

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	17.02.2020
Appeal no	:-	KVATA(ALPY)243/19
From the order of the	:-	State Tax Officer, 2nd Circle,Alappuzha
Year of assessment	:-	2015-16
Name of appellant	:-	Trinity Global, Kavalakkal Building, Cullen Road, Pitchu Iyer Junction, Alappuzha
Instituted on	:-	13.12.2018
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.13.12.2018. The assessing authority completed the assessment based on OR file received from Intelligence Wing. The assessing authority estimated the suppressed turnover, added back equal amount for probable omission and suppression and levied tax plus interest. Against the order, the appellant/ dealer 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) An assessment for the year 2015-16 was again re-opened U/s.25(1) of the Act, solely based on a penalty proceeding passed U/s.47(6) of the KVAT Act, disputed in this appeal. The Intelligence Officer, Squad No.1, Alappuzha, converted security deposit into penalty vides preceding No.OR.307/15-16 dated.30.04.2018, against which appellant filed an appeal on 01.10.2018 before the 1st appellate authority, the Assistant Commissioner, Alappuzha. While it is pending, the assessing authority had completed an assessment based on the same OR file 307/15-16by adding such turnover estimated by the Intelligence Wing along with an equal addition for

probable omissions and suppressions U/s.25(1) of the KVAT Act, 2003 vides Order No.32040664749/2015-16 dated.13.12.2018 demanding tax and interest.

- 3) While so, the appeal filed against penalty order was heard and allowed by an Order No.KVATA(ALPY) 273/18 dated.22.05.2019 by the Assistant Commissioners (Appeals), Alappuzha, directing to refund security deposit, a copy of the order is enclosed for perusal and record. Since, an assessment based on the penalty proceedings was completed before passing such an appellate order, it is necessitated to file an appeal against such assessment order dated.13.12.2018 for the year 2015-16 to setaside demand created by the assessing authority. Therefore, appellant filed this appeal belatedly in order to setaside the assessment order passed on 13.12.2018 for 2015-16.
- 4) The assessing authority has demanded interest on assessed tax from the end of the relevant assessment year from 01.04.2016 to 31.12.2018 @ 1% per month. Liability to pay interest arises only on 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.
- 5) However, it is submitted that the assessment proceeding for the year 2015-16 passed on 13.12.2018 solely based on OR file is now infructuous in view of the appellate Order No. KVATA(ALPY) 273/18 dated.22.04.2019 issued by the Assistant Commissioner (Appeals), Alappuzha. Hence, it is prayed that this appeal may be allowed by quashing assessment order dated.13.12.2018 passed on the basis of penalty proceedings U/s.47(6) in OR file 307/15-16 dated.30.04.2018 for the year 2015-16 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. In this case the estimation based on the penalty order is not sustainable because the appellant had preferred an appeal against the penalty order and disposed in favour of the appellant as allowed Vide Order No.KVATA(ALPY)273/18 dated.22.05.2019. In the facts and circumstances of the case, appeal stands allowed. Order accordingly.

Result: Allowed

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