

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	17.02.2020
Appeal no	:-	KVATA(ALPY)242/19
From the order of the	:-	State Tax Officer, 2nd Circle, Alappuzha
Year of assessment	:-	2015-16
Name of appellant	:-	M/s.Trinity Global, West of Pictu Iyear Junction, Cullen Road, Alappuzha
Instituted on	:-	07.11.2017
Date of hearing	:-	21.01.2020
Present for appellant	:-	Sri.V. Devananda Narasimham, Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, 2nd Circle, Alappuzha, Order No.32040664749/2015-16 dated.07.11.2017. The assessment completed based on the issue, the appellant dealer has not filed credit note along with the declaration and statements for discount received and low gross profit rate. Hence the assessing authority rejected the claim of discount amount and added 10% gross profit on discount received on purchase and levied tax plus interest. Aggrieved by the order, the dealer filed an appeal and defend the case on the following grounds.

1. The appellant is a Partnership firm, registered dealer under KVAT & CST Acts on the rolls the State Tax Officer, 2nd Circle, Alappuzha with TIN No.32040664749 and a wholesale dealer in white goods without a show room.
2. The assessment for 2015-16 was completed U/s.25(1) of the KVAT Act alleging that appellant had sold commodities lower than purchase price as evidenced from trading, profit and loss account. Discount received on purchases by way of credit notes Rs.60,28,930-25/- shown in trading account assessed by adding 10% Gross Profit thereon relaying on Explanation VII to Section 2(iii) of the KVAT Act, demanded Rs.9,23,810/- as tax and Rs.1,75,524/- as interest. Appellant filed a detail reply on the basis of the dictum lay down by the Apex Court simply typed in the assessment order without rebutting it in the quasi-judicial manner on merit.
3. According to monthly & annual returns e-filed, appellant had disclosed a sum of Rs.39,90,47,737/- & Rs.38,08,48,750/- as Sales & Purchase turnover respectively during the year 2015-16. ***It had***

remitted a sum of Rs.27,38,320/- as net tax as provided U/s.16 of the KVAT Rules during the year 2015-16. The difference between purchases & sales turnover conceded in the annual return shows a gross profit of Rs.1,81,98,987/- and therefore, allegation regarding sale of goods lower than purchase value is illegal, unbelievable and unsustainable in all respect.

4. On a close scrutiny of the facts and circumstances of the issue, it is analyzed that **closing stock valuation has been made on purchase rate or market rate whichever is lower.** Now, it is the trend in the market especially in electrical, electronic, consumer products that no stability in its purchase or sale price. It shows down fall in its cost every day for the main reasons to compete with China products and online shopping services of multinational companies like Amazon, Snap deal and Flip Kart etc., which offers 40 to 50% discount on payment on delivery of goods at the door steps of the customers. A dealer who conducts a small trading concern having a sales turnover of 10 to 25 Crore per year could not be able to compete with such on line shopping service providers who is forced to sell their stock even at a purchase cost in order to avoid huge loss. Launching of latest or new models with latest technology or features and low price attract customers to procure it. Thus, stocks available with the appellant in respect of those products became old model and stains devaluation or loss. These are the few reasons to sustain losses. **Nobody can prevent such stagnation in selling price in the market.** Moreover, evaluation of closing stock as on 31.03.2016 has been adopted on an accounting principle of “**purchase rate or market rate whichever is less**”. However, it is clear from payment of tax that appellant had sold goods at a rate higher than purchase value.
5. The assessing authority had demanded interest on assessed tax from the end of relevant assessment year from 01.04.2016 to 31.10.2017 @ 1% per month. The order was passed on 07.11.2017 and served it on 18.11.2017. Hence, liability to pay interest arises only after expiry of time specified in the demand notice and not from the end of the assessment year U/s.31(5) of the KVAT Act, which is reiterated by the jurisdictional Hon’ble High Court of Kerala in **Hotel Doubloon Vs Assistant Commissioner & Others (2014) 12 KTR 358 (Ker)** and Hon’ble Supreme Court in **Bhai Jaspal Sing & Another Vs The Assistant Commissioner & Others (2011) 19 KTR 255 (SC)** and therefore demand of interest as per assessment order is liable to be deleted.

6. This is an assessment challenged in view of the Constitution (101st Amendment) Act, 2016 under Article 226 of the Constitution of India wide WPC 19700/18 dismissed with a direction to avail statutory remedy. Heavy stake holders filed Writ Appeal against the Common judgment passed by the single bench of this Hon'ble Court, which is pending for orders. In the absence of finality in this aspect, the appellant is disputing the matter in this forum also.

In the above circumstances, it is prayed that the appeal may be allowed with a direction to modify impugned assessment within a time limit to be fixed in the interest of equity and justice.

Sri.V. Devananda Narasimham, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. I have gone through the arguments from the learned Advocate. The authorized representative argued that the appellant had filed a detailed reply on the basis of the dictum lay down by the Apex Court simply typed in the assessment order without rebutting it in the quasi-judicial manner on merit. It is significant to note that the decision of Hon'ble High Court of Kerala in **Priya Agencies Vs Commercial Tax Officer (2008) 16 KTR 287 and [WPC No.9931 of 2008 dated.03.04.2008]**, clearly explain that if the declaration obtained from concerned parties the claim shall be allowed. In this case the the appellant/authorized representative produced credit note with declaration from the seller dealer and relevant records in connection with the offence pointed out. I have perused and randomly checked, the above fact is cleared from the records issued by the supplier. Considering the above, the assessing authority verify the documents and allowed the same on merit. The appellant shall produce the documents before the assessing authority within 30days of receipt of this order. 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, 2nd Circle, Alappuzha/File