PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES, ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	**:-**	**05.02.2020**
Appeal no	**:-**	**KVATA(ALPY)129/19& 130/19**
From the order of the	**:-**	**State Tax Officer, Harippad**
Year of assessment	**:-**	**2015-16&2016-17**
Name of appellant	**:-**	**Smt.Shyla Ajith, M/s.A.S. Granite & Marble Centre, Kochiyude Jetty, Kandalloor**
Instituted on	**:-**	**30.12.2017& 31.01.2018**
Date of hearing	**:-**	**11.11.2019**
Present for appellant	**:-**	**Sri.Aravindakshan A.R,Advocate, K.S. Hariharan & Associates**

APPELLATE ORDER AND GROUNDS OF DECISION

The appeals are filed against the assessment orders of State Tax Officer, Harippad, Order No.32041212377/2015-16 dated.30.12.2017 & 2016-17 dated 31.01.2018. The assessment completed based on irregularities found on KVATIS scrutiny and verification of annual return with audit report. The defects found were purchase suppression, direct expenses without supporting documents in sales suppression. The assessing authority estimated the turnover, added back purchase suppression and direct expenses, added 20% Gross Profit on it, added the sales suppression for the years 2015-16 and 2016-17 and the assessing authority estimated the suppressed sales turnover (on trade analysis and quantitative analysis) and levied tax plus interest for the above years. Against the orders, the dealer defend the cases on the following grounds.

2015-16

1. The order is against law and facts and the peculiar circumstances of the case and is objected to the extent it is against the appellant.

2. The appellant directly and specifically with the support of data objected the notice. However, the assessing authority, without considering the reply of the appellant and without establishing a case to invoke Sec.25(1) of the KVAT Act issued the impugned order. The Assessing Authority's issuance of this order in non-consideration of the reply and without any corroborative evidences, is without jurisdiction. Therefore the order is liable to be quashed.

   The appellant was denied justice in this case. It is an important point to be noted here that the Assessing authority has not studied the file and evidences and did not comment on the evidences and records available before it. In short, the assessing authority has not judiciously considered the reply filed by the appellant and the evidences in the correct perspective and in the light of applicable legal provisions. The order is therefore not a speaking one and is liable to be set aside in the light of the judgment of the Hon'ble Supreme Court in ***Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkea-I Circle & Ors. (2010) 18 KTR 143 (SC)***. A copy of the reply submitted before the Assessing Authority has been extracted in the order itself, except the last sentence of the reply that contained a request for an opportunity for personal hearing. The fact is that **the appellant has not received an effective opportunity to know whether the Assessing Authority had accepted or rejected the evidences and reply furnished by the appellant.**

   The reconciliation statement is a clear evidence to substantiate the facts and circumstances of the case, which was not even discussed.

3. The objection raised to invoke Sec.25(1) are general in nature that the profit is not reasonable, that loading charges is not as enough as expected by the Assessing authority, that Gross profit is also not as expected by the assessing authority.

4. As regards the allegation that value shown in Form 8F for transportation purpose and the purchase value conceded in the

return and the books of accounts are not the same, the important fact in this issue is that while uploading Form 8FA/8F in the case of tiles and granites **floor rate** as specified by Government of Kerala will be **automatically** uploaded in the Form 8F upon uploading the quantity. However, the purchase value can be duly uploaded in the monthly returns as per the invoice value. It is pertinent to note that there is no provision or column in the Form 8F to uploaded invoice value since once the item is selected as granite or tiles, the floor rate will automatically appear in the amount column on the basis of quantity. The Appellant had clearly explained this in the reply filed before the Assessing Authority but the Assessing Authority failed to appreciate the same.

5. With regard to the Assessing Authority's reasoning that the rate per square feet of material held should be a price more than that conceded in the previous year and such general observations relied on by the assessing authority, it is submitted that the Appellant has to manage cash inflow for her business. During the year 2015-16 and 2016-17, there was heavy competition in the field. At the same time, market condition was poor. To manage the payment of creditors, the Appellant was forced to arrange money. Then the best available alternative to collect maximum money was profit reduction. This was one reason for the rate differences of same products in different years. Beyond this mere allegation of discrepancy, nothing has been proved by the assessing authority on the basis of material evidences. There has been no inspection and no clear finding from the assessing authority to invoke Section 25(1) of the KVAT Act.

