

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

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

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|------------------------------|-----------|--|
| <b>Date of order</b>         | <b>:-</b> | <b>22.02.2020</b>  |
| <b>Appeal no</b>             | <b>:-</b> | <b>KVATA(ALPY)71/19</b>  |
| <b>From the order of the</b> | <b>:-</b> | <b>State Tax Officer,<br/>Cherthala</b>  |
| <b>Year of assessment</b>    | <b>:-</b> | <b>2016-17</b>   |
| <b>Name of appellant</b>     | <b>:-</b> | <b>Sri. P. Pushkaresh,<br/>Mg. Partner, M/s.Manjal<br/>Hyper Mart, Cherthala</b> |
| <b>Instituted on</b>         | <b>:-</b> | <b>06.08.2018</b>  |
| <b>Date of hearing</b>       | <b>:-</b> | <b>09.01.2020</b>  |
| <b>Present for appellant</b> | <b>:-</b> | <b>Sri.S. Sudheer,Advocate</b>   |

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appeal filed against the assessment order of State Tax Officer, Cherthala, Order No.32040812103/2016-17 dated.06.08.2018. The assessment completed based on irregularities found on KVATIS scrutiny. The defects found were purchase and sales suppression, other income received not proved with supporting documents and irregular claim of IPT. The assessing authority estimated the turnover, added back 15% gross profit and equal addition for probable omission and suppression for purchase and sales suppression. In the absence of records, other income of Rs.226585/- added in the assessment and also disallowed the IPT claim. Aggrieved by the order, the dealer defend the case on the following grounds.

This appeal is filed from the order of the State Tax Officer, SGST Department, Cherthala. The brief facts of the case are as following:

This appellant is a registered dealer in the rolls of SGST Department, Cherthala and doing the business of super market. The assessment was solely based on the scrutiny of returns. On scrutiny and cross matching of the KVATIS the assessing authority has found four defects in the return filed and the accounts. This appellant has already given replay for all the defects, but that were not considered by the assessing authority. The order of the assessing authority is not speaking one this appellant is urging the following grounds.

1. This appellant is a genuine dealer and promptly filing returns and paying tax. The issuance of this assessment order is against the law and facts. The facts stated above also may be treated as the grounds of this appeal.
2. The assessing authority has scrutinized the KVATIS and found four defects. The first one is the difference in the closing stock value. The appellant has taken stock on the basis of the market value of the purchase price and that was permissible by the law. During the audit the auditor has valued the stock on the FIFO method and happened the difference of value and that was permissible according to the accounting principles. The assessing authority has taken the difference as unaccounted purchases. Here in the audited statement the appellant has shown a higher amount and that will reflect a higher opening stock in the next year and the appellant will pay higher tax in the coming year. Hence here there is no suppression or evasion in the said difference. Hence the taking of that amount of purchase suppression is against the fact and law and liable to be quashed.
3. The second defect noticed by the assessing authority is variation in the sales return conceded in the return and the audited statement. This appellant has conceded the sales return in the return for Rs.318190.00/- and the same in the audited statement as Rs.339032.00/-. Here the appellant has taken IPT for a lesser amount than eligible as per audited statement. Hence the appellant has never taken IPT for an amount of Rs.20842.00/-. Here the assessing authority has again taxing that amount will tantamount for double taxation and liable to be quashed.
4. The third defect is the alleged availing of irregular IPT. Here the assessing authority has alleged claim of IPT for 247 invoices. Out of the above four parties were uploaded the invoices with some difference in the invoices, but this appellant have the original invoices and that was already produced before the assessing authority and that were not considered. The major chunk of the said IPT was related to one dealer M/s.B.J.K. Pharmaceuticals. The said dealer is dealer in medicine and supplied non medicinal goods to this appellant and collected tax to the appellant. But the said dealer has uploaded those sales in bulk and that caused mismatch in the KVATIS. This appellant not taken any exemption on the goods and paid tax on the added value. This appellant has obtain the certificate

along with the ledger copy of that dealer to prove the said claim. This appellant cannot penalize for the mistake committed by the other dealer. This appellant is able to produce all the relevant documents to prove that this appellant has never taken excess IPT. This appellant has already produced all the documents before the assessing authority and that was not considered. All such documents were producing before your good self for verification at the time of hearing and that may be judicially considered.

