

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

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

<b>Date of order</b>	<b>:-</b>	<b>03.02.2020</b>
<b>Appeal no</b>	<b>:-</b>	<b>KVATA(ALPY)244/19</b>
<b>From the order of the</b>	<b>:-</b>	<b>State Tax Officer-I, Harippad</b>
<b>Year of assessment</b>	<b>:-</b>	<b>2011-12</b>
<b>Name of appellant</b>	<b>:-</b>	<b>Smt.Chandrika Das M/s.Velloor Agencies Mancompu</b>
<b>Instituted on</b>	<b>:-</b>	<b>29.11.2017</b>
<b>Date of hearing</b>	<b>:-</b>	<b>29.01.2020</b>
<b>Present for appellant</b>	<b>:-</b>	<b>Sri.Ganesh. S. Pai, Advocate</b>

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appeal filed against the assessment order of State Tax Officer-I, Harippad, Order No.32040745705/2011-12 dated.29.11.2017. The assessment completed based on absence of records in commission received for an amount of Rs.1158615/-. The assessing authority estimated the turnover, added back the same in the assessment and levied tax, cess plus interest. Aggrieved by the order, the appellant/dealer defend the case on the following grounds.

1. The appellant is a registered KVAT dealer on the rolls of the State Tax Officer-I, (Commercial Tax Officer), Harippad purchase and sale of Metallic products not coming under 3<sup>rd</sup> schedule and branded coffee, tea and its mixes, e-filed annual return conceding total and taxable turnover of Rs.1,95,46,625.24/-, remitted tax due thereon under rule 16 of the KVAT Rules, 2005 after adjusting input tax credit.
2. The assessment for 2011-2012 was completed U/s.25(1) of the KVAT Act alleging that commission received against purchases will form part of taxable turnover as per Explanation VII of Section 2(iii) of the KVAT Act @ 13.5%. The Appellant purchased goods from intra and interstate, selling such goods at a price higher than purchase value as evidenced from annual return, Trading, Profit and Loss account and audit report uploaded in KVATIS for the year 2011-12.
3. On a perusal of annual return for the year 2011-12 itself, it reveals that sales turnover conceded Rs.1,95,46,625.64/- is higher than

purchase value disclosed Rs.1,84,70,975.52/- without considering opening and closing stock, remitted tax in accordance with Rule 16 of the KVAT Rules Rs.1,75,416/- excluding IPT credit on capital goods Rs.34,606/-, conceded a gross profit of Rs.8,70,502.34/- without considering commission/discount receipts shown in Profit and Loss accounts.

4. The authority below demanded interest on assessed tax for the year 2011-12 with effect from 01.04.2012 @ 12% per annum. It is an action contrary to the statute U/s.31(5) of the KVAT Act. It is pertinent to note that tax demanded under assessment order is an assessed tax, interest can be charged on expiry of due date specified in demand notice.

Hence, demand tax on discount/commission received and levy of interest on assessed tax from the end of the assessment year may declare as illegal and set aside the assessment in the interest of justice.

Sri.Ganesh. S. Pai,Advocate, appeared and heard the case and argued based on grounds of appeal and additional argument note submitted.

1. Though the Appellant submitted all the necessary clarifications and explanations with the support of relevant Purchases Registers, Sales Register, Return copies and Audited Trading, Profit and Loss statement, the Assessing Authority had erred in completely ignoring the submissions made by the Appellant.
2. The assessing authority ought to have considered the fact that any action under Section 25 (1) of the KVAT Act, 2003 can be taken against the appellant only when it is proved that there is clear suppression of turnover or tax evasion. The assumption and presumptions should not be the basis for arriving at the conclusion that the Appellant has evaded tax due to the exchequer of the Government and in this regard, the Appellant rely upon the Judgment of the Hon'ble High Court of Kerala in the case of Classic Marbles Vs. State of Kerala reported in [(2009) 25 VST 295 (Kerala)]. The **Hon'ble Court held that in best judgment assessment the assessing authority is expected to assign valid reasons, firstly, for rejecting the books of accounts and the return filed by the assessee. Secondly, even the best judgment assessment is an assessment and therefore, the assessing authority, on mere assumptions and**

**presumptions, is not expected to make additions to the conceded turnover and also to the conceded gross profit in the return filed.**

3. The Assessing Authority ought to have understood the fact that, during the year 2011-2012, the appellant had received trade commission for an amount of Rs.11,58,615/- from his suppliers of goods. It is normal practice in the business that, the dealers would provide various kinds of commission to their customers to boost the sales. During the year 2011-2012, the appellant had received commission from M/s.Hindustan Unilever Ltd, Trichur for an amount of Rs.11,58,615/-. The appellant had properly accounted these commission in his books of accounts and reported it as indirect income in the Trading, Profit and Loss Account. All these discounts were properly routed through the purchase invoices issued by M/s.Hindustan Unilever Ltd, Trichur.
4. The Assessing Authority ought to have understood the fact that Honorable **Supreme Court in IFB Industries Vs State of Kerala**, (2012) 4 SCC 618) held that various kinds of discounts and commission provided in the normal trade practice of business is qualified for deduction.
5. The Assessing Authority also ought to have considered the fact that, appellant has not sold any material at a price which is lower than his purchase price. It is submitted that in the VAT Regime, whatever may be the collection of VAT on earlier sales has no impact on the final tax component of the goods and the State would get the tax charged in the tax invoice issued at the time of sale to the end customer. As the appellant has not sold any items at a lower price than the purchase price, there is no tax evasion and loss of revenue to the State Exchequer.
6. The Assessing Officer erred in levying interest for the alleged non-payment of tax. There was no short payment of any tax. All due tax has been fully and duly paid. That further and in any event, the purported computation of such interest is wholly arbitrary and not sustainable.
7. Appellant producing herewith the declaration given by the supplier of the appellant stating that he has not taken any input tax credit on the credit notes issued by him towards trade commission.

Heard the case. The assessing authority stated in the assessment order that there is no specific entry in the invoices and no supporting documents seen produced at the time of hearing to prove that the amount received is Trade Commission. The authorized representative argued that the appellant purchased goods from intra and interstate selling, such goods at a price higher than purchase value and it is evident from the annual return, Trading Profit and Loss account and audit report, invoices copy declaration/certificate from the supplier dealer and relevant records submitted at the time of hearing. On perusal of the records, it is clearly mentioned that the purchase amount is for Rs.18470975/- sale is for Rs.19546625/- it is understood that the business is profitable. In this case many of the decisions in Hon'ble Supreme Court and High Court about the discount case, hence it is squarely applicable in this case. In the circumstances above, the assessment order passed by the assessing authority is irregular and unwarranted. Considering the facts and circumstances above, the 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-I, Harippad/File