   The Assessing Authority also utterly failed to note that the profit of business activities cannot be computed in a category-wise manner like "profit for granite slabs, profit for ceramic tiles, profit for marble slabs, profit for cuddappah stone slabs", etc. In a highly competitive market, if a customer approaches for two items, automatically, sometimes, to attract the customer, one item of less quantity may be sold at a reduced profit, and it may be

compensated in the profit of the other item. This is a prevailing practice in business and as evidenced by the Profit and Loss Account of the relevant period, there is a Gross Profit of Rs.21,88,338/- and Net Profit of Rs.6,98,660/-.

6. With respect to loading and unloading charges, which has been highlighted by the Assessing Authority as a major discrepancy, it is submitted that the Assessing Authority utterly failed to note that the Appellant has the right to appoint unloading workers and it is an accepted practice to appoint workers for loading and unloading to get rid of the burden of loading and unloading trade unions. Only occasionally the Appellant uses the service of unloading trade union workers. The Assessing Authority is well aware that **firms that are engaged in granite and marble businesses like the Appellant have designed their premises in such a way as to facilitate mechanical loading and unloading of the goods with minimal human effort, to both reduce the expenses as well as reduce hazard for the workers**. The Appellant has conceded salary for the year Rs.6,50,500/- and loading charges of Rs.1,86,800/- and freight alone Rs.74,45,658/-. The Assessing Authority has no right to estimate any expenses without any valid documents. On the other hand, the Appellant has produced valid documents in support of the conceded expenses, and audit report was also produced.

7. Without prejudice to the above submissions, it is also submitted that the loading charges for outward supply is an Indirect Expense as per the principles of accounting. The Assessing Authority without verifying this important fact has erroneously alleged that the Appellant committed error by not bringing the same under Direct Expenses in Profit and Loss Account.

8. The Assessing Authority ought to have noted that the appellant is a trader in granites and tiles. Owing to the thick competition in the line of business, there is no sanctity in insisting a positive trade in this line of business. It is pertinent to note that the appellant had

conceded a reasonable profit at any given point of time. The Assessing Authority has established a loss or a sale less than purchase cost. Therefore also there is no scope for reopening the assessment. The Assessing Authority ought to have found that gross profit and net profit is available in the Profit and Loss Account. Therefore all the allegations are mere assumptions without the basis of any fact or law.

The assessing authority utterly failed to establish any of the provisions in the KVAT Act to invoke Section 25(1) of the KVAT Act. On the other hand, the appellant clearly countered each and every allegation with valid evidences. The reply filed by the Appellant before the assessing authority may be read as one of the grounds to this appeal. Had the Assessing Authority considered the reply in a judicious conscience, the Assessing Authority would have accepted the accounts produced by the Appellant. In this case, the Assessing Authority utterly failed to consider or evaluate the valid documents and evidences adduced by the Appellant.

9. In the case of State of Kerala V. Supreme Food Industries, OT Rev, Revision No.2 of 2013 against the Tribunal appeal in TA(VAT) Nos.1344/11. 1335/11 & 1536/11, the Hon'ble High Court of Kerala held up the conclusion of the Hon'ble Tribunal as concluded in Paragraph 8th "…….. I**n the present case now before us, admittedly the transactions find a place in the books of accounts and no specific instance of any suppression has been unearthed. In the above circumstances, we cannot accept the pleas advanced before us the learned State Representative". The Hon'ble High Court specifically mentioned and confirmed the decisions of the Hon'ble Supreme Court of India and repeatedly reminded the lower authorities in paragraph 4th, 5th and 6th of the judgment.**

"…. per contra, the learned counsel appearing for the assessee relying on the decisions of the Supreme Court in Cement Marketing Co. of India Limited Vs. Assistant Commissioner of Sales Tax (1980, 45 STC

