

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR
PRESENT: SMT. SHYLA PRIYA .V LL.B

1.KVAT Appeal Number	: KVATA 298/19
2.Order Date	: 28.02.2020
3. Instituted on	:17.07.2019
4. From the order of the	: No. VCR III/565/2014-15 dated 17.11.2018 of State Tax Officer, Squad No. III, Thrissur.
5. Year of assessment	: 2014-15
6. Name of Appellant	: M/s. Shree Suraj Spices.
7. Turnover Assessed	: 45,500 (Penalty)
8. Section/Rule under which assessment made	: U/s. 47(6) of KVAT Act.
9. Date of hearing	: 26.02.2020
10. Authorized Representative	: Adv. Manoj Kumar. M

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Shree Suraj Spices filed this appeal against the penalty Order No.VCR III/565/2014-15 dated 17.11.2018 of State Tax Officer, Squad No. III, Thrissur which was finalized U/s. 47(6) of KVAT Act.

The main grounds of appeal submitted are:-

1. The order of the State Tax Officer is against law, facts and circumstances of the appellants' case.

(2) The order passed by the State Tax Officer, Squad No.III, State Goods and Service Tax Department, Thrissur, converting the Security Deposit of Rs.45,500/- furnished into Penalty is without proper basis and contrary to the facts and circumstances of the appellants case.

(3) The impugned penalty order lacks legal sanctity for the reason that there is undue delay in passing the order. The order is seen passed after a lapse of over a year from the date of verification and served on the appellant after a lapse of over 7 months. The said process is against the provisions of the KVAT Act and Rules and also the express principles of law governing passing of orders within a reasonable time. The impugned order is liable to be set aside on this ground alone.

(4) The penalty order has been passed in an arbitrary and illegal manner without considering the contentions raised and evidences produced in a proper and legal manner. The penalty order has been passed in an unreasoned manner without pointing out any reason whatsoever for the conclusion arrived at by the State Tax

Officer. The penalty order is not a speaking order as far as the reasons for disallowing the contentions of the appellant and the reasons for conversion of the security deposit into penalty have not been enumerated in the penalty order.

It is settled principle of law that an order has to be a speaking order. Every order must contain reasons in support of it. Reasons however brief they may be are to be indicated in an order disposing off any matter, more so when such orders are subject to appeal or review before higher authorities. A party has a right to know not only the decisions but also the occasion in support of the decision. The above principles of law as laid down in the Decisions of Paul George V/s. State of Kerala 2002 (1) KLT SN 71 Pg.61 and the decision reported in 1999 (3) KLT 716 (DB) have not been followed by the State Tax Officer, and has proceeded to pass the order in an arbitrary and illegal manner. The penalty order thus passed in gross violation of the principles of law and natural justice is liable to be set aside on this ground alone.

(5) It is submitted that the entire proceedings right from the stage of detention are illegal and arbitrary. The detailed objection filed and evidenced produced by the appellant at the time of detention as well as at the time of verification, have not at all been considered by the authorities concerned. The goods were detained for the reason that :-

“The goods under transport is Dry Arecanut of 9100/- Kg. The goods have been physically verified and found that it is in good quality. The value declared in the accompanying document is Rs.100/- 1 Kg. Which is too low when compared to the prevailing market rate. Hence value estimated @Rs.150/- 1 Kg. and Security Deposit demanded on the differential value of Rs.4,55,000/-

The goods were accompanied by all relevant documents as prescribed under law like Tax Invoice, Online Generated Departmental Delivery Note etc at the time of detention of the goods, fact of which has been acknowledged by the detaining Officer and there is also no case for the detaining Officer that there are any defects in the same.

