

FORTY-SEVENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2016-2019)**

TWENTY SEVENTH REPORT

(Presented on 12th June 2018)



**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM**

2018

FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2016-2019)**

TWENTY SEVENTH REPORT

On

**Action Taken by Government on the Recommendations
contained in the 110th Report of the Committee on
Public Accounts (2008-2011)**

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(2016-2019)

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Smt. S. Shahina, Joint Secretary

Shri P. P. Shahnawas, Deputy Secretary

Shri A. Jafar Khan, Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the Twenty Seventh Report on Action Taken by Government on the recommendations contained in the 110th Report of the Committee on Public Accounts (2008-2011).

The Committee considered and finalised this Report at the meeting held on 7th June, 2018.

Thiruvananthapuram,
7th June, 2018.

V. D. SATHEESAN,
Chairman,
Committee on Public Accounts.

REPORT

This report deals with the action taken by Government on the recommendations contained in the 110th Report of the Committee on Public Accounts (2008-2011).

The 110th Report of the Committee on Public Accounts (2008-2011) was presented to the House on 22nd March 2010. The report contains 12 recommendations relating to Taxes Department. The report was forwarded to the Government on 29-3-2010 to furnish the Statement of Action Taken on the recommendations contained in the Report and the final reply was received on 27-4-2016.

The Committee examined the Statements of Action Taken in the meetings held on 18-12-2013, 6-1-2016 and 15-12-2016 and decided not to pursue further action on the recommendations, in the light of the replies furnished by Government. Such recommendations and Government replies are incorporated in this Report.

TAXES DEPARTMENT

Recommendation

(Sl. No. 1, Para No. 16)

The Committee was informed at the time of examination of audit paragraph that even though Sales Tax Department had its own internal audit wing, its achievements were not commendable. The wing was not taking any earnest efforts to monitor whether the errors pointed out by the Accountant General had cropped up in the offices other than those test checked by Audit. Since such an inaction would render the very purpose of audit ineffective, the Committee urges the department to make it mandatory that the observations of the Accountant General are being conveyed to all the officers under it and to take befitting action to tide over the lacunae which are seen repeated in the observations put forth by the Accountant General.

Action Taken

At present the internal audit wing of the Department is strengthened under the head of Deputy Commissioner (I.A). The Assistant Commissioners and

5 Commercial Tax Officers are conducting effective audit in selected offices with specific guidelines. Also, report on Comptroller and Auditor General 2007 and 2008 has been forwarded to Deputy Commissioner (I.A.) and all District Deputy Commissioners with directions to discuss the irregularities pointed out by the Accountant General (A) in the monthly conferences so as to guard against occurrence of such irregularities repeatedly.

Recommendation

(Sl. No. 2, Para No. 17)

The Committee notices that the Secretary, Taxes Department had informed that pursuant to the observation of the Accountant General on tax exemption of Rs. 1.16 crore to the manufacturer of moulded furniture, action had been initiated to cancel the assessment in respect of SSI unit in Thrissur. The Committee insists to know whether assessment had been done afresh and the amount realized from the assessee unit.

Action Taken

The original assessments in respect of M/s Western Plastic Processing Co. (P) Ltd. for the year 2001-02, 2002-03 and 2003-04 were completed as per Order No.25143053/01-02 to 03-04 of the Commercial Tax Officer, 4th Circle, Thrissur dated 24-12-2002, 24-7-2004 and 25-5-2005 respectively. The tax liability for the above years was adjusted towards the eligible SSI exemption. While auditing the files, AG has pointed out that the exemption is available only for manufacturing own products, but not for brand name goods owned by another company. As the assessee company is manufacturing Cello branded goods, the exemption given to the company is not in order. Hence as per Order No. R1.42198/08 dated 30-4-2009 the Deputy Commissioner, Thrissur set aside the above original assessment and remanded back for fresh assessment.

Aggrieved by this order, the assessee preferred appeal before the Sales Tax Appellate Tribunal, Palakkad. In the meantime, the State level Committee for Sales Tax exemption on large and medium scale industries as per their letter No. FC-4/3439/2004 dated 1-12-2009 has given the following clarification:

- (i) "In the Government Order sanctioning Sales Tax exemption, GO.(P) No.155/93/10 dated 3-11-1993 and SRO. No.1729/93 there is no mention as denial of Sales Tax exemption for the manufacturing of products under the brand names of another company.
- (ii) They have set up factory, installed machinery and actual manufacturing is taking place in the company.
- (iii) This is only a marketing arrangement and all the products are sold within the State of Kerala.
- (iv) The Court verdict mentioned in the letter from the AG relates to Central Excise Rules and not KGST Rules. Hence the exemption granted by the DIC to the Company in order."

The Tribunal as per their order No.TA.373/09 dated 18-12-2009 set aside the order of the Deputy Commissioner, Thrissur and remanded the above case for fresh assessment.

Under the above circumstance, assessments for the year 2001-02, 2002-03 and 2003-04 were completed afresh and adjusted the tax dues to the eligible SSI exemption. The tax due on the sale of raw materials for the year 2002-03 and 2003-04 amounting to Rs. 32,925 and Rs.747 respectively were collected from the assessee.

Copies of following documents are enclosed : (Annexure)

1. Copies of original assessment order.
2. Copy of appellate order of AAC, Thrissur for the year 2002-03 assessment order.
2. (a) Copy of revised assessment order.
3. Copy of appellate order of AAC, Palakkad against the revised assessment order for 2002-03.
4. Copy of Suo motu revision order by the DC, Thrissur.
5. Copy of appellate order by the STAT, Additional Bench, Palakkad.

6. Copy of Remanded assessment order for 2001-02 to 2002-03.
7. Copy of Appellate order of the DC(A), Ernakulam against the revised order (remanded) for 2002-03.
8. Revised order dated 25-6-2014 for 2002-03.
9. Copy of chalan, being the proof for remittance of tax due.

Recommendation

(Sl. No. 3, Para No. 18)

As far as the observation on short levy of tax of Rs. 18.45 lakh towards processing of paper and carbon reels into computer forms is concerned, the Committee seeks to know the action taken by the Department to vacate the stay granted by the High Court and to retrieve the money from the firm.

Action Taken

The case relates to M/s Sensex Computers, CTO, 1st circle, Thalassery. While auditing the file it was observed that the paper and carbon purchased in reels had been converted into computer stationery by punching holes on either sides and inserting carbon the same had been transformed into a computer continuous stationery and sold under the brand name 'Senssex', as such the same had been treated as first sale.

In reply to the Accountant General vide letter dated 23-3-2006, the Commercial Tax Officer had stated that the raw materials and the end products are the same and hence no manufacturing process is involved and exemption was given on that basis of conclusion. But the Accountant General has not seen accepted the contention by the Department.

In the light of the audit objection, notice had been issued to the assessee to revise the assessments for the year 2003-04 and 2004-05 under Section 19 of the KGST Act. Notices were duly served and the assessee has approached the Hon'ble High Court of Kerala in WP(C) 25000/07 and stay was being processed in different occasion till the final judgement of the appeal.

As per the Judgement of the Hon'ble High Court of Kerala dtd: 17-12-2010 (Annexure), the Writ Petition was disposed of directing the second respondent, (CTO, 1st Circle, Thalassery) to consider and finalise the proceedings pursuant to Exts. P4 and P5 (Pre assessment notices based on Accountant General's direction) taking note of the explanation of the petitioner as borne by Exts. P6 and P7 and also the contents of Ext. P8 verdict passed by the Court.

As per the reply filed by the dealer dated 9-8-2007 (Ext. P6 & P7) the assessee objected the levying of tax on computer papers as referred in Accountant General's direction and they put forth certain court decisions similar to the case of assessee which had to be ordered in favour of such goods having no difference in the raw materials used. This was also confirmed by the verdict passed in OP 37/69 of 2002 dated 13-10-2005. (Ext. P8)(Annexure).

On verification of the purchase bills, it is seen that during the years 2003-04 and 2004-05, the assessee purchased paper reels from M/s Tamil Nadu Print and Paper Ltd., Kausika Enterprises etc. The purchases are of different gauge (e.g. Trident HBML, 80 Gsm, 38.1 cm, 70 Gsm 30.5, 58 Gsm, 76.2 cm etc.).

On verification of the sales bills it is found that they had sold paper in getting pieces and in different gauges on the requirement of the seller. (e.g. 15x12x1 part 70 Gsm, 10x12x1 part 70 Gsm, 15x12x3 part 60 Gsm, 10x12x3 part 80+60+60 Gsm. 10x12x1 part 80 Gsm).

Actually there is no manufacturing process involved in this case. The assessee is cutting the paper reels into various dimensions and inserting carbon for the use in computer printers and fax machines. No new material is formed.

As per the direction from the Hon'ble High Court of Kerala in WP(C) 25000 of 2007, the sales bills were verified and in the description part no name was prescribed. On verification of the copy of deed, the name 'Sensex Computer Forms' denotes the firm name.

In the circumstances explained above, it is requested to drop the case.

Recommendation

(Sl. No. 4, Para No. 19)

The Committee comprehends that certain firms after registering as small scale industrial units undertake further expansion works or investments thereby exceeding the maximum limit of Rs.3 crore in plant and machinery fixed by the

Ministry of Industry, Government of India. Thus even though the units cease to be small scale industries any longer, they continue to enjoy all the benefits exclusively extended to such units. Opining that such a state of affair should not be allowed to go uncontrolled, the Committee calls upon the department to take effective steps to ensure that the firms already registered as SSI units obtain prior sanction of the District Industries Centre before they intend to execute any further expansion or investment in plant and/or machinery. These units should be mandatorily made to file annual returns containing the details of the expansion or investments made towards such components. The Committee understands that the firm in question had approached the High Court against the reassessment done by the department. The Committee desires to be informed of the latest position of the matter.

Action Taken

The case mentioned in this para refers to M/s Paragon Rubber Industries 02-03 & 03-04. The Hon'ble High Court vide Order in WPC No. 37931 of 2007 (N) dated 15-9-2008 (Annexure) decided that the assessing authority cannot go beyond the certificate issued by the General Manager of District Industries Centre. According to the General Manager of District Industries Centre, Kottayam, M/s Paragon Rubber Industries situated at Kumaranaloor, Kottayam enjoys the statues of SSI during the year 2002-03 and 2003-04 as per the norms prescribed by the Government of India. Hence the WP(C) was allowed in favour of the assessee.

Further directions has been given to District Deputy Commissioners to take effective steps to ensure that the firms already registered as SSI units shall obtain prior sanction of District Industries Centre before they intend to execute any further expansion or investment in Plant and Machinery.

Recommendation

(Sl. No. 5, Para No. 20)

The Committee accepts the point of view of the Accountant General in the non-demand of Sales Tax from SSI units engaged in the conversion of field latex into centrifuged latex. Simultaneously the Committee opines that if the numerous Co-operative Rubber Marketing Societies working in our State are made accountable to pay tax for every items purchased and sold by them, they will

undoubtedly be pushed into huge financial crisis. Hence, the Committee impleads the Government to take careful measures to ensure that the Co-operative rubber marketing societies are not compelled to face the brunt of assessment of tax.

Action Taken

The recommendation of the Committee has been brought to the notice of the concerned for necessary consideration.

Recommendation

(Sl. No. 6, Para No. 21)

The Committee, at the time of witness examination had desired to have a copy of the judgement in the case relating to the conversion of fresh milk into milk products and witness had assured to furnish the same immediately. But the Committee is dissatisfied to note that the same had not been made available even after the lapse of many months. The Committee indicts the department for the lapse and insists to forward a copy of the judgement within no time.

Action Taken

Copy of the judgement in question in the case of Gujarat Co-operative Milk Marketing Federation Vs State of Kerala is enclosed. (Annexure)

Recommendation

(Sl. No. 7, Para No. 27)

The Committee to its discontent, notices that the internal audit wing of the Taxes Department has become a haven for the employees who are reinstated in service after suspension which accounted for the poor performance of the Wing. Even though such a situation was prevailing in the department for quite some time, the department has not taken any commentable steps to set things right. Although there is a vigilance wing to monitor the matters of revenue collection, it is only conducting incidental inspections and hence most of the offenders escape the clutches of law. Hence the Committee instructs the department to strengthen the internal audit wing by utilizing the service of experienced personnel from the Accountant General's office at the supervisory cadre without affecting the normal

promotion prospects of the employees in the Sales Tax Department. The Committee hopes that such steps would amplify the revenue collection in the department.

Action Taken

For the effective conduct of internal audit work a team of officials has already constituted in the office of the Commissioner, comprising of three Assistant Commissioners, Five Commercial Tax Officers and the team is now headed by a Deputy Commissioner. Now the employees who are reinstated in service after suspension are not posted in sensitive posts like Internal Audit Officers.

The 'Internal Audit Team' constituted in the Department is now conducting audit regularly and is functioning in an efficient and effective manner. Hence creation of an audit wing by utilizing the service of personnel from the office of the Accountant General at the supervisory cadre in the Commercial Taxes Department is found not necessary.

Recommendation

(Sl. No.8, Para No. 28)

The Committee understands that the department is proposing to file a Tax Revision Case (TRC) in the matter of loss of interest of Rs. 20.83 lakhs regarding purchase tax of old gold. The Committee seeks to know whether TRC has been filed and if so its later position.