197 and Sree Krishna Electricals V. State of TN 2009, 23 VST 249 (SC) and the decision of this Court, in Kollannur Agencies V Assistant Commissioner (Asst.) 1991, 80 STC 177 argued that the Tribunal acted illegally in sustaining the penalty order and there is no ground to impose the penalty on ground referable to any contumacious conduct. Reference was also made to Sultan gold International V. State of Kerala 2012 (2) KLT 158 to point out that when the concept of tax liability under Section 6(2) is only the net tax payable, it goes without saying that in all type of assessments the tax payable is the net tax on sales turnover after granting rebate of the tax payable under Section 6(2) on the purchases. He further pointed out that the Revenue and the dealer before are bound by the interpartes Judgment in Supreme Food Industries Vs. State of Kerala 2012, 47 VST, 487 on the same issue relating to another year and the present attempt of the Revenue, as affirmed by the Tribunal, amounts overreaching the judgment of the Jurisdictional High Court which is binding on the parties.

I. *We are in complete agreement with the ration in the judgment delivered interparties – Supreme Food Industries (Supra). The nature of the transactions of the assessee regarding the deep freezers that it provided to its distributors was pointedly considered after looking into the agreements. This Court then held that it is more in the nature of a sale. That being so, we are of the view that the entitlement of the assessee to Input Tax Credit is an eligibility in terms of the relevant statutory provisions as annunciated in that precedent.*

II. *Now, as held in Cement Marketing Co. of India Ltd (Supra), if the view of the Revenue as taken before us is accepted, the result would be that even if the assessee raises a bonafide contention that a particular item is not able to be included in the taxable turnover, he would have to show it as form part of the taxable turnover in his return and pay tax upon it on paying of being held liable for penalty in case his contention is ultimately found by the court to be not acceptable. It was noted that the Legislature could never have surely*

intended that when the inclusion or exclusion of any particular item was itself a debatable issue. In the instant case the issue was decided by this Court interprets- Supreme Food Industries Supra in 2011, June. In Kollannur Agencies (Supra) also, this Court had concluded that if the assessing authority was of the view that, the return submitted by the assessee was incorrect or untrue, the assessing authority could have made a best judgment assessment and such a best judgment assessment, however is not possible in a case where the assessee had shown the details of the particular sale which was not disclosed in the return, in his trading account. An assessing authority under such circumstances has no power to levy penalty, it was held. In Sree Krishana Electricals (Supra), the apex Court further noted that when items which were not included in the turnover where found incorporated in the dealers' books of accounts, the non-inclusion of certain items in the turnover but disclosed in the dealers own account cannot give rise to imposition of penalty. Following the aforesaid precedents, we have no doubt that the penalty order which the dealer had challenged before the Tribunal, had to be set aside since the levy of such penalty was not authorized by the relevant statutory provisions. ….."

10. Without prejudice to the above submissions, it is also submitted that the lower authorities have totally ignored the provisions and the law existing in the State. In the case of *BGR Energy System Ltd Vs. Asst. Commissioner, Commercial Taxes*, 25 VST 391 it was held that Notice merely proposing assessment on certain turnover but not stating the basis on which the turnover is to be taxed amounts to denial of opportunity and violation of natural justice. It is further submitted that **in 25 VST 295 (Kerala), the Hon'ble Court held that since there was no material to show that the dealer earned higher than what was conceded, the rejection of return and best judgment solely on that ground is not correct. In the case of *Veppalodai Salt Corporation Vs. Commissioner of Commercial Taxes, Chennai*, 9 VST 478, in it was held that assessment order passed without considering objections is vitiated by violation of the Rules of Natural justice. In the case**

of *Bobys Restaurant Vs. Commissioner Trade Tax*, 17 VST 286 it was held that estimate must be based on material and supported by reasons. The lower authorities have utterly failed to find or detect any material evidences to substantiate their contention of suppression. There are no specific findings of irregularity either in sales or purchase or any suppression detected in these cases. In VAT, in the absence of any concrete material evidence, the adjudicating authority is not authorized for any estimation of taxable turnover from conceded receipts and it will injure the very essence & spirit of VAT.