(6) The appellant had received a supply order for 91 Qtls of Arecanut from M/s. Gupta Sons, Delhi (TIN 07060202005) for which the appellant despatched the Arecanut by Truck No.GJ25U8797 accompanied by its Invoice No.56 dated 22.05.2014 and Online generated Departmental Delivery Note bearing No.321503/DN/8525/2014 dated 22.05.2014 and online generated Declaration 8F. The goods are consigned through transporters M/s. Llaji Mulji Transport Co, Kochi - 682002. The goods are accompanied

by all the documents prescribed under the KVAT and CST Acts. The consignment of the appellant is from Kochi to Delhi and is an interstate sale. Despite the consignment being accompanied by all the requisites, the goods were detained and security deposit was demanded for release of the goods. The goods had been detained suspecting undervaluation. The reason for arriving at the valuation nor the basis on which the rate has been determined has been put across to the appellant at the time of detention. The appellants had at time of detention itself vide its letter dated 26.05.2014 objected to the detention and had produced the details of purchase related to the sales in question along with copies of the invoice of the suppliers as well, to prove that the sale value declared by the appellant is correct and there is no undervaluation as suspected to by the detaining officer.

It is submitted that the appellant had filed detailed objection, explanations and documentary evidence before the detaining official explaining the above and also pointing out that there is no reason to suspect evasion or attempt to evade tax.

The true copies of the following documents are produced herewith marked as :-

1. Annexure A - Objection letter of the appellant filed before the Detaining Officer dated 26.05.2014
2. Annexure B - Notice of detention dated 25.05.2014
3. Annexure C - Invoice No.56 dated 22.05.2014 of the Appellant dated 29.08.2014.
4. Annexure D - Departmental Delivery Note bearing No.321503/DN/8525/2014 dated 22.05.2014.
5. Annexure E - Copies of the Invoice and delivery notes of the suppliers in relation to the consignment in question.

A mere perusal of the above documents and the explanations given will point to the fact that the value declared by the appellant for the consignment in question is correct and there is no undervaluation as alleged to by the detaining official. The detention has been merely stating The goods have been physically verified and found that it is in good quality. The value declared in the accompanying document is Rs.100/- 1 Kg. Which is too low when compared to the prevailing market rate. However, neither the quality nor the basis or source of the market value adopted has been put across to the appellant. The valuation adopted by the appellant is in tandem to the quality of the

goods as well as the purchase value of the related sale. There is no attempt to evade any tax on the part of the appellant.

(7) It is submitted that the detention has been on mere surmises and conjectures which is not permitted under law. The sale value adopted by the appellant in respect of the above consignment is very much in parity with the purchase value and in respect of the Arecanut consigned. The average purchase value for 1Kg of Arecanut amounts to Rs.91/- and the appellants have charged Rs.100/- for the same while effecting sales which amounts about 9.5% to 10% profit as evident from the annexures enclosed. The purchases as well as sales have accounted and the payments for purchases made through banks and payments for the sales received through bank. The detaining Officer nor the verification Official has pointed neither pointed out as to how they have verified the quality of consignment nor the source from which the value for the consignment has been determined to be Rs.150/- per Kg. The authority also does not have a case that the appellant has received any amount over and above the amount shown in the sale bill.

On the contrary the appellant has with corroborative and substantial evidence in the form of purchase documents proved the quality as well as the value of the consignment in question. The value at which the appellant has effected the sale is the prevalent wholesale market value for the quality of Arecanut which has been consigned and sold by the appellant. Despite the consignment being accompanied by all the documents prescribed under the KVAT and CST Act and the explanations given by the appellant, the detaining official were adamant that they would not release the goods without furnishing of security deposit. Hence, right from the stage of detention the proceedings have been undertaken in an arbitrary and illegal manner.

(8) The State Tax Officer while passing the impugned order has neither perused the above documents which forms part of the records, nor gone into the statement filed by the appellant at the time of verification. The entire proceedings have been merely on conjectures and surmises. Hence, in the interest of justice it is required that the records may kindly be called for in the matter and is prayed for accordingly.

(9) It is submitted that at the time of verification as well, the appellant had appeared before the State Tax Officer, produced the books of accounts and other documents and the same were verified by the Official and no discrepancy has been found in the same. A true copy of the statement filed by the appellant before the Commercial Tax State Tax Officer is produced herewith marked as Annexure F. The verifying Officer is duty

bound to go into the veracity of the documents, the explanations given and then come to his conclusion.

The State Tax Officer has to act judiciously, evaluate the contentions raised in an independent and unbiased manner. The impugned penalty order does not show any such proceeding being followed by the verifying Officer. On the contrary the order is a pre-determined and preconceived one for conversion of the security deposit into penalty. The State Tax Officer has merely reiterated the defect pointed out in the detention notice for conversion of the security deposit furnished into penalty, without an independent verification of the matter at hand. The order thus passed in gross disregard to the principles of law and natural justice is illegal and arbitrary.