Action Taken

The case relates to Smt. P. P. Alphonsa, M/s Josco Fashion Jewellery, Kottayam for the year 2002-03. Against the revised assessment order for the year 2002-03, the assessee filed appeal before the Deputy Commissioner (Appeals), Kollam. The DC(A), Kollam as per order No. STA 134 & 133 of 2006 dated 15-11-2006 directed the Assessing Authority to compute compounded tax after deducting the purchase turnover u/s 5A. Against the order of the Deputy Commissioner (A), the State filed second appeal before the Hon'ble STA Tribunal (Addl Bench), Ernakulam. The Tribunal upheld the order of the DC(A) vide Order

No. RA 62&65/07 dated 1-3-2008. Against this, State filed Revision Petition (RP No. 336/2011) before the Hon'ble High Court of Kerala which was allowed reversing the order of the Tribunal and the 1st Appellate Authority, thereby restoring the order of the Assessing Officer. The review petition filed by the assessee also was dismissed by the Hon'ble High Court. The assessment for the year 2002-03 was completed as per the directions contained in the revision order dated 30-3-2013. Copies of the following supporting documents are enclosed: (Annexure)

1. Copy of revised assessment order dated 30-3-2013.
2. Copy of appellate order by the Deputy Commissioner (Appeals), Kollam dated 15-11-2006.
3. Copy of Tribunal Order.
4. Copy of Revision petition order of Hon'ble High Court of Kerala.
5. Copy of chalan for tax remittance.

Recommendation

(Sl. No. 9, Para No. 38)

The Committee is displeased to find that the Commissioner for Commercial Taxes had issued a clarification in October 1998 stipulating that while computing tax payable by any dealer who has opted for payment of compounded tax, purchase turnover of the preceding year under section 5A of KGST Act Should be exempted which was explicitly violative of the relevant provisions of the said Act. The Committee opines that even the Cabinet is incompetent to issue any clarification which is violative of the Act or Rules. Hence, the Committee urges the department to intimate in detail the circumstances which led to the issuance of such an incorrect clarification.

Action Taken

As per notification SRO.1727/93 as amended by SRO. 402/94 with effect from 1-4-1994, no tax is payable under section 5A on the purchase turnover of old ornaments for the year during which the dealer had opted for compositions. If the

tax payable by a dealer during the year in which he had opted for composition is assumed to include tax under section 5A also it will go against the spirit of the notification exempting the dealers opting for compounding from the payability of tax under section 5A.

The above position was also upheld by the Hon'ble High Court in its judgement in the case of M/s Mahila Jewellers in O.P.No.1650 of 2002 dtd. 16-12-2002. A copy of the judgement is enclosed for ready reference. (Annexure)

Recommendation

(Sl. No. 10, Para No. 39)

The Committee observes that while computing tax of three gold dealers who had opted for compounding system between 2000-01 and 2003-04, the assessing authorities had not reckoned the purchase turnover of old gold under Section 5 A of the Kerala General Sales Tax Act of the preceding year in each case thereby resulting in non demand of tax of Rs. 54.83 lakh besides interest of Rs. 17.20 lakh. The Committee calls for a detailed report on the action taken on each of the three cases.

Action Taken

This para refers to the following cases:

(1) Sri.P.A. Jose, M/s Josco Fashion Jewellers 2002-03

The short levy pointed out in this case is Rs. 46.36 lakhs (29.16 tax + 17.20 interest). Based on the audit enquiry, the final assessment for the year 2002-03 was completed as per order dated 10-9-2007. The assessee filed appeal and the Deputy Commissioner (A) as per order No. STA 709/07 dated 29-9-2008 allowed the appeal. Accordingly the assessment was modified vide order No. 21010269/02-03 dated 10-11-2008 by which the tax already paid was found to be in excess. Hence no dues are now outstanding against the dealer. The copy of following connected records are enclosed. (Annexure)

(1) Copy of appellate order by the DC(Appels) Kottayam dated 29-9-2008

(2) Copy of modified order dated 10-11-2008

(2) M/s P.T. Antony and Sons (2000-01 & 2001-02)

The Hon'ble High Court of Kerala has disposed the O.P. No. 1650/2002 (4) dated 16-12-2002 in the case of M/s Mahila Jewellers, Ernakulam Vs. Addl STO III circle, Ernakulam regarding compounding of gold jewellery as follows:

The liability under Section 5 A need not be taken in to account for determination of compounding fee for every year. The clarification issued by the Commissioner is consistent with Section 7 (1) (a) of the Act. Therefore the assessment to the extent of inclusion of Section 5A liability while determining compounding fee is vacated. The assessing officer is directed to demand tax on compounded rate based in the previous year's compounded tax. However he will ensure that while reckoning tax at compounded rate for first year, Section 5A, 5(b) liability conceded for previous year is taken as the basis.

Copies of the following connected documents are attached: (Annexure)

(1) Copy of Circular No.29/98.

(2) Copy of SRO. No.1090/99

(3) Copy of Hon'ble High Court decision in O.P. No. 1650/2002(u) dated 16-12-2002.

(3) M/s Saraswathy Jewellers (2002-03 & 2003-04)

The assessment in respect of the dealer was completed under Section 43 of the KGST Act, 1963 creating an additional demand of Rs. 114129. The entire amount with interest has been advised for Revenue Recovery on 20-10-2009. The entire amount was collected vide chalan No.45 dated 29-4-2010. Copy of the following connected enclosures are attached: (Annexure)

(1) Copy of modified assessment order.

(2) Copy of advice of RR Certificate and Requisition.

(3) Copy of collection particulars. (Copy of chalan for remittance of tax dues under RR)

Recommendation

(Sl. No. 11, Para No. 43)

The Committee desires to be informed of the outcome of the appeal pending before the Deputy Commissioner (Appeals).

Action Taken

Appeal No. 7188/05 filed by the assessee M/s Lakme Ltd., Ernakulam before Deputy Commissioner (Appeals), Ernakulam was dismissed on 25-4-2009. Against this, assessee filed appeal before Hon'ble Sales Tax Appellate Tribunal, Ernakulam.

Hon'ble Sales Tax Appellate Tribunal, Ernakulam as per order dated 26-8-2011 in TA. 638/2009 remanded the assessment for 1996-97 directing the assessing authority to return the disputed F form to the assessee and the assessee shall return the rectified F form within 4 months and assessing authority shall pass modified order according to law based on rectified F form submitted by the assessee. Notice is issued to the assessee to obtain F form for rectification. The assessee has already paid the amount as per Amnesty scheme as under.

1996-97

ST	38,31,094
SC	5,03,110
CST	1,22,274
Interest	5,55,361
Penalty	1,90,978
Interest due on penalty	36,286
Total	52,39,103

Copy of following documents are furnished: (Annexure)

- (1) Copy of order dismissing the original assessment order in appeal by Deputy Commissioner (Appeals), Ernakulam.
- (2) Copy of order of STAT Appellate order.
- (3) Copy of proof for payment of balance due of Rs.52 lakhs in Amnesty Scheme (Ch. No. 248 dated 27-7-2010)

Recommendation

(Sl. No. 12, Para No. 47)

The Committee insists to know whether the balance amount has since been realised.

Action Taken

The assessment dated 28-12-2005 in respect of M/s Royal Traders, Payyannur, 02-03 was revised vide order No. 35131749/03-04 dated 31-5-2006 by the Commercial Tax Officer, Thaliparamba. The appeal filed by the assessee was dismissed by the first appellate authority. The second appeal preferred by the assessee was allowed partly vide Order No. TA-97/07/25-9-2007 of the STAT, Kozhikode and the assessment was modified in the light of this order on 5-12-2007 and the demand was reduced to Rs. 58,340. Penalty was also reduced to Rs. 1,75,020 as per the revised penalty order issued in the light of Tribunal Order. The entire revised demand Rs. 2,33,360 (ST Rs. 58,340 Penalty Rs. 1,75,020) had been collected. There is no arrears outstanding against the assessee M/s Royal Traders, Payannur now. Hence there is no loss to the State.

Thiruvananthapuram,
7th June, 2018.

V. D. SATHEESAN,
Chairman,
Committee on Public Accounts.

Annexures

(Department Order to be filled in this form)

CENTRAL INDIRECT TAX AND SALES TAX DEPARTMENT

(Rule 15 and 16 of the Central Sales Tax Rules, 1955)

INDIRECT TAX OFFICER, THALORE, THIRUVARUR DISTRICT

DEPT: P.S. VIJAYA PARIKRAMA

Dated: 24.12.02

- 2514 R/53/01-02
1. Name of the assessee: M/s. Western Plastic Processing Co. (P) Ltd.
2. Nature of business: Plastic Knives, Combs
3. Place or places of business: Thalore, Thalour

Year of Assessment:

Rs.	P.
79,51,735	-
7,48,246	-
72,03,489	-
72,03,489	-

5. (i) Total turnover returned in form 85
- (ii) Turnover on which exemption is claimed
- (iii) Taxable turnover furnished
6. Taxable turnover determined by assessing authority (there may be turnover subject to different rates of tax separately)
7. Documents produced in support of the return: Day Book

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Budget, Stock register and Bills

Recd:-1. This Office Notice dated

2. Reply of the dealer dated

ORDER

M/s Western Plastic Processing Company (P) Ltd,
Thalore, Thiruvur filed annual return for the year 2001-02
declaring total exempted and taxable turnover of Rs. 79,51,735.00.
Rs. 7,48,246.00 and Rs. 72,03,489.00 respectively. The account
were called for and verified by me. The account do agree with
the return. The exemption claimed is in order as it represent
interstate sales for which separate assessment will be done.
The entire sales are supported by bills. The dealer is

B. S. S. S. S.

In maintaining daily stock register, production register etc. The account maintained by the dealer found as written in the ordinary course of the business. No irregularities noticed. The return and account accepted as correct and complete and the final assessment is completed as under.

Total turnover assessed	Rs.	79,51,735/-
Less exemption allowed	Rs.	7,48,236/-
Balance taxable turnover	Rs.	72,03,499.00
Rounded to	Rs.	72,03,500.00
Tax due at 12%	Rs.	8,64,420.00
Add. excise tax due at 15%	Rs.	1,29,663.82
Total	Rs.	9,94,083.82

Rounded to	Rs.	9,94,083/-
Net exemption allowable	Rs.	1,16,39,000/-
Balance c/o to next year	Rs.	3,06,44,937.00



ASST. COMM. OFFICER-I,
4th Circle, Thrissur.

By the officer

Copy subd to IAC, Thrissur

Copy to the file

(True Copy)

10/11/44
COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THRISUR

4331.

-II, 17th Cross, Thrissur.

Parasit P.S. Shankar

5-5-2005

2514 3053/01-02 (Revised number sec. 43)
Western Plastic Processing Co. (P) Ltd
Manufacturing of Moulded Paraffin
Thaikkattussery, Ollur.

3001-02

Assessment dated 26-12-2004

Request of the dealer dated 9-5-2005.

The assessment was completed on 26-12-2004 estimating
total and taxable turnover of Rs. 78, 51, 735-00 and Rs. 72, 03, 800/-
respectively for the year 2001-02 and 2002. Tax and AET Rs.
9, 04, 023-00. The assessee in his request dated 9-5-2005 stated
that the unit is registered under GST scheme and tax is to be
levied at 8% as per SLD, 1021/83 instead of 12% already levied.
Verification of the assessment records revealed that the

.....2



Handwritten signature
TAX OFFICER
THAIKKATTUSSERY

assessment is eligible for reduced rate of tax @ 8% being an SSI Unit. Therefore the assessment stands revised under sec. 43 KUST Act as detailed below.

Total turnover as per assessment	Rs.	79,51,735-00
Taxable turnover fixed	Rs.	72,30,800-00
Tax due @ 8%	Rs.	5,76,280-00
SSI due @ 1%	Rs.	38,442-00
Total tax due	Rs.	6,14,722-00
SSI exemption	Rs.	1,14,88,000-00
Balance C/o. to 1900-03	Rs.	1,08,76,278-00



[Signature]
 SOUL. JAMES POLAKOFF II,
 IVTH CLASS, THIRUVANANTHAPURAM
 FOURTH CIRCLE
 THIRUVANANTHAPURAM

To
 The Assessors.
 Copy sent to the I.C.; Thiruvananthapuram.
 & to the file.

Receipt Order
[Signature]
 28/1/03



COMMERCIAL TAX OFFICE
 FOURTH CIRCLE
 THIRUVANANTHAPURAM

GOVERNMENT OF KERALA

, IVth Circle, Thrissur.

Assessee : P. S. SANKARAN

24-7-2004

2514 3062/2002-03

Western Plastic Processing Company (P) Ltd
Manufacturing of Plastic Moulded Furniture
3/277 Pambattussery Road, Thekkott, Thrissur.

2002-03/05T

Rs. 20,41,559-78

Rs. 22,77,700-85

Rs. 63,888-83

Rs. 62,15,560-00

The annual return filed by the assessee disclosed a total, exempt and taxable turnover of Rs. 20,41,559-78, Rs. 22,77,700-85 and Rs. 63,888-83 respectively for the year 2002-03. The books of accounts produced in support of the return filed revealed the following sales.

..... 2

Handwritten signature/initials



Handwritten signature
28/6/04
COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THRISSUR

1 st sales (SSI exemption)	R. 4,68,82,816.24
3% Form 28 sales	R. 54,999.00
Second sales (N T)	R. 2,84,168.04

Total	R. 4,72,21,982.28
Gen-Vat (69,51,234-45+8,75,299.41)	R. 69,26,523.56
	R. 5,41,78,506.14
Tax collected	R. 2,201.07

Total turnover as per accounts	R. 5,41,50,707.21

The assessee claimed exemption on a turnover of R. 4,68,82,816.24 being SSI exempted sales. The claim is not in order. This turnover will be assessed to tax and tax due will be adjusted as per the eligibility of SSI exemption certificate produced.

