappuzha had converted security deposit Rs.27,000.00/- collected by the Commercial Tax Inspector, Commercial Tax Check Post, Walayar, on an estimated value of Rs.93,100.00/- in to Penalty under Section 47(6) of the KVAT Act, 2003. The reason for the demand and collection of security deposit in this case is that suspicion of attempt of evasion of tax for the reason that the invoice No. DM076 dated.10.09.2016 was not mentioned in the declaration in Form No.8F of the KVAT Rules, 2005.
  2. The factual position in this case is that the goods under transport were entrusted to Parcel Services, namely, Kerala Roadways for the transport to the destination of the Appellant. The goods in question had reached the Check Post at 15.43 Hours on 22.09.2016. On getting information from the Consignor/transporter, the Appellant had generated the Form No.8F Declaration on 09.09 Hours on 19.09.2016 and had uploaded in KVATIS. It seems that the transporter/Driver had misplaced the same, but produced another Form 8F relating to another consignment in the Check Post. This is the circumstances that led to the booking of the OR Case and demand and collection of security deposit. Copies of the 8F declaration are submitted herewith. Verification of the same would reveal that there was no mal practice in the transaction in question. The Appellant had also accounted the transaction in question not for the reason of but for interception, instead solely for the reason that the Appellant had effected the transaction. Verification of the Return filed and Books of Accounts and other relevant records and facts and circumstances of the case under mention would unequivocally reveal that accounting of the transaction is not for the reason of but for interception, but for the sole reason that the Appellant had actually effected the transaction and that the Appellant have in no occasion had any intention to suppress any transaction actually done by him. Copy of the uploaded statement is uploaded herewith.
  3. However, even if the collection of the security deposit and conversion of the same in to Penalty is justified purely for argument sake, the mistake is only technical in nature warranting no further inclusion of the amount covered by the OR File, since the amount covered by the OR Files is accounted transactions, there is no reason to hold that had the goods in question not been intercepted, the same would not have been accounted by the Appellant. Hence

treating the conceded transaction as unaccounted transaction for the sole reason of booking a case by the Intelligence Wing under Section 47(2) of the Act and converting the security deposit in to penalty for unfounded reasons, is not worth on the part of the Learned Assessing Authority. Treating of conceded transaction as suppressed transaction for the purpose of assessment is not even heard of.

4. In addition to the unnecessary assessment treating the amount covered by the OR Files as suppressed turnover, the Learned Assessing Authority had made a further addition of equal amounts covered by the OR Files towards probable omission and suppression on all the four cases, without ascertaining the factual position in these cases. In this connection, kindly see that by adding equal amount, it is meant that one more consignment of the same items and quantities have been transported from the same consignors outside the State misclassified and kept out of accounts, either at the time of arrival of the goods in the Check Post, the goods under transport had become invisible and hence the Check Post Authorities could not detect the same, since had the same been visible at the time of passing the goods through, the Check Post Officials would have detected the case, or at the time of arrival of the further load with the goods, the entire Check Post officials were in sound sleep and the barricade of the Check Posts were wide opened and for this reason the Check Post officials could not detect the case. Kindly see that both these are not probabilities and hence the illogical addition towards probable omission and suppression may kindly be quashed in full.
5. From this it is clear that the Learned Assessing Authority had blindly followed the unfounded observation of the Enquiry Authority with a wrong notion that if an OR File is received from the Intelligence Wing or from the Check Posts, the same has to be added to the conceded sales turnover and a further addition has to be made for the sake of the holly words, "towards Probable omission and suppression" even if the amount covered are part of accounted transactions and even if the probability towards further omission and suppression is absolutely zero. In this case, it is a proved fact that the Offence in the OR File is only in the nature of a technical one. Assessment following the orders imposing penalty without independent examination of the materials which are relevant and without applying mind is violation of the principles laid down by the Honourable High Court of Kerala in the State of Kerala (2009) 23

VST 130 (Ker). It is therefore humbly prayed that the assessment completed on this score may kindly be quashed in full.