(10) The State Tax Officer, has not come to a conclusion or finding on evasion or attempt to evade tax as can be seen from the very order. The Officer before imposing penalty has to make out a clear case of evasion of tax and establish the same before the penalty is imposed. The penalty has been imposed with a pre-determined mindset to convert the security deposit furnished, into penalty. The penalty order does not give any reason for adopting the value or the source from which the valuation has been arrived at to state that the sale value as shown by the appellant is too low. The penalty order is passed on mere surmises and conjectures, which is not permitted under law. There is no scope for any estimation in proceedings under Section 47, which aspect has altogether been forgotten by the verification authority while passing the impugned order.

(11) The appellants have accounted the above transaction in their books of accounts maintained in their usual and regular course of business which has been confirmed by the State Tax Officer and noted in the order, which can be ascertained from the records as well. The above consignment has also been shown in monthly returns filed, and the tax due there on has also been paid copy of the returns and ledgers where furnished before the State Tax Officer at the time of verification as evidenced by Annexure F. The appellant shall produce the above before the Appellate Authority at the time of hearing the appeal. The same will prove that there is no evasion or attempt to evade any tax as made out by the State Tax Officer. For imposition of penalty, a clear case of evasion or attempt to evade payment of tax has to be established beyond doubt. The appellants have not evaded or attempted to evade any tax due on the goods transported. The impugned penalty order passed in a stereotyped and mechanical manner, is to be set aside.

(12) Without prejudice to the above, it is submitted that impugned order is passed without following the due process and procedure of law. When the contentions of the appellant and the evidences as well as records are not to the satisfaction of the State Tax Officer, the fact of the same has to be made known to the appellant along with the reasoning for the same and the appellant heard before any orders are passed. The order has been passed without affording any such opportunity to the appellant. The State Tax Officer has not followed the said procedure while converting the security deposit furnished as security, into penalty. The deviation from the settled principles of law makes the impugned order one passed in gross violation of the principles of natural justice.

(13) It is further submitted that undervaluation can only be taken up in proceedings under Section 25(1) and not under Section 47 as the same is in the form of assessment. Further, a duty is cast upon the officer to prove that the assessee factually collected or obtained something more than that shown in the Bill or account. In its absence, the contention of undervaluation is unsustainable under law as held by the Hon'ble High Court of Kerala in C.O. Devassy Case [(1991) 81 STC 2 and Deputy Commissioner (Law) V/s. K.E. Kevab [(1998) 6 KTR 575] etc. Entire purchase and sales proceeds relating to the consignment have been through bankers and fact of which has been put across to the verification authority as well as evidences produced. None of the above principles of law have been followed while passing the penalty order. The order is passed without the authority of law and beyond the powers vested in the State Tax Officer under Section 47. Hence the penalty order is unsustainable under law on this ground as well.

(14) Penalty proceedings are quasi criminal proceedings. The officer before imposing penalty is duty bound to apply his mind to the facts of the case, documents and evidences before it. He has to be fully satisfied whether penalty is exigible. Even assuming so, he has to further apply his mind judicially and fix quantum of penalty to be imposed. Maximum penalty cannot be imposed in a mechanical manner. Penalty cannot be imposed on mere presumption and without any evidenced and against the settled principles of law as held by the Hon'ble High Court of Kerala in P.D. Sudhi's Case [(1999) 85 STC 339], St. Michails Oil Mill Case [(1998) 68 STC 360], K. Rajendran Nair V/s. State of Kerala [1991 KLJ (TC) 621], 25 STC 211 (SC), 2003 (3) KLT (SN) 56 etc. The order which has been passed in gross violation of the principles of law and Natural Justice, is liable to be set aside

(15) The order passed by the Commercial Tax Officer (State Tax) converting the Security Deposit of Rs.45,500/- furnished into penalty and demanding the same, is merely on surmises and conjectures. The authority has not established a case of evasion of tax in the goods transported, which is a prerequisite, so as to justify the imposition of penalty. The order of State Tax Officer converting the Security Deposit furnished into penalty is bad in law and the said order is to be cancelled. The penalty order bearing No.VCR-III/565/2014 - 2015 dated 17.11.2018 of State Tax Officer, Squad No.III, State Goods and Service Tax Department, Thrissur under Section 47(6) of KVAT Act may be cancelled and the amount of Rs.45,500/- remitted by the appellant as per Receipt No.TXTA 5102868 dated 27.05.2014 of the Commercial Tax Inspector, Commercial Tax Check Post, Bangara Manjeshwar, may be ordered to be refunded.