The return filed and account produced cannot be accepted as correct and complete for the following reasons.

1. The assessee claimed exemption on second sales of R. 2,84,168.04. The assessee did not produce purchase bill of the goods to prove that tax has been suffered at the first sale point. Therefore the same will be disallowed and this will be assessed to tax at the rate of 12%.

2. As per the return and the declaration (Form 28) sales turnover covered by Form 28 taxable @ 3% on R. 61,738.84. As per the actual sales turnover at 3% covered by Form 28 is R. 54,999/-. This is not in order. The assessee has collected 3% tax on 12% GST on R. 61,738.84 amounting to R. 1,913.97 and R. 287.10 respectively. Therefore the turnover taxable at 3% will be estimated at R. 61,738.84.

3. The claim for exemption on Gen Vat amounting to R. 69,26,523.56 will not be allowable in the absence of evidence. This will be added to the turnover and assessed to tax.

c contd....3



[Signature]
 COMMERCIAL TAX OFFICE
 FOURTH CIRCLE
 THIRUVANANTHAPURAM

4. Increase claimed sales return for Rs. 11,06,920.19. The assessee did not produce to prove the claim. In the absence of evidences, the claim will be disallowed and assessed to tax.

5. Purchase return of 100 bags of granuals amounting to Rs. 45,000/- and 40 bags of granuals (for which value is not recorded) is not proved by documents. The value of 40 bags will be estimated at Rs. 25,000/- This will be treated as sale and the sale value will be estimated by adding G.P. 15% (45000-25000 = 70,000x15%) This will be assessed to tax at 12%.

6. Excessively purchase of Rs. 8,120/- is not supported by purchase bill. This will be added back and assessed to tax.

7. As per account purchase turnover of Rs. 47,597.20 is liable to be assessed to tax under section 5A. Since no purchase details are available, this will be assessed to tax @ 12%.

8. Delivery Note is original not prepared for verification. No 'C' Form and 'D' Form Register produced for verification. This defeated effective verification of accounts.

It is, therefore, proposed to reject the return filed and account produced as incorrect and incomplete and to estimate the total and taxable turnover to the best of judgment as detailed below.

Turnover as per account	Rs. 5,41,49,506.14
Less: Deduction and Impreciation	Rs. 1,00,000.00
Add: Sales turnover of the turnover not stated	Rs. 3,25,000.00
Add sales return disallowed	Rs. 11,06,920.19
Add purchase return disallowed adding @ P. 15,000 x 25,000 = 70,000x15%	Rs. 80,500.00
Less Excess purchase not supported assessable under section 5A	Rs. 8,120.00
Purchase turnover under section 5A as per account	Rs. 47,597.20
	Rs. 5,62,16,643.53
Add tax collected	Rs. 2,201.07
Total turnover proposed	Rs. 5,62,18,844.60
Less exemption allowed for colltd.	Rs. 2,201.07
Balance taxable turnover proposed	Rs. 5,62,16,643.53



[Signature]
 DISTRICT TAX OFFICER
 MUMBAI

contd...

E/F.

Rs. 5,62,18,840-00

This will be apportioned as under.

Turnover taxable at 8% (SEI Unit)	Rs.	5,54,07,450-00
	Rs.	57,800-00
Turnover taxable at 12%	Rs.	2,15,000-00
	Rs.	80,800-00
	Rs.	47,000-00
	Rs.	2,84,170-00
Turnover taxable (24% oil grease)	Rs.	10,000-00
Turnover taxable at 8%	Rs.	3,150-00

AST will be levied at 12% Rs.

The above proposal was communicated to the assesses and his objection if any invited. The notices was served on the assesses on 6-7-2004. Since there is no response from the dealer, the assessment stands completed as prepared as under.

Total turnover taxed	Rs.	5,62,18,840-00
Taxable turnover taxed	Rs.	5,62,18,840-00

all exemption start.

Tax due on a turnover of Rs. 5,54,07,450/-	Rs.	2,32,800-00
AST due @ 12%	Rs.	5,54,800-00
Total	Rs.	80,97,450-00
SEI exemption 24% from 2001-02	Rs.	1,08,44,917-00
Balance SEI t/p. to next year	Rs.	53,47,431-00

1. Tax due on 8% 63,800/- @ 2%	Rs.	1,274-00
2. Tax due @ 12% Rs. 2,15,000/-	Rs.	37,800-00
3. Tax due @ 12% Rs. 80,800/- (purchase return disallowed)	Rs.	3,660-00
4. Tax due @ 12% on Rs. 47,000/-	Rs.	5,710-00
5. Tax due @ 12% on Rs. 2,84,170/-	Rs.	34,100-00
6. Tax due (oil grease etc.) Rs. 10,000/-	Rs.	2,400-00
	Rs.	91,586-00



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COMMERCIAL TAX OFFICE
FOURTH CIRCLE

Total	Rs.	1,05,323-85
Rounded to	Rs.	1,05,323-00
Paid	Rs.	2,201-00

Balance	Rs.	1,03,122-00

This should be paid as specified in the demand notice issued.

SALTS TAX OFFICER,
14TH CIRCLE, THIRUVARUR.

To

The assessee.

Copy subd. to the Inspecting Asst. Commissioner, Thiruvur.

to the file.

2/

file copy

10/2/54
22/10/54



COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THIRUVARUR

OFFICE OF THE APPELLATE ASST. COMMISSIONER, Commercial Taxes, Thrissur
 26.09.05
 (Present: Sri. A. L. Nambu) Date of order

Agricultural Income tax Appeal No.

Sales tax Appeal No. SA.LI 22 842/04

Intimation of the order 05.10.04

From the order of the Sales Tax Officer, 14th Circle, Thrissur

- (1) Year of Assessment : 2002-03
- (2) Name of Appellant : M/s. Westorn Plastic Processing Co. P.Ltd,
Nagar Road, Thrissur
- (3) Income/Turnover assessed : Rs. 56216640/-
- (4) Tax demanded Income tax/Sales tax/Surcharge/Central Sales tax :
- (5) Section/Rule under which assessment was made :

Date of hearing: 29.07.05

Present for Appellant : Sri. V. N. Krishnakumar, Chartered Accountant

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant here are manufacturers and dealers in plastic moulded furniture at Ingikkattussery, Malore, Thrissur. The final assessment for the year 02-03 was completed by Sales Tax Officer, 14th Circle, Thrissur on 2.7.04. Being aggrieved by this order, the appellant has come up in appeal.

When the appeal was posted for hearing, Sri. V. N. Krishnakumar, Chartered Accountant appeared and he was heard. The main contentions raised by the appellant are as follows.

The impugned order is opposed to law, facts and circumstances of the case. The turnover covered by the alleged bills amounting to Rs. 284166.04 cannot be made exigible to sales tax as the products covered therein are liable to tax only at the point of their first sale within the State of Kerala.

The assessing authority erred in investigating the value of

23/10/05

[Signature]



[Signature]
 24/10/05
COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISSUR

Form 18 sales by including the cessat collected once again in the turnover. It is submitted that the cessat collected cannot form part of the taxable turnover. The appellant have proved the entire sales return claimed by them qualifies for deduction from the taxable turnover and the accounts show the date on which the goods were returned and the amount for which refund was made or credit was allowed to the purchaser. It is also submitted that the addition made to the taxable turnover was also warrants to be deleted.

The assessing authority pointed out the following reasons to reject the books of accounts.

The claim of exemption on second sales is disallowed since the same has not been proved. The claim of exemption on new accounting to Section 40 will not allowable in the absence of evidences. Also, the claim of sales return also disallowed as it is not proved. The purchase return of 40 bags of granules will be treated as sales and estimating estimated the sale value by adding 5% at 5%. On the basis of the above, the assessing authority rejected the return and accounts and computed the assessment on the basis of payment.

The appellant has submitted the specific and particular grounds in this regard. I have heard the learned Sales Tax Officer and I also in this respect. On scrutiny of the contentions and reasons stated by the assessing, it is submitted that the matter to be decided is whether the addition of Rs. 4.5 lakhs is reasonable or not. The authorized representative argued that the assessing authority has not unearthed any specific offenses, omissions or suppressions either in purchase or sales in the assessment order regarding the transactions effected in the year by the appellant. Therefore, he submitted that the addition of Rs. 500000/- is arbitrary and not based



12/11/2011
 COMMERCIAL TAX OFFICE
 FOURTH CIRCLE
 BANGALORE

on any valid grounds, hence it is liable to be deleted.

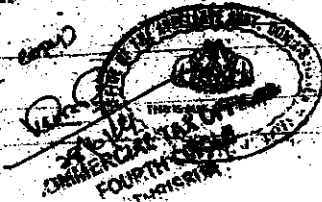
I have examined the above contentions with reference to the materials available to me. It is a fact that no specific offences have been levelled against the appellant. Therefore, I think in the absence of any omission or suppression, a large addition for omission and suppression is unsustainable and illegal. Considering the volume and nature of offences levelled against the appellant, I think a lumpsum amount of Rs. 900000/- is sufficient in this case to meet the ends of justice and I order accordingly.

Other point raised by the appellant that the disallowance of claim of sales turnover. Regarding the sales return and purchase return, sales turnover of Form 10 declarations, etc. I think there are some strength in the contentions of the appellant. But the assessing authority is even ignored this facts without verifying the evidences and documents produced by the appellant. Therefore, the assessing authority is directed to verify all the relevant facts regarding the sales return, purchase return, and sales turnover in the strength of Form 10 declarations before the assessing authority within 15 days of receipt of this order and the assessing authority is directed to verify the above documents and pass orders in accordance with law and I order accordingly.

Result : 2008-03. Reversed

Appellate Tax Commissioner
Thiruvananthapuram

To
The Appellant
Copy to: STO, Ithadimala, Thiruvananthapuram
Copy to: ITO, Thiruvananthapuram
Copy sent to DC/TC
Copy to file



A.J.M.

-II, IVth Circle, Thrissur.

Present : P.S. Sankaran

1-6-2005

2614 3052/2002-03 (Revised)

Western Plastic Processing Co.(P) Ltd.,
Thaikkattussery Road, Thrissur.

2002-03
(Revised)

- 1. This office order dt. 24-7-2004.
- 2. STA.1.842/04 dated 26-3-2005 of AAC., Thrissur.

16-8-2005
26-8-2005

As per the appellate order read as scrub paper above the appellate Asst. Commissioner has ordered certain relief to the assessee. Regarding the purchase return, sales return and the turn over of Form 10 Declaration sales, the Appellate Asst. Commissioner has ordered to verify the originals and documents produced by the appellant. As per the directions contained in the appellate order the assessee has produced the above documents for further verification.

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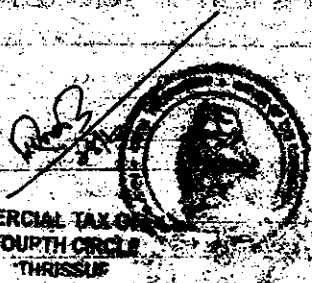


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26/8/05
COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISSUR

1. Verification of the sales return with regard to credit note and sale bill, the following sales returns are eligible for exemption as claimed by the assessee.

Sl. No.	Date	Sl. No.	Date	Amount
100	10-9-02	1	10-9-02	15,007-82
101	10-9-02	"	"	4,003-60
102	12-9-02	"	"	8,004-00
103	12-9-02	2	12-9-02	15,014-15
104	12-9-02	4	12-9-02	7,002-00
105	12-9-02	3	12-9-02	1,000-00
106	20-11-02	5	20-11-02	2,770-04
107	12-9-02	7	12-9-02	15,000-00
108	12-9-02	8	12-9-02	15,000-00
109	12-9-02	9	12-9-02	15,000-00
110	12-9-02	10	12-9-02	15,000-00
111	12-9-02	11	"	7,000-00
112	12-9-02	12	"	7,000-00
				1,47,000-00



COMMERCIAL TAX OFFICE
FOURTH FLOOR
THIRUVALE

Assessee has not filed purchase list including the purchase of moulded chairs from M/S. Bhagavathy Traders, Kooni. Further in the 17(3) notice was specifically noted that in the absence of proof for sufficiency of tax at the 1st sale point, tax will be levied at the rate of 12%. The assessee has not objected the proposed tax has been levied. At the stage of appeal, the assessee argued that the sale turnover of Rs. 2,84,170/- is a second sale furniture and no tax is leviable. The Appellate Asst. Commissioner, Theissur considered the argument of the dealer in the appellate order. But the assessee could not prove his claim with documentary evidences before the appellate authority. Therefore, the decision of the appellate authority is not favourable to the dealer.

I have verified the purchase list and sale bill produced by the dealer in detail. It is interesting to note that the assessee has purchased moulded chair as per Bill No. 355 & 356 dated 3-1-2003 and 4-1-2003 respectively for Rs. 2,84,150-00 and sold the same or such to the same dealer as per Bill No. 455, 456 & 457 on 2-2-2003 for the same purchase items No. 2,84,150-00. In the above circumstances the objections raised over sales and assessment stands rejected as proposed as under.