5. The fourth and last defect noted by the assessing authority is the other income. The assessing authority has proposed the assessment of other income for Rs.555309.00/-, but has omitted Rs.328624.00/- on production of evidence. But the discount was not effecting the IPT and the appellant is in profit an there is no necessity in assessing the same and that is against the dictum laid down in **Priya Agencies Vs Commercial Tax Officer (2008) 16 KTR 287 (Ker) and also in K.K. Agencies Vs Commercial Tax Officer [W.P. (C) No.9931 of 2008] Southern Motors Vs. State of Karnataka & Ors. [ (2017) 25 KTR 349 (SC)]. Vettathil Agencies Vs. Commercial Tax Officer & others in WP(C) No.40512/2016 (T).**
6. Here the then assessing authority has completed the assessment without considering the objection filed by this appellant. Hence the learned assessing authority has thereby violated the cardinal principle of natural justice, which was laid down in the dictum of the Hon'ble High Court in **Suzion Infrastructure Services Ltd Vs. Commercial Tax Officer (WC) [ (2004) 12 KTR 360 Ker]**. On the above said ground itself the impugned order is liable to be quashed.
7. Here the assessing authority has found out the mistakes in the return and revision is required. Hence the assessing authority ought to have give chance for that. Further this appellant is submitting that in the decision of the Hon'ble High Court in **Sathishkumar Purushothambhai Patel Vs Commercial Taxes, 1<sup>st</sup> Circle, Kalamassery at Kakkanad, Civil Station, Cochin and others reported in 2016 89 VST 390 (Ker)**, where the Hon'ble Court held: "while completing an assessment in relation to an assessee and before proceeding with proposal for completing the best judgment basis, since in the instant case, I do not find such an exercise having been done by the 1<sup>st</sup> respondent. I

**direct that, before proceeding further with ext P4 notice issued to the petitioner, 1<sup>st</sup> respondent shall comply with the requirements of Section 22, 23 and 24 as applicable by allowing the petitioner to revise the returns for various months in the assessment in question".** Here the assessing authority has not given the chance for directing the party to file revision and the assessing authority has given time for that. The said Act of the assessing authority is against the dictum laid down above and on the sole ground the impugned assessment order liable to be quashed.

8. The learned assessing authority had erred in levying the penal interest of Rs.61070.00/-, on the additional demand created on his best judgment. The demand of penal interest, before issuing a demand notice is against law and natural justice in view of the decision of the Hon'ble High Court of Kerala in **State of Kerala Vs. Western India Cosmetics and Health Products Ltd and Others Case** [ (2010) 18 KTR 414 (Ker)]. In the light of the above decision, the demand of penal interest raised may be declared as cancelled. This appellant never collected any tax as alleged.
9. This appellant has already filed writ petition challenging the validity of the assessment before through WP(C) No.29186/2018 and the said writ petition has dismissed along with WP(C) No.11335/2018 on 11.01.2019 and as per the direction in the above judgment in para 191, this appellant is filing this appeal after contesting from that, hence there is no question of limitation in this case.
10. Considering all the contentions raised above and the contentions raised at the time of hearing of the appeal, appreciate all the evidences produced, the appeal may be allowed.

What have been stated above are true to the best of my knowledge, and belief.

Sri.S. Sudheer, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. I have gone through the records submitted at the time of hearing. It is found that the entire alleged aspects are supported with documentary evidences and these are randomly checked. So there is no evasion of tax in the above matters. The amount of Rs.2980/- under

miscellaneous income not proved with any evidences, and in the case of one bill dated.04.05.2016 is not accounted. Hence the assessing authority has to be levied tax for these two aspects. The appellant/authorized representative submitted whole documents in connection with the offence stated in the assessment order except the above referred item. Considering the facts of the case the assessing authority has to cross verify the above evidences and accept the same on merit and re-do the assessment according to law. The appellant shall produce the documentary evidences before the assessing authority within 15days of receipt of this order. The assessing authority is directed to modify the order as discussed above. In the result the appeal stands allowed. 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, Cherthala/File