

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES, ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	10.02.2020
Appeal no	:-	KVATA(ALPY)211/19
From the order of the	:-	State Tax Officer, Mavelikkara
Year of assessment	:-	2014-15
Name of appellant	:-	Sri.Sanal Kumar.B, Bhaskara Communication, Puthiyakavu,Mavelikkara
Instituted on	:-	13.05.2019
Date of hearing	:-	21.01.2020
Present for appellant	:-	Sri.P. Sivadasan, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Mavelikkara, Order No.32041049174/14-15 dated.13.05.2019. The assessing authority passed the order based on the purchase difference of Rs.2444380/-. In the absence of records, the assessing authority estimated the alleged turnover, added back 5.68% gross profit for the above defect and levied tax plus interest. Aggrieved by the order, the dealer defend the case on the following grounds.

1. The order of the assessing authority is against the facts and circumstances of the case and hence not sustainable.
2. The original assessment for the year 2014-15 in respect of the appellant was modified in appeal vide Order No.KVATA (ALPY)352/17 dated.07.09.2018 with direction to produce relevant records before the assessing authority for verification and pass orders afresh. In pursuance of the appellate order, the assessing authority issued a notice on 05.04.2019 and the appellant appeared before the officer on 26.04.2019 and explained the reason for the difference in purchase turnover resulted from write off of damaged stock and requested some time to produce the records especially because of the reason that the appellant is a victim of 2018 flood in which most of his office records were destroyed. He also had to

undergo medical treatment and bed rest from .04.2019 onwards. In the meantime the officer passed order on 13.05.2019 in a hasty manner restoring the original assessment without hearing the appellant. The order is arbitrary and illegal and hence liable to be quashed. The order is against the decision of the Honourable High Court of Kerala in Padmarajan P Vs Commercial Tax Officer, Kochi and others reported in 2012 (4) KHC 241 wherein it was held that assessment finalized without giving an effective opportunity to participate in hearing in person or through authorized representative is not proper.

3. The order was passed in violation of the principles of natural justice in the sense that no opportunity for hearing was given to the appellant before finalizing the order. The officer ought to have issued a notice, essentially in the nature of a show case notice, asking the dealer to show the cause as to why the original order should not be restored as the dealer failed to produce relevant records for verification as directed by the appellate authority. For this reason the order is liable to be quashed.
4. The appellant was not deliberate in not producing the records before the assessing officer. He was prevented by circumstances beyond his control. A medical certificate to prove the medical treatment undergone by the appellant is also submitted herewith. For these and other points to be raised at the time of hearing, it may be pleased to set aside the impugned order of the assessing authority and remitted back for fresh disposal after giving an effective opportunity to the appellant for hearing and produce records.

Sri. P. Sivadasan, Sales Tax Practitioner, appeared and heard the case and argued based on grounds of appeal and additional argument note submitted as follows.

I may submit the following facts also as part of the grounds of appeal for benign consideration and favourable orders. I am a dealer who has sustained total loss in this 2018 flood. My business, business equipments, office records including books of accounts and my home were damaged. At present my family is residing in a rented building. Our locality comprises in the flood hit areas declared by the Government. Added to this stock

inflicted by the flood, it was haunted by various health problems necessitating prolonged medical treatment. It was under this deplorable condition, that I received the notice issued by the officer asking to produce the records for the year 2014-15 for verification. On receipt of the notice, I met the officer and explained the situation. Thereafter, I retrieved as many office records as possible, denied in sunlight and kept ready in a partly destroyed condition. My officer staffs also left the place drinking the flood time. In the meantime the officer passed orders restoring the original assessment. The order has placed heaving burden on me which I am unable to meet in the present condition.

In the assessment year 2014-15, damaged goods valued Rs.23,80391.98/- and Rs.64009.36/- (Total Rs.2444381.34/-) were written off in the months of May 2014 and February 2015 respectively. All these purchases were made from local VAT Registered dealers, paid tax and duly and properly accounted and uploaded in KVATIS. However, the purchase value reported in the respective monthly returns were the net value reduced by the value of damaged goods and no input tax credit availed in respect of the damaged goods. In assessment, the officer disallowed the claim of damaged goods, estimated the corresponding sale value by adding gross profit and assessed to tax. No input tax credit allowed. This being the situation, I humbly request that input tax credit admissible as per rules may kindly be made available to me and the burden to that extent relieved.

At present I am not in a position to pay off the arrears. I am facing recovery action initiated by banks and other financial institutions and also the RR proceedings initiated by tax authorities. Under these circumstances, I humbly request that I am be granted an opportunity for personal hearing and to produce available records before the assessing officer. The assessing officer may be directed to verify the records and dispose of the case as per law.

Heard the case. On going through the assessment order, it is found that the assessing authority passed the impugned order without any material evidence or cross verification of records. At the time of hearing, the authorized representative submitted a detailed argument note and evidences including photo's for flood affected area, copies of returns, statements, copies of invoices and copy of RR requisition. On perusal and verification of the documentary evidences filed by the appellant, it is noted that the claim of the appellant have some force. The assessing authority is

directed to give further opportunity and cross verify the records and also considering the situations of the appellant and pass orders according to law. It is needful to verify whether the appellant had claimed IPT. If the IPT is not claimed it shall be allowed, and if the same is illegally claimed it shall be forfeited to Government. In the result the order modified 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, Mavelikkara/File