Total turnover filed	Rs.	5, 52, 16, 640-00
Family turnover filed	Rs.	5, 50, 88, 800-00
Net turnover		
Tax 10% @ 10% on Rs. 5, 46, 38, 410/-	Rs.	45, 63, 180-30
ASST due @ 10%	Rs.	6, 64, 470-00
Total	Rs.	50, 17, 625-70
SI - 10%	Rs.	1, 09, 76, 270-00



DRS
COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THIRUVANANTHAPURAM

PROCEEDINGS OF THE APPELLATE ASSISTANT COMMISSIONER-II, DEPT. OF
COMMERCIAL TAXES, PALAKKAD.

Present: Sri. T. Chandrasekharan

Agricultural Income Tax Appeal No. :

Tax Appeal No. :

STA 6807/05 ⁽²⁾

Date of Order :

18.12.2008

From the Order of the Addl. Sales Tax Officer, IV Circle, Thrissur.

1) Year of assessment :

2002-2003 (Revised)

2) Name of Appellant :

M/s. Western Plastic Processing Co. (P) Ltd.,
Thakkattussery, Thrissur.

3) Income/Turnover assessed :

Rs. 2,84,168/-

4) Tax demanded - Income tax/Super Tax/

Sales Tax/Surchage/Central Sales Tax : Rs. 34,100/-

5) Section/Rule under which
assessment was made

Date of hearing :

18.12.2008

Present for Appellant :

Mr. V.M. Krishnakumar, Chartered Accountant

APPELLATE ORDER AND GROUND OF DECISION

This appeal is filed by M/s. Western Plastic Processing Co. (P) Ltd., Thrissur against the modified assessment completed on 01.06.2005. The assessing authority completed the modified order for the reason that purchase return of Rs. 2,84,168/- is not filed by any documentary evidences. The purchase return was effected as per Delivery Note. But no original copy of Det. Delivery Note is produced for verification. So the assessing authority modified the assessment to the above extent.

The above order of the assessing authority is now under challenge in appeal. When this appeal was posted for hearing, V.M. Krishnakumar, Chartered Accountant appeared and



T. CHANDRASEKHARAN
APPELLATE ASSISTANT COMMISSIONER-II
FOURTH CIRCLE
THRISSUR

He contended that the purchase of Moulded Chair as per bill No. CFL 355, 356 Dt. 04.01.2003, 04.01.2003 respectively for Rs. 2,84,168/- were sold to the purchasing dealer as per Bill No. 464, 465, 466 Dt. 29.03.2003 for the same purchase value of Rs. 2,84,168/-. He also produced a photocopy of letter from the purchasing dealer that the entire stock is taken into their books of accounts. He also contended that the transactions were only second sales within the State between two registered dealers.

Based on the above arguments advanced by the learned counsel, I have verified the records and considered the issues under dispute which is decided as under:-

It is a fact that the appellant assessee returned the goods to the original purchaser, after the expiry of 3 months. But now the appellant raised that this is not a purchase return but only sales to the purchaser as per Sale Bill No. 464, 465, 466 Dt. 29.03.2003. But the appellant failed to produce these sale bills before me for verification. No stock register was produced to show that these sales are deducted in the Stock Register. No original purchase bills are produced before me that this is a second sales. In the absence of these evidences, I find no reason to interfere the order of the assessing authority. Hence, I upheld the order. The assessing authority regarding these sales are perfectly in the eye of Law. So this appeal fails and stands dismissed.

APPEAL - 1883-2003 - DISMISSED



Handwritten notes: (7/2/2011), 276/14, COMMERCIAL TAX OFFICE, THIRUVANANTHAPURAM, IV CIRCLE, THIRISSUR.

Assistant Commissioner-II, Dept. of Commercial Taxes, Palakkad.
Appellate Asst. Commissioner-II, Dept. of Commercial Taxes, Palakkad.

Joint Commissioner-I, Commercial Taxes, Thiruvananthapuram.
Inspecting Assistant Commissioner, Thirissur.
Commercial Tax Officer, IV circle, Thirissur. / File.

A-11.

-11, IVta Circle, Thrisur.

Present: P.S. Shankar

25-5-2005

ESis 3053/2003-04

Western Plastic Processing Co. (P) Ltd.,
Manufacturing of Plastic Moulded Cases,
Thaikattussery Road, Thalore.

5,71,97,998-30

5,54,64,120-75

17,43,868-85

5,71,97,990-00

The assessee filed annual returns declaring total, exempted and taxable turnover of Rs. 5,71,97,998-30, 5,54,64,120-00 and Rs. 17,43,868-85 respectively for the year 2003-04. The books of accounts in support of the returns filed were called for and verified. They disclosed the following results.

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COMMERCIAL TAX OFFICES
FOURTH CIRCLE

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Exempt sales turnover	-	Rs. 5,54,54,122.02
3% inter state sales	-	Rs. 16,84,878.55
8% taxable sales (SSI)	-	Rs. 83,880.25
Total	-	Rs. 5,71,97,900.82

The assessee claimed exemption on a turnover of Rs. 5,54,54,122.02 being SSI exemption. The claim is not in order. The same will be assessed to tax and tax due will be adjusted against the SSI exemption according to the eligibility criteria if SSI certificate produced.

The assessee claimed reduced rate of tax @ 3% on a turnover of Rs. 16,84,878.55 being inter state sales. The claim is in order and allowed.

The assessee have claimed reduced rate of tax @ 8% on a turnover of Rs. 83,880.25 being SSI units. The above claim is also in order and allowed.

In the circumstances the assessment for 2003-04 stands completed as follows:

Total turnover (Rs.)	-	Rs. 5,71,97,900.82
Less: 3% inter state sales	-	Rs. 16,84,878.55
Total turnover (Rs.)	-	Rs. 5,55,13,022.27
Less: 8% SSI exemption	-	Rs. 66,41,041.82
Total taxable turnover (Rs.)	-	Rs. 48,71,989.45
Less: 3% inter state sales	-	Rs. 14,61,587.84
Total taxable turnover (Rs.)	-	Rs. 34,10,401.61
Tax @ 8% on Rs. 34,10,401.61	-	Rs. 2,72,832.13
AS T @ 10%	-	Rs. 3,41,040.16
Total sales tax due	-	Rs. 6,13,872.29
SSI exemption R/F.	-	Rs. 39,56,653.00

Balance exercise C/O to 2004-05.

Rs. 14,52,778.71

S. T. due @ 3% on 2-16, 82, 890.00 - R. 50, 546.40
 - do. @ 3% on 2-22, 890.00 - R. 4, 719.20

Total
 A. 67 due @ 15% - R. 63, 265.60 /
 - R. 8, 239.04

Total
 Rounded to - R. 63, 555.00
 S. T. paid. - R. 52, 808.00

Balance due 747.00

This amount to be paid as shown in the second notice issued.

ADM. SALES TAX OFFICE - II
 FOURTH CIRCLE, THIRISSUR.

To be submitted to Insp. A. S. Commissioner, Thirissur.
 Copy to file.



(Two copy)
 COMMERCIAL TAX OFFICE
 FOURTH CIRCLE
 THIRISSUR

PROCEEDINGS OF THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR

PRESENT: S. K. K. RENJAN

Subj: KKGST Act 1963 - Sec 43 - Exemption under Section 43 -
M/E Western Plastic Processing Company (P) Ltd, Thalore, Thrissur
for the years 2001-02, 2002-03 & 2003-04 - Cancellation of assessment -
cancelled - Orders issued.

- Read: 1) Order No.25143053/01-02 dated 05.05.2005
 No.25143053/02-03 dated 01.06.2005 and
 No.25143053/03-04 of the Commercial Tax Officer, IVth
 Circle, Thrissur
 2) This office Notice No. RI 4219/08 dated 13.04.2009.

ORDER NO. RI 4219/08 DATED 30.04.2009

M/s. Western Plastic Company (P) Ltd, Thalore, Thrissur is an assessee on the rolls of the Commercial Tax Officer, 4th Circle, Thrissur engaged in manufacturing of Plastic moulded furniture. As per Order No: A5/6259/2002 D-Dis dated 30-11-2002 of the General Manager, District Industries Centre, Thrissur, the dealer is eligible for SSI exemption for an amount of Rs. 1,16,39,000/- for the period from 10-12-2001 to 09-12-2008. The original assessment in respect of the dealer for the year 2001-02 was completed on 24-12-2002 by fixing a total and taxable turnover of Rs. 79,51,735/- and Rs. 72,03,490/- and revised under Section 43 on 05-05-2005 for incorrect application for tax rate. The tax due for the year was Rs. 6,62,722/- and was adjusted towards SSI exemption.

The final assessment for the year 2002-03 was completed on 24-07-2004 fixing a total and taxable turnover of Rs. 5,62,18,844.60/- and Rs. 5,62,16,643.53/- respectively. The assessment was revised as per the direction of Appellate Assessment Commissioner vide Order No: STAT 842/04/26-03-2005 fixing a total and taxable turnover of Rs. 5,62,16,640/- and Rs. 5,50,88,590/-. The tax liability was Rs. 50,17,623.71/- and was adjusted towards SSI exemption.

*copy
for the
copy for
year of 2002-03
to file*

*only 24.12.02
02-03 revised 25.05
new 24.7.04*



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COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISSUR

which might set a bad trend or pattern for similar assessments and reckoning, the Commissioner might think to be prejudicial to the Revenue. The prejudice must be prejudice to the Revenue MILLAH TRADING COMPANY VS. Intelligence Officer (Ker.).

The Hon. Jurisdictional High Court then went on to add that it is necessary that the Commissioner must come to a definite finding that the order is both erroneous as well as prejudicial to the interests of the Revenue. Even if an order is prejudicial to the interests of the Revenue, it cannot be interfered with if it is not erroneous. Again, the Commissioner should not interfere with an order which is not prejudicial to the interests of Revenue, even if it is erroneous.

The only contention raised by your learned self for assuming jurisdiction under Section 35 of the K.G.S.T. Act 1963 is that "tax exemption is available only for manufacturing own products, but not for brand name goods owned by other companies". It is submitted that such a restrictive interpretation figures nowhere in any of the three notifications issued by the Government for the conferment of exemption from sales tax, viz. SROs 499/90, 521/92 and 1729/93 on the strength of which, exemption from sales tax has been conferred on the dealer by the empowered District Level Committee for Sales Tax Exemption in which the then Department of Sales Tax was duly represented.

The matter of eligibility for exemption from sales tax by the dealer was once again re-examined by the District Level Committee on Sales Tax Exemption pursuant to a letter received by them from the Commercial Tax Officer, Fourth Circle, Thrissur, in the light of the District Audit Report for 2005-06 of the Principal Accountant General (Audit), Kerala, Thiruvananthapuram dated 22.02.2007 bearing No.SRA (HQ)11/ST/116-137/2006-07/618 raising the identical issue. At its meeting held on 22.02.2008 in the chamber of the District Collector, Thrissur, the Committee comprised of the District Collector, Thrissur, District Collector, Thrissur, Thrissur and the Deputy Commissioner of Commercial Taxes, Thrissur, discussed the case in detail and found that the exemption granted to the Dealer is in order. There is a specific finding by the Committee that there is no denial of exemption to the manufacturer of products under the brand name of another Company. Since this was the unanimous finding of the District Level Committee of Sales Tax Exemption of which your learned self was a concurring member with no Note of dissent, it is respectfully submitted that your change of opinion on the same set of facts is not warranted resulting in the initiation of proceedings under Section 35 of the K.G.S.T. Act 1963. A certified true photocopy of the said minutes is annexed hereto as Exhibit A for your perusal.

Further, an identical question was raised before the Hon. High Court of Kerala in COHCIN CEMENTS LIMITED V. STATE OF KERALA (2008) 16 KTR 332(Ker.). At paragraph 25 of the judgment, the Hon. Division Bench of the



[Signature]
 COMMERCIAL TAX OFFICER
 FOURTH CIRCLE
 THRISSUR

High Court held that the notification does not refer to any other condition or circumstance limiting the exemption. The conditions prescribed are not inhibited by any further condition which may affect the exemption granted. The exemption notification is used to encourage industrial units. The notification is issued as a beneficial notification and further in the public interest. Such exemption notification requires to be liberally construed and if the tax payer is within the plain terms of the exemption notification, he cannot be denied the benefits of the exemption. The exemption notification requires to be strictly construed at the stage of applicability and once found applicable, requires to be construed liberally. Merely because the petitioner's industrial unit uses the brand name of another person, it does not mean that the petitioner's industrial unit is not manufacturing cement using fly ash and effecting sale of such cement both within the State as well as outside the State. Since the industrial unit fulfils all the conditions that are stated in SMOs 388/96 and 4729/93, the revisional authority/Deputy Commissioner of Commercial Taxes, merely relying upon the fact that the petitioner is not manufacturing cement on the facts and circumstances of the case, could not have initiated any proceedings for revising an order of assessment passed by the assessing authority.

A certified true photocopy of the said judgment is appended herein after as Exhibit.

6. In VADILAL CHEMICALS LIMITED VS. State of Andhra Pradesh (2005) 142 STC 76(SC), the Hon-Apex Court held that under the incentive scheme in the State of Andhra Pradesh, the Government had set up a process for the various industrial units to be eligible for the benefits of the scheme. The procedure laid for the eligibility of the industrial units was prescribed by the State Level Committee and the District Level Committee and the Department of Industries and Commerce by issuing an Eligibility Certificate. No other method was prescribed under the scheme for determining the eligibility of an industrial undertaking for the benefits granted. The Department of Industries and Commerce having exercised its mind and having granted the final Eligibility Certificate which was valid at all material times, the Commercial Taxes Department could not go beyond the same, more so when the sales tax department is exclusively represented in the State Level Committee and District Level Committee for Sales Tax Exemption.