11. In **Pelexy K Varghese V State of Kerala**, the KVAT Appellate Tribunal, Ernakulam had directed the "assessing authority to levy interest only for the period after service of demand notice". The reasoning of the same case is squarely applicable to the appellant's case as well. Relevant portion of this decision is extracted below:

    "We have justified in adopting the compounded rate of tax of 4% for the year 2011-12. However, interest can be demanded only from the date of demand notice as held by the Hon'ble High Court of Kerala in a similar case in State of Kerala Vs. Sri. T.S. Kalyanaraman, Kalyan Jewellers (ST Rev. No: 79 of 2008 dated.13.01.2009). The Hon'ble High Court held that no interest could be demanded from the assessee under Section 23(3) or 23 (3A) until default arises and that interest should be payable on the differential amount for the default period, that is, for the period after service of notice along with assessment order. We, therefore direct the assessing authority to levy interest only for the period after service of demand notice".

12. It is prayed that the return may be accepted as such and all addition and estimation made by the Assessing Authority may be deleted.

2016-17

1. The order is against law and facts and the peculiar circumstances of the case and is objected to the extent it is against the appellant.

2. The appellant directly and specifically with the support of data objected the notice. However, the assessing authority, without considering the reply of the appellant and without establishing a case to invoke Sec.25(1) of the KVAT Act issued the impugned order. The Assessing Authority's issuance of this order in non-consideration of the reply and without any corroborative evidences, is without jurisdiction. Therefore the order is liable to be quashed.

   The appellant was denied justice in this case. It is an important point to be noted here that the Assessing authority has not studied the file and evidences and did not comment on the evidences and records available before it. In short, the assessing authority has not judiciously considered the reply filed by the appellant and the evidences in the correct perspective and in the light of applicable legal provisions. The order is therefore not a speaking one and is liable to be set aside in the light of the judgment of the Hon'ble Supreme Court in ***Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkea-I Circle & Ors. (2010) 18 KTR 143 (SC)***. A copy of the reply submitted before the Assessing Authority has been extracted in the order itself, except the last sentence of the reply that contained a request for an opportunity for personal hearing. The fact is that **the appellant has not received an effective opportunity to know whether the Assessing Authority had accepted or rejected the evidences and reply furnished by the appellant.**

   The reconciliation statement is a clear evidence to substantiate the facts and circumstances of the case, which was not even discussed.

3. The objection raised to invoke Sec.25(1) are general in nature that the profit is not reasonable, that loading charges is not as enough as expected by the Assessing authority, that Gross profit is also not as expected by the assessing authority.

4. As regards the allegation that value shown in Form 8F for transportation purpose and the purchase value conceded in the return and the books of accounts are not the same, the important fact in this issue is that while uploading Form 8FA/8F in the case of tiles and granites **floor rate** as specified by Government of Kerala will be **automatically** uploaded in the Form 8F upon uploading the quantity. However, the purchase value can be duly uploaded in the monthly returns as per the invoice value. It is pertinent to note that there is no provision or column in the Form 8F to uploaded invoice value since once the item is selected as granite or tiles, the floor rate will automatically appear in the amount column on the basis of quantity. The Appellant had clearly explained this in the reply filed before the Assessing Authority but the Assessing Authority failed to appreciate the same.

5. With regard to the Assessing Authority's reasoning that the rate per square feet of material held should be a price more than that conceded in the previous year and such general observations relied on by the assessing authority, it is submitted that the Appellant has to manage cash inflow for her business. During the year 2015-16 and 2016-17, there was heavy competition in the field. At the same time, market condition was poor. To manage the payment of creditors, the Appellant was forced to arrange money. Then the best available alternative to collect maximum money was profit reduction. This was one reason for the rate differences of same products in different years. Beyond this mere allegation of discrepancy, nothing has been proved by the assessing authority on the basis of material evidences. There has been no inspection and no clear finding from the assessing authority to invoke Section 25(1) of the KVAT Act.