(16) It is prayed that the Assistant Commissioner (Appeals) may be pleased to pass orders setting aside the order of the State Tax Officer, Squad No.III, State Goods and Service Tax Department, Thrissur bearing No. VCR-III/565/2014 - 2015 dated 17.11.2018 converting the Security deposit of Rs.45,500/- furnished by the appellant into penalty.

(17) Such other grounds as may be raised at the time of hearing of the appeal.

He produced additional argument notes as follows:

The penalty order VCR-III/565/2014 - 2015 dated 17.11.2018 has been passed in an arbitrary and illegal manner without considering the contentions raised and evidences produced in a proper and legal manner. The order is not a speaking order and has merely reiterated the defects pointed out in the detention notice without entering a independent finding on evasion or attempt to evade any tax on the part of the appellant. The detailed objection filed and evidences produced by the appellant right from the time of detention as well as at the time of verification and as available in the records, have not at all been considered by the authorities, which is evident from the penalty order passed.

The goods are accompanied by all the documents prescribed under the KVAT and CST Acts as evident from the Annexures A to E filed with the Appeal Memorandum and neither the detaining official nor the verifying official, has a contrary view. The consignment of the appellant is from Kochi to Delhi and is an interstate sale. The Value and the consignment have duly been declared before the assessing authority as evident from the Annexure D - Departmental Delivery Note bearing

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No.321503/DN/8525/2014 dated 22.05.2014, which bears the endorsement of the assessing authority. Despite the consignment being accompanied by all the requisites documents especially Delivery Note declared and endorsed before the assessing authority, the goods were detained and security deposit was demanded for release of the goods.

The consignment had been detained suspecting undervaluation. The appellants had at time of detention itself vide its letter dated 26.05.2014 objected to the detention and had produced the details of purchases related to the sales in question along with copies of the invoice of the suppliers as well, to prove that the sale value declared by the appellant is correct and there is no undervaluation. The valuation adopted by the appellant is in tandem to the quality of the goods as well as the purchase value of the related sale. Neither the detaining Officer nor the verification Official has pointed out as to how they have verified the quality of consignment nor the source from which the value for the consignment has been determined to be Rs.150/- per Kg. The authority also does not have a case that the appellant has received any amount over and above the amount shown in the sale bill. On the contrary the appellant has with corroborative and substantial evidence in the form of purchase documents proved the quality as well as the value of the consignment in question. The value at which the appellant has effected the sale, is the prevalent wholesale market value for the quality of Arecanut which has been consigned and sold by the appellant.

Despite the consignment being accompanied by all the documents prescribed under the KVAT and CST Act and the explanations and evidences given by the appellant immediately on detention, the detaining official were adamant that they would not release the goods without furnishing of security deposit.

The verifying Officer is duty bound to go into the records, veracity of the documents, the explanations given and then come to his conclusion. The State Tax Officer has to act judiciously, evaluate the contentions raised in an independent and unbiased manner. The impugned penalty order does not show any such procedure being followed by the verifying Officer. On the contrary the order passed is a pre-determined and preconceived one for conversion of the security deposit into penalty.

The State Tax Officer has merely reiterated the defect pointed out in the detention notice for conversion of the security deposit furnished into penalty, without an

independent verification of the matter at hand. The penalty order is not a speaking order as far as the reasons for disallowing the contentions of the appellant and the reasons for conversion of the security deposit into penalty have not been enumerated in the penalty order.

Section 47(6) mandates that the Officer conducting the verification, has to make out a clear case of evasion of tax and establish the same, before the penalty is imposed. The Officer, has not come to a conclusion or finding on evasion or attempt to evade tax by the appellant so as to justify the imposition of penalty, which is absent in the instant case as can be seen from the very order.