- i. The Eligibility Certificate issued by the Department of Industries and Commerce could not be cancelled by the Sales Tax Authorities (Paragraph 22 of the order cited above)
- ii. The State which was represented by the Departments could only speak with one voice. Having regard to the language of the G.O. granting the exemption, it was the view that was expressed by the Department of Industries that had to be taken to be that voice. (Paragraph 23 of the order cited above).

7. Your learned self has raised the proposition that manufacture under the brand name of another Company would disqualify the dealer to the benefit of sales tax

exemption as formulated by the Government of Kerala. For this, you have relied on the term "manufacture" based on the Central Excise Act, 1944 (Act 1 of 1944) and notification No.1/93-CE dated 28th February, 1993 which was the matter of adjudication before the Hon. Supreme Court in COMMISSIONER OF CENTRAL EXCISE, RAIPUR Vs. HIRA CEMENT (2006) 145 STC 264 (SC).

- i. The Hon. Supreme Court in PONDICHERRY STATE CO-OPERATIVE CONSUMER FEDERATION LIMITED Vs. UNION TERRITORY OF PONDICHERRY (2006) 16 KTR 152 (SC) has held that even if an exemption is granted with an "open eye" on the industry, the Department of Sales Tax is bound to honour the exemption Certificate granted by the authorities. The Court went on to hold that liberal interpretation of the term "manufacture" is required and the interpretation of "manufacture" based on Excise law is erroneous.
 - ii. A certified true photocopy of the said decision is furnished herein after as Exhibit-C.
8. It is submitted that exemption notification has to be interpreted as to give its true import and meaning and not to make it purposeless and nugatory. Notification by which exemption or other benefits are provided by the Government in exercise of its statutory powers normally have some purpose and policy decision behind it. Such purpose is not to be defeated nor those who may be entitled for it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it. The exemption notification is not to be construed liberally, but to be construed to effectuate the object of the notification. SOOPPY HAJIN Vs. STATE OF KERALA (2009) 17 KTR 22(Ker.)
9. On the facts and the circumstances of the case, it is submitted that the ~~provisions of the CGST Act, 1954 and the provisions of the KGSJ Act, 1954 are not applicable to the goods covered there under apart from being contrary to the judicial decisions of the Hon. Apex Court and the jurisdictional High Court on the subject as well as the proceedings of the District Level Committee on Sales Tax Exemption held in the chambers of the District Collector on 29.05.2008 of which you were a claiming member.~~
10. Accordingly, it is proposed to revise the subject orders of a. Assessment may kindly be discontinued by your learned self or in the alternative, you may be pleased to keep the proceedings in abeyance until the matter has been resolved finally by the State Level Committee on Sales Tax Exemption as requested for by the General Manager, District Industries Centre, Thrissur vide his letter No. A3/209/07 dated 18.05.2008.
11. Any further clarification and/or explanation required by your learned self would be furnished on receipt of your directives in this regard.



21/6/17
COMMERCIAL TAX OFFICE
FOURTH FLOOR
THRISSUR

I have examined the contentions raised and evidences produced in support of contentions and the connected assessment records. With regards to the contentions raised that a unit prejudicial to revenue is not been defined under the Act and must be judicially examined. As far as the assessment completed in respect of the dealer for the years since the exemption allowed was erroneous, the assessment orders so passed were prejudicial to revenue. With regards to the contention that the three notifications issued vide SRO 499/90, 521/92 & 1729/93 there is no restrictive interpretation with regard to the SSI exemption conferred on the dealer by the empowered District Level Committee for sales tax it may be seen that the unit has started function during 12.02.2001 and SSI exemption was granted vide order dated 30.11.2002 for the period from 10.12.2001 to 09.12.2008 to the tune of Rs. 1,16,39,800/- In the above District Level Committee the Deputy Commissioner, Commercial Taxes also. After obtaining the above order, the company has entered into contract for manufacture sale and supply of plastic moulded furniture as per the specification of M/s. Wim Plastic Ltd. on 6th day of November 2001. The Company has applied for SSI exemption on 05.10.2002 and the same was sanctioned by the Minutes of the District Level Committee for Sale Tax Exemption held on 15.12.2002. At the time of issuing exemption under the heading name of the Company with M/s. Wim Plastic Industries was submitted to the District Level Committee for SSI Exemption. When the matter was came to notice of the District Level Committee, the matter was discussed in detail on 29.05.2008 in the District Level Committee and it was resolved to refer the case to State Level Committee requesting the committee to look in this case and order whether granting of Sales Tax exemption of the above unit by the District Level Committee is appropriate vide letter dated 18.06.2008 of the General Manager, Thrissur. The dealer is well aware of these matters since he was heard by the District Level Committee for Sales Tax Exemption on 25.09.2008.

With regards to the contention that there is no specific denial of exemption to the manufacturing of products under the brand name of any other company, it may be noticed that the dealer vide agreement dated 06.11.2001 with M/s. Wim Plastics Ltd. Daman it is seen that there are mutually agreed conditions for manufacturing of plastic moulded furniture. Vide application dated 03.08.2001 the dealer has applied for registration for the manufacture of moulded plastic furniture items in their own

factory for sale. But as per agreement entered into with Wim Plastic, the dealer has to manufacture plastic moulded furniture and other products by mutual agreement with the Company for Manufacture, sell and supply to the Wim Plastic Industries. The finished products manufactured and produced by the Company under this agreement shall be sale and supply to M/s Wim Plastic Industries on principal to principal basis and the rates may be mutually agreed upon parties here to from time to time. The price to be agreed upon shall be exclusive of Sales Tax, Central Excise and other local state/Central levies as may be levied in the products so manufactured. Freight and transportation charges shall also be paid by the M/s Wim Plastic Industries. So the company shall manufacture, sale or supply of products to M/s Wim Plastic as per specifications connected by M/s Wim Plastic Industries from time to time. So also from the assessment records it is seen that the dealer has used the entire Form 26 (Departmental Delivery Note) to transport the moulds for making furniture and other goods from the factory to M/s Wim Plastic Industries Daman and it is stated that "not for sale, no commercial value." From the records it is evident that the dealer has never purchased the mould for the manufacture of products in the factory but it was supplied from M/s Wim Plastic Industries and the damaged items were returned to M/s Wim Plastic Industries by the dealer. From this it is evident that the dealer has manufactured the products during these years according to the agreement by M/s Wim Plastics as per the terms and conditions and as per the specifications of the purchasing company. Hence in the above circumstances the Sales Tax Authorities have referred the matter to District Industries Centre, to cancel the SEI exemption to the dealer. The Sales Tax Authorities have referred the matter to appropriate authority for their decision and remits M/s Cochin Cements Ltd V/a State of Kerala of the High Court of Kerala (2008) 164 ITR 332 (KER), the decision quoted is, with regards to the SEI exemption granted vide SRO No. 368/96 read with SRO 1729/93 is not applicable in the facts and circumstances of this case as contended by the dealer, since it relates to SEI exemption granted to Industrial units for which use 'fly ash' as material for manufacture of products and notification itself says the exemption notification is subject to all the other conditions and restrictions imposed under the notification SRO 1729/93. Here in this case the dealer has claimed exemption for the manufacture of sale of plastic moulded furniture and other goods



21/11/11
 COMMERCIAL TAX OFFICE
 FOURTH CIRCLE
 THIRUVANANTHAPURAM

manufactured and sold to M/s Wim Plastics Company according to their instructions and moulds supplied vide agreement under reference along with other terms and conditions. Hence in my opinion the argument raised by the dealer against the proposal under reference stands failed. The SSI exemption granted to the dealer by the assessing authority for the above years is irregular, incorrect prejudicial to the interest of revenue. Therefore the above orders are liable to get aside and the following orders are passed. For the reasons stated above invoking revisional powers vested on me under Section 35 of the KGST Act 1963 by set aside the assessment orders in respect of M/s Western Plastic Processing Company Pvt Ltd for three years 2001-2002, 2002-03 & 2003-04, as per the Proceedings of the Sales Tax Officer, IVth Circle, Thrissur under reference, remanded back to the assessing authority for fresh disposal according to law.

DEPUTY COMMISSIONER
THRISSUR

To X

(2 draw copy)

M/s Western Plastics Inds



COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THRISSUR

- Copy Submitted to the Deputy Commissioner (Legal Wing), Department of Commercial Taxes, Thiruvananthapuram
- Copy to the Inspecting Asst. Commissioner, Department of Commercial Taxes, Thrissur
- Copy to the Commercial Tax Officer, IVth Circle, Thrissur with assessment records for the years 2001-02 containing 302 pages
2002-03 296 pages
2003-04 368 pages
- Copy to the file/Spares/stock file

IN THE KERALA AGRIL. INCOME TAX & SALES TAX APPELLATE TRIBUNAL,
ADDL. BENCH, PALAKKAD.

T.A.No.277/2009

Date of Order: 18th October, 2009
24th Novina, 1934

PRESENT

Smt. M.R. Anitha, B.Sc., LL.B. : Member (Judicial)
Sri. P.V. John, B.Com., LL.B., FCA., : Member (Accounts)
FCS., AICWA., MBA., M.B.A.,

BETWEEN:

Western Plastic Processing
Company Private Limited. | Appellant
Thaikkattuserry, Thrissur.
M N
The State of Kerala : Respondent

STA.No.6807/2005 of the Appellate Assistant Commissioner-II,
Commercial Taxes, Palakkad order dated 18-2-2009.

Proceedings of the Addl. Sales Tax Officer-II, IVth Circle,
Thrissur dated 1-6-2009.

Proceedings of the Addl. Sales Tax Officer-II, IVth Circle,
Thrissur dated 1-6-2009. The proceedings on 18th day of September,
2009 before us, in the presence of Sri. V.M. Krishnakumar, Chartered
Accountant for the Appellant and of Sri. G. Palakrishnan (Law Officer),
Palakkad State Representative for the Respondent and the appeal
having stood over to this day for consideration, the Tribunal
passed the following.

O R D E R

Smt. M.R. Anitha, Member (Judicial)

This appeal filed by M/s. Western Plastic Processing Company
Limited, Thaikkattuserry, Thrissur, against the order of the
Appellate Assistant Commissioner-II, Palakkad in STA.6807/05 dated
18-12-2008. The appellant is on the rolls of Addl.
Sales Tax Officer-II, IVth Circle, Thrissur. The appeal relates
to the assessment year 2008-09.

COMMERCIAL TAX OFFICE
FOURTH CIRCLE



T.A.No.233/09

As per the order in STA-I-242/04 dated 26-3-2005 of Appellate Assistant Commissioner, Commercial Taxes, Thrissur, the original assessment order was modified. Regarding purchase return, sales return and turnover of Form 18 declaration sales, the Appellate Assistant Commissioner ordered to verify the evidence and documents produced by the appellant. Accordingly modified order was passed. Aggrieved by the same first appeal was preferred before the Appellate Assistant Commissioner-II, Department of Commercial Taxes, Palakkad. As per the impugned order the first appellate authority dismissed the appeal. Against which the appellant came up in appeal before this Tribunal on the following grounds:

1) The impugned order bearing No.25143052/2002-2003 (Revised) dated 01-6-2005 passed by the learned Additional Joint Tax Officer, Fourth Circle, Thrissur and also bearing No.25143052/05 dated 12-8-2005 passed by the Appellate Assistant Commissioner-II, Department of Commercial Taxes, Palakkad, are opposed to law, facts, weight of evidence, circumstances of the case and the provisions of the IGST Act, 1965 and the rules made there under to the extent appealed against herein after.

2) The only ground relied upon by the Trial Authority for the disallowance of the impugned turnover of Rs.2,84,170/- as second sales was that "no satisfactory explanation" was offered by the dealer for effecting the said transaction in total disregard of the fact that it was a transaction of second sale. The dealer at the point of their first sale...



COMMISSIONER
FOURTH CIRCLE

(Contd. P.3)



T.A.No.233/09

in the normal course of its business for which no specific explanation is warranted.

- 3) The first Appellate Authority has passed the impugned order on appeal in total disregard of the facts of the case. He has proceeded to adjudicate upon the appeal on the incorrect premise that it was a purchase return for which no documentary evidence was submitted by the Appellant. The finding of the first Appellate Authority that the goods were returned to the original "Purchaser" after the expiry of three months is also contradictory to the facts and records of the case. The transaction even if deemed to be a "Purchase Return" is well within the time limit of three months prescribed under Rule 9(b) (ii) to the EGST Rules, 1965 read with the proviso to Section 5(2C) (ii) (b) of the EGST Act, 1965. The goods were purchased on 03-01-2003 and 04-01-2003 and was sold by the Appellant on 24-7-2004 which is well within the statutory time limit of three months.

- 4) The Purchase Return covered by the Delivery Note referred to by the first Appellate Authority refers to the purchase Return for granules specified at paragraph (5) appearing at page number (3) of the original order of assessment bearing No. 25143052/2602-2003 dated 24-07-2004 for which a sum of Rs.80,500/- has been added by the Trial Authority to the concealed taxable turnover of the Appellant. This has no bearing on the matter under appeal and the incorrect reference to the absence of Delivery Notes for the impugned transaction read in conjunction with the other findings of the first Appellate Authority reveals non-application of mind to the facts of the matter under appeal and further displays a prejudiced mentality in the process of adjudication on the matter under appeal.