   The Assessing Authority also utterly failed to note that the profit of business activities cannot be computed in a category-wise manner like "profit for granite slabs, profit for ceramic tiles, profit for marble slabs, profit for cuddappah stone slabs", etc. In a highly competitive market, if a customer approaches for two items,

automatically, sometimes, to attract the customer, one item of less quantity may be sold at a reduced profit, and it may be compensated in the profit of the other item. This is a prevailing practice in business and as evidenced by the Profit and Loss Account of the relevant period, there is a Gross Profit of Rs.23,86,533/- and Net Profit of Rs.7,14,043/-.

6. With respect to loading and unloading charges, which has been highlighted by the Assessing Authority as a major discrepancy, it is submitted that the Assessing Authority utterly failed to note that the Appellant has the right to appoint unloading workers and it is an accepted practice to appoint workers for loading and unloading to get rid of the burden of loading and unloading trade unions. Only occasionally the Appellant uses the service of unloading trade union workers. The Assessing Authority is well aware that **firms that are engaged in granite and marble businesses like the Appellant have designed their premises in such a way as to facilitate mechanical loading and unloading of the goods with minimal human effort, to both reduce the expenses as well as reduce hazard for the workers**. The Appellant has conceded salary for the year Rs.6,17,224/- and loading charges of Rs.2,05,679/- and freight alone Rs.61,70,701/-. The Assessing Authority has no right to estimate any expenses without any valid documents. On the other hand, the Appellant has produced valid documents in support of the conceded expenses, and audit report was also produced.

7. Without prejudice to the above submissions, it is also submitted that the loading charges for outward supply is an Indirect Expense as per the principles of accounting. The Assessing Authority without verifying this important fact has erroneously alleged that the Appellant committed error by not bringing the same under Direct Expenses in Profit and Loss Account.

8. The Assessing Authority ought to have noted that the appellant is a trader in granites and tiles. Owing to the thick competition in the

line of business, there is no sanctity in insisting a positive trade in this line of business. It is pertinent to note that the appellant had conceded a reasonable profit at any given point of time. The Assessing Authority has established a loss or a sale less than purchase cost. Therefore also there is no scope for reopening the assessment. The Assessing Authority ought to have found that gross profit and net profit is available in the Profit and Loss Account. Therefore all the allegations are mere assumptions without the basis of any fact or law.

The assessing authority utterly failed to establish any of the provisions in the KVAT Act to invoke Section 25(1) of the KVAT Act. On the other hand, the appellant clearly countered each and every allegation with valid evidences. The reply filed by the Appellant before the assessing authority may be read as one of the grounds to this appeal. Had the Assessing Authority considered the reply in a judicious conscience, the Assessing Authority would have accepted the accounts produced by the Appellant. In this case, the Assessing Authority utterly failed to consider or evaluate the valid documents and evidences adduced by the Appellant.

9. In the case of State of Kerala V. Supreme Food Industries, OT Rev, Revision No.2 of 2013 against the Tribunal appeal in TA(VAT) Nos.1344/11. 1335/11 & 1536/11, the Hon'ble High Court of Kerala held up the conclusion of the Hon'ble Tribunal as concluded in Paragraph 8th "…….. I**n the present case now before us, admittedly the transactions find a place in the books of accounts and no specific instance of any suppression has been unearthed. In the above circumstances, we cannot accept the pleas advanced before us the learned State Representative". The Hon'ble High Court specifically mentioned and confirmed the decisions of the Hon'ble Supreme Court of India and repeatedly reminded the lower authorities in paragraph 4th, 5th and 6th of the judgment.**

"…. per contra, the learned counsel appearing for the assessee relying on the decisions of the Supreme Court in Cement Marketing Co. of India Limited Vs. Assistant Commissioner of Sales Tax (1980, 45 STC 197 and Sree Krishna Electricals V. State of TN 2009, 23 VST 249 (SC) and the decision of this Court, in Kollannur Agencies V Assistant Commissioner (Asst.) 1991, 80 STC 177 argued that the Tribunal acted illegally in sustaining the penalty order and there is no ground to impose the penalty on ground referable to any contumacious conduct. Reference was also made to Sultan gold International V. State of Kerala 2012 (2) KLT 158 to point out that when the concept of tax liability under Section 6(2) is only the net tax payable, it goes without saying that in all type of assessments the tax payable is the net tax on sales turnover after granting rebate of the tax payable under Section 6(2) on the purchases. He further pointed out that the Revenue and the dealer before are bound by the interpartes Judgment in Supreme Food Industries Vs. State of Kerala 2012, 47 VST, 487 on the same issue relating to another year and the present attempt of the Revenue, as affirmed by the Tribunal, amounts overreaching the judgment of the Jurisdictional High Court which is binding on the parties.

