

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

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

<b>Date of order</b>	<b>:-</b>	<b>12.02.2020</b>
<b>Appeal no</b>	<b>:-</b>	<b>KVATA(ALPY)150/19</b>
<b>From the order of the</b>	<b>:-</b>	<b>AIT&amp;STO, Alappuzha</b>
<b>Year of assessment</b>	<b>:-</b>	<b>2011-12</b>
<b>Name of appellant</b>	<b>:-</b>	<b>Sri.Shahul Hameed Naina, M/s.Nainas Trust Lime Industries, Ponnad P.O., Mannancherry,Alappuzha</b>
<b>Instituted on</b>	<b>:-</b>	<b>17.06.2019</b>
<b>Date of hearing</b>	<b>:-</b>	<b>21.01.2020</b>

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**Present for appellant:-Sri.V.K. Mukundan Nair, Sales Tax Practitioner**

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appeal filed against the assessment order of Agrl. Income Tax & State Tax Officer, Alappuzha, (Order No.32041323314/11-12 dated.17.06.2019) is challenged here. The assessing authority has completed the assessment based in the absence of records to ascertain the closing stock variation as per accounts with that of actual verification of physical stock. Since documentary evidences were not produced to prove the correctness of the conceded closing stock the original assessment was restored. Aggrieved by the above order, the appellant raised the following grounds.

The appellant society is engaged in the manufacture of Lime. It has purchased raw lime shell locally. Consumables like coconut shell and coke were also purchased for processing. Since coke is fully exempt it will not reflect in the closing stock inventory filed for 2011-12. The allegations leveled against the appellant society is the failure to concede the value of closing stock pertaining to coke. Scrutiny of the records will prove that the amount of Rs.21,06,000/- represents the purchase turnover of coke not exigible to tax. The appellant society could not avail the opportunity

afforded by the assessing authority since the authorized representative of the appellant company was laid up. The assessing authority has completed the assessment *exparte* which was challenged in appeal stating as follows.

1. The assessing authority has not afforded effective opportunity to the appellant society to prove the claim. He has therefore violated the principles laid down by the High Court of Kerala in the following case.

*2010(3) KHC 299 Suzion Infrastructure Service Ltd Vs Commercial Tax Officer (WC), Ernakulam. 35 VST 451.*

2. The order of Assessment is highly arbitrary and excessive.
3. The assessing authority ought to have found that the appellant society has conceded the sales turnover of coke amounting to Rs.22,50,000/- in the returns filed for the year 2012-13. Copy of the Annual Return is herewith attached for kind reference.
4. The assessing authority is not justified in making best judgment assessment without observing procedural formalities as held by the High Court of Kerala in *K.S. Shamon Vs. State of Kerala (2016) 88 VST 186 (Ker); (2015) 5 KHC 318 and Suzion Infrastructure Service Ltd Vs. Commercial Tax Officer (W.C), Commercial Taxes, Ernakulam (2010) 35 VST 451 (Ker); (2010) 3 KHC 299*. He has also failed to follow the instructions issued by the Commissioner Commercial Taxes in *Circular No.27/2015*.
5. The interest levied on entire tax is unjust and illegal since the appellant has no liability to pay tax U/s.31 (5) of the Act in respect of estimated turnover. To make the appellant liable for interest provisions of Sec.31(5) should be applicable and to apply Sec.31(5) there should have been default on the part of the appellant in paying the tax within the time prescribed in the Act. This argument is raised in view of the decision reported in 63 VST 136 (Ker) M. Abdul Azeez Vs Commercial Tax Officer. In as much as real escape of turnover and tax can't be established in respect of added portion

of turnover, levy of interest thereon is unjust in view of the dictum laid down in 18 KTR 414 (KER) State of Kerala Vs Western India Cosmetics & Health Product.

The Assistant Commissioner in Order No.KVATA(ALPY) 186/17 dated.29.07.2018 has modified the assessment with direction to complete the assessments after affording sufficient opportunity to the appellant to prove the contentions raised in the grounds of appeal. Though documentary evidences were produced before the assessing authority original assessment was restored against which the following argument are raised.

1. The assessing authority has restore the assessments violating the provisions of the Sec.3 (4) of the Act as well as the judicial pronouncements as detailed here under.

The position of law in this regard is well settled through various rulings of the Hon'ble High Courts and the Apex Court. Such action would amount to judicial indiscipline as held by the Hon'ble Supreme Court in Union of India Vs. Kamalakshi Finance Corporation Ltd. Reported in AIR 1992 SC 711, CCE Flok India AIR 2000 SC 2484. Strongly deprecating the approach of the statutory authorities in disobeying the orders of the Courts or sitting in judgment over the same by erroneous interpretation, the Apex Court observed as under:

“The High Court has, in our view, rightly criticized the conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles

of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. **The mere fact that the order of the appellate authority is not “acceptable” to the department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court.** If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws”.

In CCE Vs. Flock (India) AIR 2000 SC 2484 the Apex Court has observed as under:

“An order of appellate authority is binding on the lower authority who is duty bound to implement the order of the superior authority. Refusal to carry out the directions will amount to denial of justice and destructive of one of the basic principles in the administration of justice based on hierarchy of authorities”.

2. The assessing authority has failed to consider the letter dated.24.01.2019 and the certificate dated.30.01.2019 issued by the Chartered Accountant.
3. The assessing authority has failed to consider the request dated.25.06.2019 with regard to the permission to revise the closing stock inventory for 2011-12.