T.A.No.233/09

Point: According to the appellant the impugned turnover of Rs.2,84,170/- are second sales. As per ~~entry~~ entry 64 of 1st Schedule the transaction is taxable at the point of first sale.

To substantiate the contentions appellant produced the certified photocopies of purchase and sales bills and other documents. Copy of invoice No.355 and 356 dated 3-1-2003 and 4-1-2003 respectively of Sri.Bhagavathy Traders were produced showing their purchases. Further, copy of invoice number 464, 465 dated 29-3-2003 are also produced to prove the sale of these items to Bhagavathy Traders for the same price. The relevant entries in the register of the appellant is also produced. Further a copy of letter issued by M/s.Bhagavathy Traders certifying that the goods purchased by them vide bill No.464,465 and 466 dated 29-3-2003 of the appellant have been taken into their books of account and stock register on 29-3-2003 with corresponding entry in the stock register is also stated. So the above documents would prima facie prove the claim of the appellant that they have sold the items covered by the impugned turnover to Bhagavathy Traders. But according to the first appellate authority appellant failed to produce the sale bills before him for verification. It is also stated that no stock register was produced to show that these sales are deducted in the stock register and no original purchase bills are produced to show that these are second sales. Hence the claim was rejected. But it has been specifically pleaded



1003

(Contd...2.5)

REVENUE
CIRCLE
BANGALORE



T.A.No.233/09

before this Tribunal that all these documents were produced before the Appellate Authority but he failed to verify the records and documents produced before him. In the modified assessment order the assessing authority has stated that appellant could not prove this claim with documentary evidence before the appellate authority. But now the appellant has produced the copy of sales bills and other documents with a contention that all these documents were produced before the first appellate authority. There is specific mention in the appellate order about the bill numbers with dates. It is also stated that the photocopy of letter from purchasing dealer was produced before him. So it will probabalise the case of the appellant that those documents were produced before the first appellate authority but he failed to verify the same and pass orders in the right sense. Documents produced by the appellant. If the copy of the documents produced before this Tribunal are true and genuine, it it would prove that the impugned transactions are exempt sales within the state between the two registered dealers. Law does not prevent the assessee from selling the goods to the same purchaser whatever be the purpose behind it (the fact that M/s.Bhagavathy Traders, Cochin is a registered dealer is also not in dispute). If that be so it is liable to be deleted from the taxable turnover of the appellant. Hence the impugned order passed without verifying the documents proving the transaction is not a sustainable one and is hereby set aside. Direct the



[Handwritten Signature]
 T. A. NO. 233/09
 COCHIN
 20/11/09



T.A.No.233/06

appellant to produce the original of the documents before the 1st appellate authority within a period of 3 months starting from this date and thereafter he shall dispose the matter in the light of the findings made above.

In the result appeal allowed.

(Dated This the 16th Day of October, 2009)

Sd/-
MEMBER (JUDICIAL)

/By Order/

Sd/-
MEMBER (ACCOUNTS)

Assistant Secretary.

Copies to:

- ✓ The Appellant thr' A/R.
- The S.R.
- The Addl. Commr. and Officer-in-Charge, 14th Circle, Thrissur.
- The Deputy Commissioner, S/T., Thrissur.
- The Deputy Commissioner, S/T., Thrissur.
- The Appellate Asst. Commissioner, C/T., Palakkad. ✓
- The Joint Commissioner (Law), Ernakulam.
- The Commissioner, COT., Trpa.
- The Secretary, KAIT & STAT., Ernakulam.
- The Asst. Secretary, STAT., Addl. Benches, Kozhikode/Kottayam/Tvm.
- The Stock File.
- The File.

KPP/



COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISUR

T.A.No.373/09

Date of Order: 18th December, 2009
27th Agraahayana, 1951PRESENT

Smt.M.R.Anitha, B.Sc., LL.B., : Member(Judicial)
Sri.P.V.John, B.Com., LL.B., FCB., : Member(Accounts)
FCA., AICWA., MBA., MCA.,

BETWEEN:

Western Plastic Processing
Company (P) Limited,
Thrissur. : Appellant.

I H D

The State of Kerala : Respondent

R1-4215/08 of the Deputy Commissioner, Commercial Taxes,
Thrissur order dated 30-4-2009.

This appeal coming on for hearing on 16th day of December, 2009 before us, in the presence of Sri.V.K.Krishnakumar, Chartered Accountant for the Appellant and of Sri.C.Balagrishnan(Law Officer), Palakkad State Representative for the Respondent and the appeal having stood over to this day for consideration, the Tribunal passed the following.

O R D E RMember(Judicial)

This appeal is filed against the order of the Deputy Commissioner, Commercial Taxes, Thrissur passed in suo-motu Revision under section 35 of the GST Act, 1963.

The appellant is an assessee on the rolls of the Commercial Tax Officer, 4th Circle, Thrissur engaged in manufacturing of plastic moulded furniture. As per order No.A5/6299/2002 D.Dis, dated 30-11-2002 of the General Manager, District Industries Centre, Thrissur the dealer is eligible for SSI exemption for an amount of Rs. 250,000/- for the period from 10-12-2001 to 9-12-2008. The tax assessment in respect of the dealer



(Contd..P.2)

TAX OFFICER

4TH CIRCLE

for the year 2001-02 was completed on 24-12-2002 by fixing a total and taxable turnover of Rs. 79,51,235/- and Rs. 72,03,490/- and revised under section 43 on 5-5-2005 for incorrect application for tax rate. The tax due for the year was Rs. 6,62,722/- and was adjusted towards SSI exemption.

The final assessment for the year 2002-03 was completed on 24-7-2004 fixing a total and taxable turnover of Rs. 562,8844.60 and Rs. 5,62,16,643.53 respectively. The assessment was revised as per the direction of Appellate Assistant Commissioner vide order No. STAT. 842/04/26-3-2005 fixing a total and taxable turnover of Rs. 5,62,16,640/- and Rs. 5,50,88,590/-. The tax liability was Rs. 50,17,625.72 and was adjusted towards SSI exemption. Hence after issuing notice and hearing the appellant the impugned order was passed by the Deputy Commissioner setting aside the SSI exemption granted to the appellant by the assessing authority and thereby setting aside the assessment orders with respect to the appellant company for the years 2001-02, 2002-03 and 2003-04 and remanded the matter to the assessing authority for fresh disposal according to law.

Aggrieved by the same appellant came up in appeal before this Tribunal raising the following grounds of appeal:

"The impugned order No. H1-4219/08 dated 30-4-2009 passed by the learned Deputy Commissioner of Commercial Taxes, Thrissur, under section 35 of the CGST Act, 1963 is opposed to law, facts, weight of evidence, circumstances of the case, judicial pronouncements on the subject and the Sales Tax Exemption Scheme Formulated under the CGST Act, 1963.



COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISUR

(Contd..P.3)

02. Whether, on the facts and in the circumstances of the case, the finding of the learned Deputy Commissioner, Department of Commercial Taxes, Thrissur, relying upon the decision of the Hon. Apex Court in COMMISSIONER OF CENTRAL EXCISE, RAIPUR Vs. HIRA CEMENT (2006) 145 STC 264 (SC) that the SSI exemption granted to the Appellant by the assessing authority for the three years is irregular, incorrect and prejudicial to the interest of revenue is perverse and patently contrary to the records and to the finding of the District Level Committee in which the Deputy Commissioner has himself concurred with the finding of the Committee that the exemption granted to the unit was in order?
03. Whether, on the facts and in the circumstances of the case, there is any prohibition in paragraph (40) of SRO 1729/95 dated 03-11-1993 denying the benefit of exemption from payment of sales tax to a manufacturer who manufactures a product and sells it to a brand holder for sale?
04. Whether, on the facts and in the circumstances of the case, there is any prohibition in paragraph of the learned Deputy Commissioner, Department of Commercial Taxes, Thrissur, has the unilateral benefit of exemption from payment of sales tax conferred upon the Appellant by the Department of Industries and Commerce? Attention is invited to paragraph No. (22) of the judgment of the Hon. Apex Court in VADILAL CHEMICALS LIMITED VS. STATE OF ANDHRA PRADESH AND OTHERS (2005) 142 STC 75 (SC).
05. Whether, on the facts and in the circumstances of the case, the Appellant-Company is entitled to exemption from payment of sales tax conferred on it by the District Level Committee, Sales Tax Exemption, Thrissur, even in respect of goods manufactured and sold by it as a SSI Unit to a



(Contd..P.4)
 COMMERCIAL TAX OFFICE
 FOURTH CIRCLE
 THRISUR

brand-name holder in terms of ERO 1729/03 dated 05-11-1993?

06. Whether, on the facts and in the circumstances of the case, the learned Deputy Commissioner, Department of Commercial Taxes, Thrissur, is justified in invoking Section 35 of the MGT Act, 1963 without entering a finding that the subject orders of assessment for the three years are prejudicial to the interests of the Revenue without establishing that they are also erroneous as held by the Hon. High Court in **BISMILLAH TRADING COMPANY VS. INTELLIGENCE OFFICER (2000) 119 STC 558 (Ker.)**?
07. Whether, on the facts and in the circumstances of the case, the learned Deputy Commissioner, Department of Commercial Taxes, Thrissur, is justified in placing reliance on **COMMISSIONER OF CENTRAL EXCISE, RAIPUR Vs. HIRA CEMENT (2006) 145 STC 264 (SC)**, which has no bearing whatsoever on the facts and circumstances of the case and could not have initiated any proceedings for revising the orders of assessment passed by the assessing authority for the three years in question? Reference is invited to paragraph No. (20) of the judgment of the Jurisdictional High Court in **COCHIN UNITED TRADING VS. STATE OF KERALA (2006) 16 KTR 332(Ker.)**
08. On the facts and in the circumstances of the case, it is submitted that the Hon'ble Tribunal may deem it fit to set aside the impugned order of the learned Deputy Commissioner, Department of Commercial Taxes, Thrissur and to pass orders that the Appellant Company is entitled to exemption from sales tax on the basis of the eligibility certificate issued to it by the Department of Industries and commerce and the same is ^{paid} ~~payed~~ for ".

(Contd..P.5)



V. Ramesh
28/6
COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISUR

The State Representative on the other hand defended the order passed by the lower authority.

Now the point for consideration is:

- (1) Whether the impugned order passed by the Deputy Commissioner is liable to be interfered with?

Point:

At the time of argument authorised representative take our attention to the minutes of State Level Committee held on 9-9-2009. The relevant portion of the minutes reads as follows:

23. M/s. Western Plastic Processing Co. Pvt. Ltd., Thrissur.
M/s. Western Plastic Processing Co. Pvt. Ltd., Thrissur is an ESSE registered under the Companies Act & engaged in the production of Plastic Moulded Furniture and Injection Moulded Goods. The firm started commercial production on 10-02-2001. They have entered into an agreement with another firm viz. M/s. Win Plast Limited, Demap, for the supply of plastic furniture's which is only a marketing arrangement. The company is having their own moulds and is manufacturing products with own raw materials and supplies to another company as part of its marketing arrangement. The company has invested in plant and machinery and set up the factory and actual production takes place.

The DIC, Thrissur in its meeting held on 15-11-2002 sanctioned STE to the tune of Rs. 1,16,39,000/- for the period of 10-02-2001 to 09-12-2008. During an inspection by the officials from the office of the Accountant General at the Commercial Tax Office, they raised objections against the sanctioning of STE for brand name of goods owned by another firm. Based on the directions from the office of the Accountant General, Thrissur, the Deputy Commissioner of Commercial Taxes, Thrissur, requested the General Manager, DIC, Thrissur to cancel the STE already sanctioned.

(Contd..P.6)



COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THRISSUR

Accordingly this was placed before the DIC in its meeting held on 29-5-2008 and the DIC came to the conclusion that the decision to grant STE is in order. The DIC also opined that the court verdict mentioned in the letter from the Accountant General is in respect of Central Excise Rules. However the DIC sought clarification from SIC.

The SIC heard the party, examined the records, rules and decided to endorse the decision of the DIC dated 15-11-2002 on the following grounds.

- 1) In the G.O. sanctioning STE (G.O.(P) No.155/93/ID Dated 05-11-1993 and SRO.No.1729/93) there is no mentioning of denial of STE for the manufacture of products under the brand name of another company.
- 2) They have set up factory, installed machineries and actual production/manufacturing is taking place in the company.
- 3) This is only a marketing arrangement and all the products are sold within the State of Kerala.
- 4) The court verdict mentioned in the letter from the Accountant General relates to Central Excise Rules and not Sales Tax.

On going through the above minutes it could be seen that District Level Committee of District Industries Centre in its meeting held on 29-5-2008 found that the decision to grant sales tax-exemption to the appellant-company is in order. District Level Committee also found that the court verdict referred in the letter from the Accountant General is in respect of Central Excise Rules. However District Level Committee sought clarification from State Level Committee. Consequently State Level

(Contd..P.7)

2816 COMMERCIAL TAX OFFICE
FOURTH FLOOR
TRIPUNITHUR

Committee heard the party and examined the matter and endorsed the decision of District Level Committee dated 15-11-2002. By the said decision the District Level Committee sanctioned sales tax exemption to the tune of Rs.1,16,39,000/- to the appellant for the period from 10-2-2001 to 9-12-2008. The grounds for endorsing the decision of the District Level Committee is also specifically provided. So the decision of the Deputy Commissioner in denying sales tax exemption for the manufacture of products under the brand name of another company is not seems to be in order. Hence the impugned order passed by the Deputy Commissioner is set aside and the case is remanded to the assessing authority. Appellant shall produce minutes of the State Level Committee before the assessing authority within a period of 3 months starting from the date of receipt of this order and thereafter the assessing authority shall re-do the assessment for the years 2001-02, 2002-03 and 2003-04 for fresh disposal in the light of the minutes of the State Level Committee and pass orders in accordance with law.