I. *We are in complete agreement with the ration in the judgment delivered interparties – Supreme Food Industries (Supra). The nature of the transactions of the assessee regarding the deep freezers that it provided to its distributors was pointedly considered after looking into the agreements. This Court then held that it is more in the nature of a sale. That being so, we are of the view that the entitlement of the assessee to Input Tax Credit is an eligibility in terms of the relevant statutory provisions as annunciated in that precedent.*

II. *Now, as held in Cement Marketing Co. of India Ltd (Supra), if the view of the Revenue as taken before us is accepted, the result would be that even if the assessee raises a bonafide contention that a particular item is not able to be included in the taxable turnover, he*

would have to show it as form part of the taxable turnover in his return and pay tax upon it on paying of being held liable for penalty in case his contention is ultimately found by the court to be not acceptable. It was noted that the Legislature could never have surely intended that when the inclusion or exclusion of any particular item was itself a debatable issue. In the instant case the issue was decided by this Court interprets- Supreme Food Industries Supra in 2011, June. In Kollannur Agencies (Supra) also, this Court had concluded that if the assessing authority was of the view that, the return submitted by the assessee was incorrect or untrue, the assessing authority could have made a best judgment assessment and such a best judgment assessment, however is not possible in a case where the assessee had shown the details of the particular sale which was not disclosed in the return, in his trading account. An assessing authority under such circumstances has no power to levy penalty, it was held. In Sree Krishana Electricals (Supra), the apex Court further noted that when items which were not included in the turnover where found incorporated in the dealers' books of accounts, the non-inclusion of certain items in the turnover but disclosed in the dealers own account cannot give rise to imposition of penalty. Following the aforesaid precedents, we have no doubt that the penalty order which the dealer had challenged before the Tribunal, had to be set aside since the levy of such penalty was not authorized by the relevant statutory provisions. ….."

10. Without prejudice to the above submissions, it is also submitted that the lower authorities have totally ignored the provisions and the law existing in the State. In the case of *BGR Energy System Ltd Vs. Asst. Commissioner, Commercial Taxes*, 25 VST 391 it was held that Notice merely proposing assessment on certain turnover but not stating the basis on which the turnover is to be taxed amounts to denial of opportunity and violation of natural justice. It is further submitted that **in 25 VST 295 (Kerala), the Hon'ble Court held that since there was no material to show that the dealer earned higher than what was conceded, the rejection of return and best judgment solely on that ground is not correct.**

In the case of *Veppalodai Salt Corporation Vs. Commissioner of Commercial Taxes, Chennai*, 9 VST 478, in it was held that assessment order passed without considering objections is vitiated by violation of the Rules of Natural justice. In the case of *Bobys Restaurant Vs. Commissioner Trade Tax*, 17 VST 286 it was held that estimate must be based on material and supported by reasons. The lower authorities have utterly failed to find or detect any material evidences to substantiate their contention of suppression. There are no specific findings of irregularity either in sales or purchase or any suppression detected in these cases. In VAT, in the absence of any concrete material evidence, the adjudicating authority is not authorized for any estimation of taxable turnover from conceded receipts and it will injure the very essence & spirit of VAT.

11. In **Pelexy K Varghese V State of Kerala**, the KVAT Appellate Tribunal, Ernakulam had directed the "assessing authority to levy interest only for the period after service of demand notice". The reasoning of the same case is squarely applicable to the appellant's case as well. Relevant portion of this decision is extracted below:

    "We have justified in adopting the compounded rate of tax of 4% for the year 2011-12. However, interest can be demanded only from the date of demand notice as held by the Hon'ble High Court of Kerala in a similar case in State of Kerala Vs. Sri. T.S. Kalyanaraman, Kalyan Jewellers (ST Rev. No: 79 of 2008 dated.13.01.2009). The Hon'ble High Court held that no interest could be demanded from the assessee under Section 23(3) or 23 (3A) until default arises and that interest should be payable on the differential amount for the default period, that is, for the period after service of notice along with assessment order. We, therefore direct the assessing authority to levy interest only for the period after service of demand notice".