In the circumstances stated above it is humbly requested that the assessing authority may be directed to pass fresh orders based on valid documents and to grant permission to file revise the closing stock inventory for 2011-12.

Sri. V.K. Mukundan Nair, Sales Tax Practitioner, appeared and heard the case and a detailed argument note submitted as follows.

The appellant Trust has purchased raw lime shell and produced burnt lime. Finished products were sold locally and interstate as detailed below.

Local Sale Rs.46,03,260

Interstate Sale Rs. 90,000

Rs.46,93,260

It has uploaded the closing stock worth Rs.4,44,000/- in respect of the following items.

Sl.No.	Commodity	Quantity	Rate	Value
1	Lime Shell	65 MT	3600	234000
2	Waste Lime Shell	20 MT	3500	70000
3	Burnt Lime Shell	10 MT	6000	60000
4	Coconut Shell	10 MT	8000	80000

**Total Value = 4,44,000**

Conceded turnover as per return is exclusive of the value of charcoal for Rs.21,06,000/-. Being exempted goods value thereof has not been included in the uploaded statements.

Based on the annual return, form 13A etc. the assessing authority has completed the assessment for 2011-12 determining the taxable turnover at Rs.21,06,000/- as detailed below.

Total sales conceded : Rs.46,93,260.00

Add: Suppressed sale detected as  
above describe : Rs.21,06,000.00

Total Sales turnover determined : Rs.67,99,260.00

Less: Turnover already assessed : Rs.46,93,260.00

Balance Taxable turnover : Rs.21,06,000.00

Due to circumstances beyond control of the appellant trust reply to the notice under Section 25(1) could not be filed. Accordingly final assessment was completed ex-parte.

Appellant trust has preferred appeal before the Assistant Commissioner (Appeal) assailing the impugned orders. At the time of hearing the authorized representative has produced audit report, bills etc. and evidences to prove that the conceded purchase as per accounts is inclusive of the purchase of charcoal exempt from levy of tax. Considering the merits and facts of the case that appellate authority has set aside the assessment with direction to pass orders affording opportunity to the appellant trust.

In response to the notice the secretary has produced books of accounts and the certificates obtained from the Chartered Accountant stating that closing stock furnished in Form No.13A is inclusive of the value of Charcoal. Copy of the certificate is herewith attached along with connected records. But the Assessing authority has restored the assessment stating that the dealer appeared before me and produced only certain purchase bills in original as documentary evidences. He is silent about the certificate issued by the Chartered Accountant wherein he has stated as follows.

***“This is to certify that the value of closing stock furnished as per our report in Form No.13A is Rs.25,50,000/- and which has been arrived at after taking into account of the purchase of materials as well as Charcoal effected from unregistered dealers which were reflected in the return filed by the assessee”.***

The assessing authority has no case that the appellant trust has neither purchased nor consumed Charcoal. He could not detect any unaccounted purchase of raw material including exempted items. No unaccounted sales were also established. Evidently the assessing authority has failed to pass speaking orders violating the principles laid down in *Madhya Pradesh Industries Ltd. Vs. Union of India AIR 1966 SC 671*. In that case the court has held as follows;

A speaking order is an order passed after applying one's mind to the issues, facts involved and giving the reasons for arriving at the decision. Speaking orders also means the quasi-judicial authorities must record the reasons for arriving at the decision after considering all relevant submissions. It is one of the settled principles of administrative law that taxation authorities are bound to pass speaking orders. The assessment orders to be passed should be self-explanatory, covering all the points. It is very necessary that a proper speaking order has to be passed and that the conclusions arrived at be supported by a process of logical reasoning and justification. Many a times courts have struck down the non-speaking orders passed by taxation authorities, as a non-speaking order is no order in the eye of law. Even the penalty orders must be speaking orders in the proper sense.

The Supreme court in Madhya Pradesh Industries Ltd. Vs. Union of India AIR 1966 SC 671 delivered on August 16, 1965 has held that "the condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. It gives satisfaction to the party against whom the order is made".

The assessing authority has failed to furnish information even under the RTI Act.

In view of the fact and circumstances stated above estimation of taxable turnover at Rs.21,06,000/- in highly arbitrary and excessive. Reduction of addition is prayed for if the request for acceptance of accounts cannot be entertained.

Heard the case. I have gone through the case and it is found that the arguments of the authorized representative has some force, because the assessing authority is not justified in restoring the assessment ignoring the certificate issued by the Chartered Accountant wherein he has stated that ***"this is to certify that the value of closing stock furnished as per our report in Form No.13A is Rs.25,50,000/- and which has been arrived at after taking into account of the purchase of materials as well as Charcoal effected from unregistered dealers which were reflected in the return filed by the assessee"***.

The Assessing Authority could not establish that the appellant trust has effected any unaccounted purchase or production of burnt lime. Misclassification has also not been detected or pointed out. Similarly the orders passed by the assessing authority cannot be termed as speaking orders. Even the details of purchase bills produced for verification were not divulged. The appellant trust has remitted Rs.39169/- towards the dues for 2011-12.

In view of the facts and circumstances of the case I am of the considered view that the taxable turnover determined is excessive. Hence request for reduction of turnover deserves merits. In the result I direct the assessing authority to refix the total turnover by adding 10% of the conceded turnover as per accounts. He will refix the taxable turnover deducting the turnover as per self assessed return filed for 2011-2012. 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 AIT&STO, Alappuzha/File