In the result appeal allowed.

(Dated this the 16th day of December, 2009)

sd/-
MEMBER (JUDICIAL) / Dy. Commr.

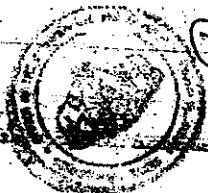
sd/-
MEMBER (ACCOUNTS)

Assistant Secretary.

Copies to:

- The Appellant thr' A/R.
- The State Representative.
- The Commercial Tax Officer, 4th Circle, Thrissur.
- The INSPECTING ASST. COMMISSIONER, C/T., Thrissur.
- The Deputy Commissioner, C/T., Thrissur.
- The Deputy Joint Commissioner (Law), Ernakulam.
- The Commissioner, CCF., Tvm.
- The Secretary, KAIT & STAT., Ernakulam.
- The Asst. Secretary, STAT., Addl. Benches, Kozhikode/Kottayam/Tvm.
- The Stock File/The File.

KRP/



(2009 12 16)

28/12/09
4th OFFICE
4th CIRCLE
THRISSUR

PROCEEDINGS OF THE COMMERCIAL TAX OFFICER, IV TH CIRCLE, THRISSUR

PRESENT : Smt. K.G. REMAJA

Dated: 22-03-2010

1. 25143053 / 01-02
2. Western Plastic Processing (P) Ltd.
3. Manufacturing of Moulded furniture
4. Thakkottussery, Olur
5. (i) 79,51,735
(ii) 7,48,246
(iii) 72,03,499
6. 72,03,499 @ 8%
7. Remanded

- Read:-
1. This office proceedings even number dated: 24/12/2002.
 2. This office revised proceedings under Section 43 even number dated: 25/2/2005.
 3. Order No.R1-4219/03 dated: 30/4/2008 of the Deputy Commissioner, Thissur
 4. Order No.TA.379/03 dated: 18/12/2009 of Tribunal, Palakkad.

ORDER

The original assessment for the year 2001-02 in respect of M/s. Western Plastic Processing (P) Ltd. was completed as per this office reference read as 1st paper above. The above assessment was revised under section 43 for rectifying the mistake of application of incorrect rate of tax for the above year. The tax dues for the year was adjusted towards the eligible SSI exemption. Subsequently the assessment for the year 2001-02 was set aside by the Deputy Commissioner, Thissur on the ground that the SSI exemption granted to the assessee is not in order. Aggrieved by this order the assessee preferred appeal before the tribunal and as per the order read as 4th paper above the order of the Deputy Commissioner, Thissur is set aside and remanded for fresh assessment. Under the above circumstances the assessment for the year 2001-02 is completed afresh as shown below:-

Total turnover as per accounts : Rs. 79,51,735.00

Less exemption allowed on interstate sales : Rs. 7,48,236.00

Rs. 72,03,499.00



COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISSUR

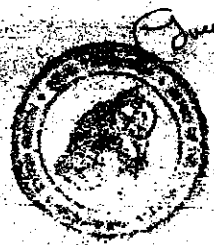
Rounded to	Rs. 72,03,500.00
Tax due @ 8%	Rs. 5,76,280.00
AST due @ 15%	Rs. 1,08,642.00
Total due	Rs. 6,62,722.00
SSI exemption allowable	Rs. 1,16,39,000.00
Balance carried over to 2002-03	Rs. 1,09,76,278.00

As

**COMMERCIAL TAX OFFICER,
IV TH CIRCLE, THRISSUR**

To

The Hon'ble
Copy submitted to the Inspecting Assistant Commissioner, Thrissur
Copy to File



Done (copy)

[Signature]

**COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THRISSUR**

PROCEEDINGS OF THE COMMERCIAL TAX OFFICER, IV TH CIRCLE, THRISSUR.

PRESENT : Smt. K.G. REMABA

Dated: 22-03-2010

1. 25143053/02-03 (Remanded)
2. Western Plastic Processing Co. (P) Ltd.
3. Manufacturer of Plastic Moulded furniture
4. III / 277, Thakkattussery Road, Thalors, Thrissur
5. (i) 5,30,41,559.71
(ii) 5,22,77,700.85
(iii) 83,898
6. 5,50,88,580
7. -

- Read:-
1. This office proceedings even number dated: 24/7/2004
 2. Modified Order even number dated: 1-8-2005
 3. Deputy Commissioner, Thrissur Order No.R1-4219/06 dated: 30-04-2009
 4. Tribunal appellate Order No.TA.373/08 dated: 18.12.2008

ORDER

The original assessment for the year 2002-03 in respect of M/s. Western Plastic Processing Co. (P) Ltd. was completed as per this office proceedings read as 1st paper above. Aggrieved by this Order the assessee preferred appeal before the Appellate Assistant Commissioner, Thrissur. According to the direction of the appellate order of the Appellate Assistant Commissioner, the assessment for the year 2002-03 was modified. The above assessments were set aside and remanded for fresh assessment by the Deputy Commissioner, Thrissur as per the order read as 3rd paper above. Aggrieved by this order the assessee filed appeal before the tribunal and as per the order read as 4th paper above the order of the Deputy Commissioner was set aside and remanded for fresh assessment. Under the above circumstances the assessment for the year 2002-03 is completed afresh as shown below:-

Total turnover as per accounts

Rs. 5,41,48,506.80

Add as directed by Appellate Assistant Commissioner

Rs. 1,00,000.00

Add 85% towards surcharge and cess

Rs. 65,000.00

Add sales return not proved	Rs.	6,38,870.00
Add purchase return disallowed	Rs.	80,500.00
Add sundry purchase not supported assessable Under section 5A	Rs.	8,120.00
Purchase turnover under section 5A as per Accounts	Rs.	47,597.00
Total turnover	Rs.	5,50,88,583.00
Rounded	Rs.	5,50,88,580.00
Turnover eligible for SSI Exemption	Rs.	5,45,39,410.00
Tax due @ 8% on Rs.54539410	Rs.	43,63,153.00
AST due @ 15%	Rs.	6,54,473.00
Total	Rs.	50,17,626.00
Eligible exemption brought forward from 01-02	Rs.	1,09,76,278.00
Balance carried over to 2003-04	Rs.	59,58,852.00
Turnover not eligible for SSI exemption	Rs.	5,49,180.00
Tax due @ 3% on Rs. 63800	Rs.	1,914.00
Tax due @ 12% on Rs. 60000	Rs.	7,200.00
Tax due @ 24% on Rs. 5000	Rs.	1,200.00
Tax due @ 12% on Rs.284179	Rs.	34,100.00
Tax due @ 12% on Rs. 80500	Rs.	9,660.00
Tax due @ 12% on Rs. 47580	Rs.	5,710.00
Tax due @ 8% on Rs. 8120	Rs.	649.00
Total	Rs.	549180
Total tax	Rs.	60,433.00
AST due @ 15%	Rs.	60,433.00
Total	Rs.	8,065.00
	Rs.	55,468.00



COMMERCIAL TAX OFFICE
SOUTH CIRCLE

Total	Rs.	69,498.00
Total paid	Rs.	2,201.00
Balance	Rs.	<u>67,297.00</u>

This should be paid as per Demand Notice attached.

Rs

COMMERCIAL TAX OFFICER
IV TH CIRCLE, THRISSUR

To

The Assessee
Copy submitted to the Inspecting Assistant Commissioner, Thrissur
Copy to File

Tps.

File
3/13/16

(Done 27/4)
W. R. S.
28/06/16



COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISSUR

PROCEEDINGS OF THE COMMERCIAL TAX OFFICER, IV TH CIRCLE, THRISSUR

PRESENT : Smt. K.G. REMAJI

Dated: 25-03-2010

1. 25143053 / 03-04
2. Western Plastic Processing Co.(P) Ltd.
3. Manufacturing of Plastic Moulded Chairs
4. Thaikattussery Road, Thalore
5. (i) 5,71,97,998
(ii) 5,54,54,120
(iii) 17,43,868
6. 5,71,97,998
7. Remanded

- Read:-
1. This office proceedings even number dated: 25/5/2005.
 2. Deputy Commissioner, Thirissur Order No.R1.421908 dated: 30.4.2009
 3. Tribunal Appellate Order No. TA.37309 dated: 16.12.2009

ORDER

The original assessment in respect of Western Plastic Processing Co.(P) Ltd. for the year 2003-04 was completed as per this office order read as 1st paper above. The above order was set aside and remanded back for fresh assessment by the Deputy Commissioner, Thirissur vide the order read as 2nd paper above. Aggrieved by the order the assessee preferred appeal before the tribunal and the Tribunal as per the order read as 3rd paper above set aside the Deputy Commissioner's Order and remanded for fresh assessment. Under the above circumstances the KGST assessment for the year 2003-04 is completed afresh as shown below:-

Total turnover as per accounts	Rs. 5,71,97,998.00
Turnover eligible for SSI exemption	Rs. 5,54,54,120.00
Tax due @ 8%	Rs. 44,38,330.00
AST due @ 15%	Rs. 6,85,449.00
Total	Rs. 51,01,775.00

COMMERCIAL TAX OFFICER, IV TH CIRCLE, THRISSUR
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Eligible SSI exemption brought forward from Previous month	Rs. 59,58,653.00
Amount carried over to 2004-05	Rs. 8,56,874.00
Raw material and plastic moulded AC cranes sales	Rs. 17,43,878.00
Tax due @ 3% on Rs.16,84,878	Rs. 50,546.00
Tax due @ 8% on Rs.58,990	Rs. 4,719.00
Total	Rs. 55,265.00
AST due @ 15%	Rs. 8,280.00
Total	Rs. 63,555.00
Total paid	Rs. 62,808.00
Balance	Rs. 747.00

This should be paid as per Demand Notice attached.

Ma
COMMERCIAL TAX OFFICER,
IV TH CIRCLE, THRISSUR

To

The Assessee
Copy submitted to the Inspecting Assistant Commissioner, Thrissur
Copy to File



COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISSUR

THE OFFICE OF THE DEPUTY COMMISSIONER (APPEALS)-I
COMMERCIAL TAX, ERNAKULAM

Date of Order : 30/04/2013

(Present: Shri. Tome Joseph, B.Com, L.L.M)

AIT/ST/KVAT/LT Appeal No. : STA 45/09
Instituted on : 16/08/2005
From the order of the : Commercial Tax Officer-II, 4th Circle,
Thrissur
2002-03
(1) Year of assessment :
(2) Name of the appellant : M/s. Western Plastic Processing Co.
(P) Ltd., Thaikkattussery Road,
Thrissur
(3) Income/Turnover assessed :
(4) Tax demanded Income Tax /
Super Tax / Sales Tax / Surcharge /
Central Sales Tax :
(5) Section / Rule under which
assessment was made : / - / -

/Date of hearing : 30/04/2013

Present for appellant : Shri. V.M.Krishnakumar, Chartered Accountant

APPELLATE ORDER AND GROUNDS OF DECISION

This appeal is filed against the revised order of assessment dated 01/06/2005 passed by the Addl. Commercial Tax Officer-II, 4th Circle, Thrissur and relates to the assessment year 2002-03. The order is passed under the KGST Act. In the above assessment order, the assessing authority levied tax on a sale value of Rs. 2,84,170/-. The appellant submitted that this is second sale of moulded plastic chairs which is not liable to tax at the hands of the appellant. Brushing aside the various arguments raised by the appellant, the above turnover was subject to levy of tax @ 12%. This order is now challenged in this appeal on the following grounds:-

1. The impugned order bearing NO.2514 3052/2002-2003 [Revised] dated 01.06.2005 passed by the learned Additional Sales Tax Officer-II, Fourth Circle, Thrissur, is opposed to law, facts, weight of evidence, circumstances of the case, the provisions of The K.G.S.T. Act, 1963 and the judicial pronouncements on the subject.
2. The learned Trial Authority erred both in law and on facts in subjecting the second-sale of moulded plastic chairs of value of Rs.2,84,170/- to tax once again in the hands of the appellant company on the grounds that:



28/6/14

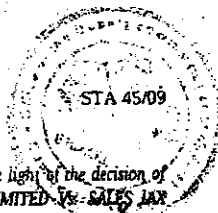
ASST. COM. TAX OFFICER-II
FOURTH CIRCLE
THRASSUR

STA 45/09

- a) No documentary evidence relating to the same was produced before the Appellate Assistant Commissioner; and
 - b) No satisfactory explanation was offered by the dealer for such a transaction.
3. Both the purchase and sales turnover relating to the impugned transaction has been clearly reflected in the Trading Account filed by the dealer before the Trial Authority at the time of the original hearing itself and before the first appellate authority in the course of the appellate proceedings.
 4. The contention of the learned Trial Authority that the Appellant-Company could not prove the impugned transaction with documentary evidence is also contrary to the facts on record of the Department. Exhibits P.1.1. through P.1.3. filed before the Appellate Assistant Commissioner proves the validity of the assertion on the part of the Appellant-Company.
 5. Neither The K.G.S.T. Act, 1963 nor the rules made there under impress an embargo on the sale of goods back to the original seller. The chairs were returned on the basis of commercial expediency as it was not found to be moving with the Appellant-Company and accordingly, it was re-sold to M/s. Sree Bhagavathy Traders, Kochin-682 012, who had originally supplied the chairs to the Appellant-Company vide their Bill Nos. CEI 355 and 356 dated 03.01.2003 and 04.01.2003 respectively on which, their K.G.S.T. Registration NO.2401 0446 dated 11.05.1984 has been conspicuously displayed.
 6. Further, the very fact that the said item was taxable only at the point of first sale within the State of Kerala by a registered dealer and that the sale by the Appellant-Company was only a second sale without any further liability to tax was also not considered by the learned Trial Authority. This has resulted in subjecting the goods to double taxation, which does not have the sanction of law.
 7. The transactions relating to the purchase and sale of the impugned chairs find specific reflection in the Statements of Account filed by the Appellant-Company before the authorities herein below as well as in the books of account maintained by the Company. As held by the Hon. Apex Court in *STATE OF MADRAS Vs. JAYARAJA NADAR & SONS* (1971) 28 STC 700 (SC), an assessment where the officer determines the turnover by including items found in the Books of Account is not a best of judgment assessment.
 8. The decision of the Hon. Jurisdictional High Court of Kerala in *KOLLANNUR AGENCIES Vs. ASST. COMMISSIONER (ASSESSMENT), SALES TAX OFFICE, SPECIAL CIRCLE, THRISSUR* [1991] 80 STC 177 [KER.], to the effect that where the amount of turnover is not disclosed in the returns, but is shown in the Trading Account filed by the Assessee, it is not a case where a Best of Judgment assessment can be made is also in favour of the Appellant-Company.