6. It has been observed that the Appellant had disclosed Local sales turnover Rs.6,42,054.00/- and Interstate sales turnover Rs.1,63,710.00/- (Total Rs.8,05,764.00/-). But verification of own invoice as per the list of sales uploaded by the Appellant, it was observed that the Appellant had effected sales to the tune of Rs.10,14,768.00/-, i.e. Local sales Rs.6,57,054.00/- and Interstate sales Rs.3,57,714.00/- during the year 2016-17. Interstate sales Rs.3,57,714.00/- as against the Conceded sales turnover Rs.1,63,710.00/- has been assessed separately. Local sales as per Invoice comes to Rs.6,57,054.00/- as against the conceded sale of Rs.6,42,054.00/- resulting in a short disclosure of Rs.15,000.00/-. This has been assessed to tax with addition of an equal amount. The factual position is that the Interstate sales during the year 2016-17 is only for a Total amount of Rs.1,63,710.00/-. Transactions relating to Interstate Sales have been honestly disclosed in the Returns. The transactions for a Total Amount of Rs.1,94,004.00/- are actually Interstate Purchases which have been disclosed in the list of purchases uploaded along with the returns. These transactions are also erroneously uploaded in the list of sales also which was innocently happened. Though a letter praying for revising return for deleting the transactions from the list of sales uploaded was filed, no permission was granted for the same but proceeded with assessment for reasons unknown, in spite of clarifying the position before the Learned Assessing Authority.
7. It has also been observed that the Appellant had not accounted 97 purchases effected for registered Dealers within the State of Kerala for a Total amount of Rs.10,30,986.29/-. The Learned Assessing Authority had estimated the sales turnover of the same at Rs.11,34,084.60/- by adding 10% towards Gross Profit and had made addition of an equal amount towards probable omission and suppression.
8. It has also been observed on verification of the KVATIS that the Appellant had not disclosed one sale effected to M/s.United Tech a Registered Dealer with TIN No.32071208051 as per sale Bill No.18 dated.15.03.2017 for a Total Amount of Rs.16,030.00/- inclusive of Tax Rs.2,030.00/-. The Learned Assessing Authority had added the same to the conceded sales turnover and had added an equal amount towards probable omission and suppression.

9. Verification of the Check Post Transaction Module of the KVATIS by the learned Assessing Authority and revealed that two purchases effected by the Appellant from outside the Dealers for a Total Amount of Rs.53,000.00/- were omitted to be disclosed. The Learned Assessing Authority had estimated the sales turnover of the same at Rs.60,490.00/- by adding Gross Profit @ 15% and had made addition of an equal amount towards probable omission and suppression.

10. In this connection kindly see that the Appellant had already submitted Applications praying for Revision of Returns for incorporating purchases and sales omitted to be disclosed before receipt of any notice proposing assessment or Penalty from any competent Authority.

<b>Sl.No.</b>	<b>Date</b>	<b>Details</b>
<b>1</b>	<b>2</b>	<b>3</b>
1	05.12.2017	Filed online Application to the Commercial Tax Officer, Kayamkulam praying for permission to revise the Returns for rectifying errors crept while filing returns
2	05.12.2017	Filed letter disclosing that four sale bills and three purchases were wrongly entered and 88 purchases omitted to be disclosed and furnishing the list in all these cases

11. Thus, before the issuance of any notice proposing assessment or pointing out any omission from any competent authority, the Appellant had sought permission to revise the return rectifying the defects unfortunately crept. In the circumstances, the action on the part of the Learned Assessing Authority as if the case was detected by him and that the revenue involved in the omission would have been lost to the Exchequer for ever unless booked by the Department is premature and against the facts and circumstances of the case. In fact, the defects mentioned against serial number 3 (vi) to (x) would not have been available, if the Application seeking permission to revise the Return was entertained by the Learned Assessing Authority. Hence the Steps towards assessment disconsidering the genuine claim is premature and hence liable to be quashed in full.