Further, there is no scope for any estimation of value in proceedings under Section 47, which aspect has altogether been forgotten by the verification authority while passing the impugned order. Undervaluation can only be taken up in proceedings under Section 25(1) and not under Section 47 as the same is in the form of estimation and assessment. Further, a duty is cast upon the officer to prove that the assessee factually collected or obtained something more than that shown in the Bill or account. In its absence, the contention of undervaluation is unsustainable under law as held by the Hon'ble High Court of Kerala in **C.O. Devassy Case [(1991) 81 STC 2]** and **Deputy Commissioner (Law) V/s. K.E. Kevab [(1998) 6 KTR 575]** etc.

The consignment is a genuine one consigned by the appellant with all valid documents as prescribed under law. The authorities below also do not have a case that documents prescribed were not accompanied the transport. The consignment has also been declared before the assessing authority as evident from Annexure D Delivery note which bears the endorsement of the assessing authority. The purchases relating to the consignment in question are from registered dealers in Kerala and supported with tax Invoices and Online generated Departmental delivery notes, are easily ascertainable. The invoices and Delivery Notes of two of the suppliers from whom the goods were purchased, also bear check post seal as evidenced by Annexure E, which also proves that the purchase value at which we have purchased is fair and correct at the point of time. The tax invoice of the suppliers relating to the consignment were produced then and there at very time of detention along with the objection letter as evidenced by Annexure A letter dated 26.05.2014. The detaining official has merely stated that the consignment is of higher quality without any evidence and when the evidence produced by the appellant point otherwise. The entire payments to the suppliers have been made by cheque. The books of accounts especially the stock register and the party ledgers were all produced before

the verifying authority, wherein the details of the said transaction were clearly and correctly pointed out. The copies of the relevant page of the stock register and party register which forms part of the records having been produced before the verifying Officer, are attached herewith for ready reference as **Annexure G**. A mere perusal of the said books of accounts with the invoices could ascertain the actualities of the matter at hand. The Official also does not have a claim that the transaction is not accounted. The verifying Officer too lost sight of the above and has not considered the records and the evidences which were produced, as evident from the penalty order.

The impugned penalty order also lacks legal sanctity for the reason that there is undue delay in passing the order. The order is seen passed after a lapse of over a year from the date of verification and served on the appellant after a lapse of over 7 months. The reasons for disallowing the contentions and evidences produced have not been elucidated in the order. Proceedings for assessment have been undertaken in the proceedings under Section 47(6). Evasion or attempt to evade tax has not been established in the instant case so as to impose penalty. Hence the said order is against the provisions of the KVAT Act and Rules and also the express principles of law governing passing of orders and is liable to be set aside.

It is humbly prayed that the Assistant Commissioner (Appeals) may be pleased to pass orders setting aside the order of the State Tax Officer, Squad No.III, State Goods and Service Tax Department, Thrissur bearing No. VCR-III/565/2014 - 2015 dated 17.11.2018 converting the Security deposit of Rs.45,500/- furnished by the appellant into penalty and order the refund of the same.

When the appeal was posted for hearing Adv, Manoj Kumar. M appeared and heard.

The contention is that the purchase of arecanut was intercepted and penalty imposed on allegation that the goods of high quality valuing much above the declared price. The appellant contends that it is mere assumption without any base. The estimation @ Rs. 150/kg is excessive. The Delivery note 321503/DN/8525/2014 dated 22.05.2014 is endorsed by assessing authority produces to permit transportation without advance tax claims average value during the period is Rs 90 and appellants sales at Rs 100 on average.

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I donot find any merit on the appellants contention because the quality of arecanut was already assessed by the then intelligence inspector and officer by his physical verification. This judgement cannot be overruled now, without any reverification of the item. Hence the valuation by the intelligence authorities is upheld. This appeal is found meritless and is herewith dismissed.

Result: Dismissed

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copsubmitted1.JointCommissioner(Law),SGSTDept,Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

- 1. State Tax Officer, Squad No. III, Thrissur*
 - 2. Asst Commissioner(I) ,SGST Dept, Thrissur.*
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