

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	24.01.2020
Appeal no	:-	KVATA(ALPY)90/19
From the order of the	:-	Intelligence Officer, Squad No.I, Commercial Taxes,Alappuzha
Year of assessment	:-	2015-16
Name of appellant	:-	M/s.Shine Coatings, Thirumala, Bhagam P.O., Thuravoor, Alappuzha
Instituted on	:-	10.08.2018
Date of hearing	:-	20.12.2019
Present for appellant	:-	Sri.P.H. Riyas,Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the penalty order of Intelligence Officer, Squad No.I, Commercial Taxes, Alappuzha, Order No. OR.451/2015-16 Dated.10.08.2018. The Intelligence Inspector intercepted the vehicle with goods (Paint) transporting from Thuravoor to Kayamkulam, for the reason stated that the invoices are dated.16.12.2015, the consignment transported on 17.12.2015. So the goods moved to Kayamkulam belatedly. Therefore 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.

1. The appellant is a registered dealer under KVAT Act on the rolls of the Commercial Tax Officer, Kuthiyathode engaged in manufacturing and local sale of Paints, Polishes, Enamels, Lacquers and Varnishes etc. The return for the month of December 2015 was filed on 19.01.2016 disclosing sales turnover of Rs.6,97,553.28/- by using invoices bearing No.252 to 287 as evidenced from form 10 and form 52 sales register uploaded in KVATIS.

2. On 17.12.2015, one consignment accompanied with tax invoices 273 and 275 dated.16.12.2015 moved to Kayamkulam belatedly, the Intelligence Inspector, Squad No.1, Alappuzha, intercepted the consignment at Kalavoor and found that goods under transport are supported with tax invoices as provided u/s.46(3) (a) of the KVAT Act. Since impugned tax invoices are dated.16.12.2015, multiple transports suspected and collected security deposit on the invoice value including tax.
3. While conducting enquiry u/s.47(6) of the KVAT Act, head of the Squad No.1, the Intelligence Officer have not established a case of attempt to evasion of tax. The presumption stated in the detention notice by the subordinate Intelligence Inspector was upheld without stating any valid reason in a mechanical manner. In the absence of conclusive findings as contemplated u/s.47(6) of the KVAT Act regarding attempt to evade payment of tax, the Intelligence Officer is not justified in converting security deposit in to penalty. Mere presumption is not a sufficient reason to establish evasion of tax and such preponderance of possibilities are baseless to establish a case of tax evasion. Tax could not be collected on mere presumptions. In the instant case, the appellant used continuous tax invoices from 252 to 287 during the month of December 2015 as evidenced from monthly return form 10 uploaded in KVATIS. All the invoices were generated from computer system as evidenced from the invoices collected by the Intelligence Wing. Therefore, in the absence of clear finding that there was an attempt to evade payment of tax, impugned penalty proceedings u/s.47(6) of the KVAT Act is unsustainable in view of the judgment **Renganathan D Vs Commercial Tax Inspector and another ILR 2011 (2) 647 (Ker)**. It is also stated that the Intelligence Officer had conducted further enquiries behind the dealer and such a finding is also not a reason for imposing penalty.

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

Heard the case and arguments. The authorized representative argued that, the appellant/dealer used continuous tax invoice from 252 to

287 during the month as stated from monthly return uploaded in KVATIS and accounted in their books of accounts and remitted the tax. The argument of the authorized representative is some force, because the learned Intelligence Officer, stated in the order, it is suspected that the multiple transaction of goods in this case. The Intelligence Officer without stating a valid reason in this case. it is only a presumption and in a mechanical manner. I am of view that it is a technical mistake and tax not evaded in this case. Hence in the light of judgment **D. Ranganathan Vs. Commercial Tax Inspector dated.29.04.2011 and India Foods Exports Vs. State of Kerala (2009) 17 KTR 592 (KER)** is squarely applicable in this case. In the facts of the case, 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.I, Commercial Taxes,

Alappuzha/File