12.The Learned Assessing Authority had observed that the Appellant had not filed Trading Profit and Loss Accounts and Balance Sheet for the year 2016-17 and hence, with the available details, the Learned Assessing Authority had made Stock analysis and detected sales suppression detected as under;

<b>Sl.No.</b>	<b>Details</b>	<b>Amount Rs.</b>
<b>1</b>	<b>2</b>	<b>3</b>
1	Opening Stock	16,68,550.75
2	Add Purchases	18,71,355.00
3	Add direct Expenses 2%	37,423.00
4	Total Value of Goods	35,77,332.75
5	Less Closing Stock	15,24,497.00
6	Purchase Value of goods sold	20,52,835.09
7	Add Gross Profit @ 15%	3,07,925.26
8	Total Sales Turnover determined	23,60,760.35
9	Less sales conceded	10,05,764.00
10	Sales Suppression detected	13,54,996.35

13.The Learned Assessing Authority had added the amount of Rs.13,54,996.35/- to the conceded sales turnover for the purpose of assessment. In this connection, kindly see that the purchase Rs. given in the above analysis is Rs.18,71,355.00/- and for Trading, purchase effected and conceded is only Rs.16,73,755.61/- and the remaining purchase for Rs.1,97,599.39/- is for executing Works Contract as can be seen in the Return filed in Form No.10B. Corresponding payment received during the year 2016-17 is only Rs.25,000.00/-. Hence the analysis of estimating the sales turnover by adding 15% towards Gross Profit on the same and estimating sales turnover and alleging sales suppression is highly illogical. The Learned Assessing Authority had not detected any sales suppression, other than the specific cases already mentioned, for

which request to revise the return was submitted. However, not satisfied by this irregular analysis and computing turnover suppression, the Learned Assessing Authority had made a further addition of an equal amount of the turnover suppression calculated, towards probable omission and suppression. The factual position is that the Appellant had waited for permission to revise the return for which, necessary application was submitted by him and the preparation of Trading Profit and Loss Account kept pending awaiting for permission to revise the return. However, the Appellant had filed Returns disclosing purchases and sales, and pointed out the omission unfortunately happened in disclosing the purchases and sales. The Learned Assessing Authority had considered all these omissions relating to purchases as well as sales treating as suppression for the purpose of assessment. In the circumstances, the stock analysis as done above with imaginary figures for direct expenses and Gross Profit and thereby allege sales suppression is an unwarranted action. Further, the Learned Assessing Authority had made an equal amount towards probable omission and suppression also and had assessed the same to tax. By making addition towards probable omission and suppression over and above the suppression calculated by him, it is clear that the Learned Assessing Authority is having no confidence with the stock analysis made by himself. However, by doing so, he Learned Assessing Authority is having the responsibility to clarify as to how there is a probability towards further omission and suppression in this case. All these would make it clear that the Learned Assessing Authority had not applied his mind in making addition towards probable omission and suppression even if by applying human sense, it is proved to the effect that there is no probability towards further omission and suppression on this score.

14. The Learned Assessing Authority had disallowed the claim of Input Tax Credit Rs.305.41/- corresponding to 10 purchases for a Total amount of Rs.4,148.94/- without considering the fact that the Appellant had adhered to the Statutory Provisions on this score, which is presumably with a notion that the duty of enforcing Law is with the Customer dealers and not with the Department. Since there is no omission or any mistake on the part of the Appellant, the assessment completed on this score may kindly be quashed in full.
15. The Learned Assessing Authority had levied Interest Rs.85,294.00/- on the whole amounts assessed from the return period. Interest from the return period under Section 31(6) of the Act is applicable only on detected suppression, if any and tax corresponding to

estimation is only applicable from the expiry of the date specified in the demand notice for remittance of the assessed amount. The Honourable Apex Court in Maruthy Wire Industries Pvt. Ltd, Vs. Commercial Tax Officer, First Circle, Mattancherry reported in (2001) 9 KTR 273 (SC) had held that for attracting levy of Interest, either there should be an admission of the liability to tax and abstain from payment or there should be an assessment for the levy of interest. Further, the Honourable High Court of Kerala in State of Kerala Vs. Western India Cosmetics and Health Products Ltd & Ors reported in (2010) 18 KTR 414 (Ker) had confirmed that interest is applicable from the return period on the tax actually payable from the return period, in modification to PK. Damodaran's case. No justification has been made in the Judgment in this decision on the demand of Interest on estimation.