12. It is prayed that the return may be accepted as such and all addition and estimation made by the Assessing Authority may be deleted.

Sri.Aravindakshan A.R, Advocate, K.S. Hariharan & Associates, appeared and heard the case and argued based on grounds of appeal.

The subject matter of both the appeals filed are common in nature. Hence disposed in a single order.

I have heard the learned counsel. Records connected with the cases were also perused.

The learned counsel has canvassed for the acceptance of the accounts placing reliance on the various judgments mentioned in the grounds of appeal. He has also stated that sufficient and effective opportunity were not afforded to prove the genuineness of the returns filed and the account produced in support thereof, gross profit arrived at by the assessing authority is highly arbitrary and excessive, it is against the principles laid down in the decision in ST Revenue 46 and 51/13 dated 01-01-2014 (State of Kerala Vs. Antony Abraham) and that estimation of turnover is made without any valid data or materials. He has also added that no enquiry has been conducted by the assessing authority to adopt the selling rate as per the guidelines issued by the High Court of Kerala in various judicial pronouncements.

This is a case in which the assessing authority has made addition on the grounds like low gross profit, disproportionate freight, failure to account loading and unloading charges in respect of goods transported under cover of declaration in 8F etc. The appellant has mainly challenged the orders placing reliance on the judgments reported in 50 VST 195 (Ker) KMP Timbers and Saw Mills Vs CTO and 50 VST 199 (Cashew Manufacturers and Association Vs State of Kerala) in which the Court has held as follows.

"Further, advance tax is only a provisional deposit towards tax and nothing in the Act requires the appellant or any party to pay tax except on actual sale price. The value fixed under the circular for payment of advance tax does not reflect the basis for actual liability. In fact, tax is payable only on actual sale price and the appellant is absolutely free to claim refund of advance tax paid, if it is in excess over tax liability. If there is allegation of under -invoicing, it is for the assessing officer to establish the same in adjudication proceedings."

Again in 50 VST 199 (Cashew Manufacturers and Association Vs State of Kerala) the court has held as follows.

"I clarify that the circulars can be relied on only for the purpose of levy of advance tax as contemplated under Section 47 (16A) of the KVAT Act and in cases where undervaluation is detected, adopting floor value fixed as a guideline, proceedings under the KVAT Act can be initiated."

There was no inspection during the relevant year. The Assessing Authority has not discredited the P&L account, form No.13, 13A etc. Revised return filed by the appellant has also been accepted by the Assessing Authority which agrees with the audited accounts. The contention of the appellant with regard to the engaging of mechanical loading and unloading with minimum human efforts were not examined by the assessing authority. The order of assessment is silent about the nature of enquiry conducted by the assessing authority as laid down in 50 VST 195 (Ker) KMP Timbers and Saw Mills Vs Commercial Tax Officer. In view of the defects and infirmity pointed out by the Assessing Authority estimation of turnover is found to be inevitable. Total unaccounted purchase detected is only Rs.17819/- .

It is found that the order under challenge is passed not fully based upon proper appreciation of the findings, rulings of the courts, relevant provisions of the law, nature of transaction and critical analysis of the

documents produced before the assessing authority for the finalization of assessment.

In the circumstances I deem it appropriate to estimate the sales turnover of granite, marble, ceramic tiles, and cuddappah stone at the rates adopted in the order of assessment as against separate addition of ₹1,2289,357/- and ₹ 54,312/- for the year 2015-16 and ₹160,61,944/- and ₹8138721/- made towards suppression for the year 2016-17 respectively. For this purpose, the assessing authority will adopt the quantity of the above items conceded sold during the relevant year as per accounts. No other modification is found necessary. 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,Harippad/File