16. For the above reasons and that may be argued at the time of hearing of the case, it is most respectfully prayed that the orders of the Learned Assessing Authority in arbitrarily completing the assessment for the year 2016-17 may kindly be modified to the admitted extent which is prescribed by Statute.

**KVATA(ALPY)148/19**

1. The Learned Assessing Authority had proposed CST assessment for the year 2016-17 under Rule 6(5) of the CST (Kerala) Rules, 1957 with certain observations. The Appellant had filed an effective and convincing reply containing objections to the proposals. But the Learned Assessing Authority had completed the assessment as proposed with a slight modification as per Assessment Order No.32020212982/2016-17 dated.29.01.2019.
2. The order passed by the Learned Assessing Authority is against Law, Facts and circumstances of the case for the following reasons.
  - I. It has been observed that the Appellant had conceded Interstate sales Rs.1,63,710.00/- at concessional rates. On verification of the uploaded sales, it was found that the Interstate sales amounted to Rs.3,57,714.00/-. Treating the differential amount as suppressed one, the Learned Assessing Authority had added the same to the conceded sales turnover and had made addition of an equal amount towards probable omission and suppression and assessed the same at Schedule rate. The factual position in the case under mention is submitted against each as under;



Sl.No.	Name of Dealer	Invoice No. and Date	Amount Rs.	Tax Collected Rs.	Factual Position
1	2	3	4	5	6
1	Chennai Floating and Tube Settlers Chennai 33481351377	DM076 10.09.16	77,520.00	0.00	These transactions are not Interstate Sales, but Interstate Purchase. The purchases have been uploaded in the return for the Month of September, 2016. Unfortunately the transactions have been uploaded in the list of sale also due to oversight. However, the transactions have not been conceded in Part A of the Return as sales. Hence the assessment on this score may kindly be quashed in full.
2	Chennai Floating and Tube Settlers Chennai 33481351377	DT070 10.09.16	45,900.00	0.00	
3	M/s.East India Food Exports 33756180422	04/16-17 30.05.16	1,53,000.00	0.00	These transactions are only the Interstate sales which have been conceded in the Returns also.
4	M/s.East India Food Exports 33756180422	7 09.06.16	10,710.00	0.00	
5	Global Adsorbents Pvt. Ltd 36360232756	GA/H/1084-2016-17 16.09.16	70,584.00	0.00	The transaction is not Interstate Sale, but Interstate Purchase. The purchase has been uploaded in the return for the Month of September, 2016. Unfortunately the transaction has been uploaded in the list of sale also due to oversight. However, the transaction has not been conceded in Part A of the Return as sales. Hence the assessment on this score may kindly be quashed in full.
<b>TOTAL</b>			<b>3,57,714.00</b>	<b>0.00</b>	

II. Thus, kindly see that the Interstate sales during the year 2016-17 is only for a Total amount of Rs.1,63,710.00/- (Transactions mentioned against serial number 3 and 4 only) which have been honestly disclosed in the Returns. The transactions mentioned against serial numbers 1, 2 and 5 above for a Total Amount of Rs.1,94,004.00/- are actually Interstate Purchases which have been disclosed in the list of

purchases uploaded along with the returns. These transactions are also erroneously uploaded in the list of sales also which was innocently happened. Though a letter praying for revising return for deleting the transactions from the list of sales uploaded was filed, no permission was granted for the same but proceeded with assessment for reasons unknown, in spite of clarifying the position before the Learned Assessing Authority.

- III. Not satisfied with the irregular assessment on the above, the Learned Assessing Authority had made addition of an equal amount of the differential turnover of Rs.1,94,004.00/- towards probable omission and suppression. During the year, the entire Check Posts were computerized, and the Department is having the details of Interstate Sales in the Check Post Transaction Module of the KVATIS. Without evidence to the effect that there was movement of goods to outside the State, even if the transactions were actually Interstate sales, the addition proposed is highly illogical and such a practice in CST Assessment is not even heard off.
3. In the circumstances, it is prayed that the CST Assessment completed for the year 2016-17 may kindly be modified to the conceded amount of Rs.1,63,710.00/-.

**KVATA(ALPY)149/19**

1. The Learned Assessing Authority had proposed assessment for the year 2016-17 alleging turnover escaping assessment. The Appellant had filed a Specific, effective and convincing reply containing factual position to the observations and objections to the proposals. However, without appreciating the factual position and without any valid materials for assessment of non-taxable turnover, the Learned Assessing Authority had passed assessment orders as proposed as per assessment Order No.32040919372/2016-17 dated.29.01.2019.
2. The Orders passed by the Learned Assessing Authority is against facts and circumstances of the case for the following reasons.
  - I. It has been observed that the Appellant had entered in to a Contract with M/s. I Mall, for the installation of Plant and Machinery for Rs.2,00,000.00/- during the year 2016-17 with the observation that the Appellant had disclosed Rs.25,000.00/- only, the Learned Assessing Authority had assessed the entire Balance Amount of Rs.1,75,000.00/- even without allowing statutory deduction under Rule 10 (2) (b) of the KVAT Rules, 2005, stating that the Appellant is not eligible for the same.

- II. In this connection, the factual position in this case is that the Appellant had received only Rs.25,000.00/- as material cost during the year 2016-17. The remaining amounts were received only during 2017-18 against Invoice No.GN02/17-18 dated.31.03.2018 for Rs.2,15,000.00/- and the CGST and SGST due thereon @ 9% each Rs.19,350.00/- under CGST and Rs.19,350.00/- under SGST have been collected and remitted by the Appellant. (The Total amount of the Contract was enhanced to Rs.2,40,000.00/- and Rs.2,15,000.00/- was received under the GST Regime). In the circumstances, the assessment on Rs.1,75,000.00/- is unwarranted.
- III. The Learned Assessing Authority had levied Interest Rs.16,748.00/- on the whole amounts assessed from the return period. Interest from the return period under Section 31(6) of the Act is applicable only on detected suppression, if any and tax corresponding to estimation is only applicable from the expiry of the date specified in the demand notice for remittance of the assessed amount. The Honourable Apex Court in Maruthy Wire Industries Pvt. Ltd, Vs. Commercial Tax Officer, First Circle, Mattancherry reported in (2001) 9 KTR 273 (SC) had held that for attracting levy of Interest, either there should be an admission of the liability to tax and abstain from payment or there should be an assessment for the levy of interest. Further, the Honourable High Court of Kerala in State of Kerala Vs. Western India Cosmetics and Health Products Ltd & Ors reported in (2010) 18 KTR 414 (Ker) had confirmed that interest is applicable from the return period on the tax actually payable from the return period, in modification to PK. Damodaran's case. No justification has been made in the Judgment in this decision on the demand of Interest on estimation.
3. For the above reasons and that may be argued at the time of hearing of the case, it is most respectfully prayed that the orders of the Learned Assessing Authority in arbitrarily completing the assessment for the year 2016-17 may kindly be modified to the admitted extent which is prescribed by Statute.

Sri.M.N. Mohanan, Sales Tax Practitioner, appeared and heard the cases and argued based on grounds of appeal.

Heard the cases, the subject matter of the appeal cases are common in nature, hence the appeals are disposed in a single order.

The authorized representative argued that, in the case of interstate purchase, the mistake done in the uploading stage. The 1<sup>st</sup> three invoices

are purchases, last two are sales and are accounted in the books of accounts, the documents are produced before the assessing authority and an opportunity may be given. The argument have some force, hence the assessing authority consider this portion of assessment and verify and allow the same on merit subject to verification and also summarized the addition. Another contention raised in KVATA(ALPY)147/19, the appellant/authorized representative has not produced any documentary evidences to substantiate the claim, hence no interference with this portion of assessment. However the addition adopted is a little high, hence it is reduced to 50% of the same. Third contention raised in KVATA(ALPY)149/19, the appellant has suppressed the contract amount of Rs.200000/- for installation of plant and machinery. It is argued that the appellant dealer has remitted the tax for the entire amount, hence this aspect is to be verified and accept on merit. The assessing authority is directed to modify the order as discussed above. 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 State Tax Officer,Kayamkulam/File