K. R. S.
28/6
COMMERCIAL TAX OFFICES
FOURTH CIRCLE
THRISSUR





9. The question of the levy of penal interest may also be considered in the light of the decision of the Hon. Apex Court in **MARUTI WIRE INDUSTRIES PRIVATE LIMITED - VS - SALES TAX OFFICER, FIRST CIRCLE, MATTANCHERRY & ORS. [2001]122 STC 410 (SC)**.

10. On the facts and in the circumstances of the case, it is submitted that the learned first Appellate Authority may be kind enough to delete the addition of the sum of Rs. 2,84,170/- made to the returned taxable turnover of the Appellant-Company and the same is prayed for.

The authorised representative Shri. V.M Krishnakumar, Chartered Accountant appeared and argued the matter. He is heard and I have examined these issues. The only issue to be decided is regarding the levy of tax on a sum of Rs. 2,84,170/- which is claimed to be a second sale of moulded plastic chairs. The claim of the appellant is that this turnover is not liable to be tax as they are second sales. The appellant has produced before me the Bill No.s 355 & 356 dated 03/01/2003 and 04/01/2003 respectively which evidences the purchase of the above plastic chairs. I have examined these bills. It is seen that these items are purchased from Sri. Bhagavathy Traders, Kochi who is a dealer with valid Registration number. It is also noted in the bill that this is a second sale. Moreover, the appellant has also produced letter from Sri. Bhagavathy Traders to the effect that the purchase from the appellant as per bill Nos. 464, 465 & 466 dated 29/03/2003 have been entered in the books of accourts and form part of their stock. The claim of the appellant is that the goods for the above amount of Rs. 2,84,170/- are purchases from Sri. Bhagavathy Traders and they were again sold back to Sri. Bhagavathy Traders as per Bill No. 464, 465 & 466. In the light of the fact that the sale by Sri. Bhagavathy Traders to the appellant is second sales it becomes clear that the above turnover is not liable to be taxed as the same was taxable at the point of first sale. As observed by the Hon'ble Tribunal, law does not prevent the assessee from selling the goods to the same purchaser whatever be the aim behind it. Therefore the above turnover shall be deleted from taxable turnover of the appellant. The appeal is therefore allowed.

RESULT : [2002-03] [STA] ALLOWED

Deputy Commissioner (Appeals)-I,
Ernakulam

To
The appellant through Authorised representative
Copy to the Commercial Tax Officer-II, 4th Circle, Thrissur
Copy to the I.A.C, Thrissur
Copy submitted to JC-1, C.T., TVM/ File
LS/-

(True copy)

28/1/04
COMMERCIAL TAX OFFICER
FOURTH CIRCLE
THRISUR



(Assessment Order to be issued in this form)
DEPARTMENT OF COMMERCIAL TAXES
 (Rules 18 and 21 of the Kerala General Sales Tax Rules, 1963)
PROCEEDINGS OF THE SALES TAX OFFICER, 4TH CIRCLE, THRISSUR
Present : K.S. RAMLA

Dated: 25.06.2014

ORDER No. 25143053/2012-13 (REVISED)

Sub: KGST Act 1963 - M/s Western Plastic Processing Co (P) Ltd, Thalare, Thriissur
 - Assessment for 2002-03 - revised order passed - Reg:-

- Read: 1) This office proceedings of even No. 24.02.2014.
 2) Modified order of even No. dated 01.06.2005.
 3) Remanded order No. 25143053/2002-03 dated 22.03.2010.
 4) Appellate order No. STA 45/09 dated 30.04.2013 of Deputy Commissioner (Appeals), Ernakulam.

The assessment in respect of M/s Western Plastic Processing Co. (P) Ltd, Thriissur for the years 2002-03 was completed as per this office proceedings read as 1st paper above. Aggrieved by this order the assessee preferred appeal before Appellate Assistant Commissioner, Thriissur. As per the directions of the Appellate Assistant Commissioner in STA 842/04 dated 26.03.2005 the assessment for the year 2002-03 was modified vide this office order 2nd cited.

In the above assessment order the assessing authority levied tax on sale value of moulded chairs which the dealer claimed as second sales against this order also the assessee went on appeal. In the meantime based on the audit objection of the accounts the above assessments were set aside and remanded by the Deputy Commissioner, Thriissur for fresh assessment.

Aggrieved by this order the assessee filed appeal before tribunal and as per order No. 373/09 dated 18.12.2009 of Tribunal the order of Deputy Commissioner, Thriissur was set aside and remanded for fresh assessment.

The remanded assessment was completed as per order cited 3rd above fixing total turnover as Rs. 5,50,88,590 and taxable turnover not eligible for SSI exemption on Rs. 5,49,180/-.

As per the appellate order read as 4th paper above the Deputy Commissioner (Appeal), Ernakulam has disposed the appeal filed by the dealer with direction to delete the turnover of moulded plastic chairs of value Rs. 2,84,170/- from the taxable turnover of the dealer.

Ram S
 SALES TAX OFFICER
 FOURTH CIRCLE
 THRISSUR



In the above circumstances the assessment for 2002-03 is revised as under:

Taxable turnover fixed in the remanded order/ revised order	: Rs. 5,50,88,590.00
Less exemption allowed or second sales of moulded chairs (as directed by Deputy Commissioner (Appeals)	: Rs. 2,84,170.00
Balance taxable turnover fixed	: Rs. 5,48,04,420.00
Turnover eligible for SSI exemption	: Rs. 5,45,39,410.00
Tax due @ 8% on Rs. 5,45,39,410/-	: Rs. 43,63,153.00
AST due @ 15%	: Rs. 6,54,473.00
Total	: Rs. 50,17,626.00
Eligible exemption brought forward from 01-02	: Rs. 1,09,76,278.00
Balance Carry forward to 2003-04	: Rs. 59,58,652.00
Turnover not eligible for SSI exemption	: Rs. 2,65,010.00
Tax due @ 3% on Rs. 63,800/-	: Rs. 1,914.00
" @ 12% on Rs. 1,88,090	: Rs. 22,570.00
" @ 24% on Rs. 5,000/-	: Rs. 1,200.00
" @ 8% on Rs. 8,120/-	: <u>Rs. 650.00</u>
	: Rs. 26,334.00
AST due @ 15%	: Rs. 3,950.00
Total	: Rs. 30,284.00
Paid as per original order : Rs. 2,201	
Chalan No. 931/24.05.2006 : <u>Rs. 32,925</u>	: Rs. 35,126.00
Excess	: Rs. 4,842.00
Interest due @ 23% (from 2.10.2004 to 24.05.2006) on Rs. 30,284	: Rs. 6,965.00
Paid Chalan 931/24.05.06	: <u>Rs. 12,787.00</u>
Excess	: Rs. 5,822.00



COMMERCIAL TAX OFFICER
IV TH CIRCLE, THRISSUR.

To

The dealer
Copy submitted to the Inspecting Assistant Commissioner, Thrissur
Copy to file.

SE/-

T. R. 12A (Cont.) [See Rules 102 (c) & 154]

COMMERCIAL TAXES
CHALAN
ORIGINAL

For remittance of money to the Central State Government

Order to the Executive and grant receipt

To be filled at the Treasury/Bank/Revenue/Rupak (in words)

Bank/Post Office

Date

Signature

Stamp

For Western Plastic Processing Co. (P) Ltd.

Pin. No. 1000000000

Thiruvananthapuram

Commercial Tax Officer
Fourth Circle Office
Thrissur



(True copy)
R. S. S.
8/7/94

COMMERCIAL TAX OFFICE
FOURTH CIRCLE
THRISUR

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER (KVAT),
COMMERCIAL TAXES, SPECIAL CIRCLE, KOTTAYAM**

Present : Smt. K.G. Valsalamony Dated - 30.03.2013

Assessment No.	- 21010358/2002-03/Revised.
Name of the assessee	- Smt. P.P. Alphonsa, The Josco Fashion Jewellery
Nature of business	- Gold Jewellery
Place of business	- Kottayam.

- Read : 1. This office assessment Order No. 21010358/2002-03/Revised dt. 5.6.2006.
2. Order in ST Rev. Nos. 265 & 275 of 2008 dt. 29.5.2009 of Hon'ble High Court of Kerala.
3. Order RP Nos. 335 & 336 of 2011 in ST (Rev) Nos. 275 & 265 of 2008 dt. 14.6.2012 of Hon'ble High Court of Kerala.

ORDER

The assessee Smt. P.P. Alphonsa, The Josco Fashion Jewellery, Kottayam had opted for paying tax under compounding system under section 7(1)(a) of KGST Act 1963 for the year 2002-03 and permission was granted accordingly and the assessment was completed vide reference 1st cited. Against the assessment order, the assessee filed appeal before the Deputy Commissioner (A), Kollam and the Deputy Commissioner (A) vide Order Nos. STA. 134 & 135 of 2006 dt. 15.11.2006 directed to compute the compounded tax after deducting the purchase turnover under section 5A. Against the order of the Deputy Commissioner (A) the state filed second appeal before the Hon'ble Tribunal and the Tribunal also upheld the findings of the Deputy Commissioner (A). Against this order, the state filed TRC before the Hon'ble High Court of Kerala and the Hon'ble High Court by order referred second above reversed the order of the Tribunal and the first

appellate authority and restore the order of the assessing authority. The revision petition filed by the assessee also were dismissed by the Hon'ble High Court vide reference 3rd cited.

In the circumstances, the assessment for the year 2002-03 is completed as under as per the directions contained in the revision order referred 2nd above.

Tax payable as per accounts for the previous year:

Tax due @ 1% on purchase of old gold ornaments of Rs. 15,51,01,359/-	Ra. 15,51,014.00
Tax due @ 1% on purchase of sales of Ra. 3820696/-	Ra. 38,207.00
Tax due @ 4% on sales of Ra. 153260703.24	Ra. 62,10,428.00
Total	Ra. 77,99,649.00
200% of the above as ST due for 2002-03	Ra. 1,55,99,298.00
AST due @ 15%	Ra. 23,32,895.00
Total tax due for 2002-03	Ra. 1,79,39,193.00
Tax paid	Ra. 1,42,13,961.00
Balance due	Ra. 36,35,232.00
Interest due under section 23 (3) of the EGST Act	Ra. 52,63,534.00

This should be paid as specified in the demand notes issued immediately.

Assistant Commissioner (KVAT)
Special Circle, Kottayam

To, The assessee
Copy submitted to Deputy Commissioner, Kottayam/PBE

DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, KOLLAM
 Date of order: 15.11.2006

Present: Sri. M. B. Abdul Azeez

Income-tax Appeal No. STN-11a/2006-135/2006

Income-tax Appeal No. 296-2006

Instituted of the Commercial Tax Office on deputation,
 Special Circle, Kottayam

from the order of the Commercial Tax Office on deputation,
 Special Circle, Kottayam

(1) Year of assessment: 2002-03 and 2004-05 (Revised K.G.S.T.)

(2) Name of appellant: Sri. P. F. Alphonsa, Proprietor,
 Pisco Fashion Jewellers, Kottayam

(3) Income/Turnover assessed:

(4) Tax demanded Income-tax/Supertax/Secs-tax/Surcharge/Central Excise:

(5) Section/Rule under which assessment was made:

Date of hearing:

10.11.2006

Present for Appellant:

Sri. C.N. Kuruvilla, Advocate,
 Kottayam

APPELLATE ORDER AND GROUND OF DECISION

These two appeals are filed by M/s. P. F. Alphonsa, The Pisco Fashion Jewellers, Kottayam challenging the revised K.G.S.T. assessment orders of the Commercial Tax Officer on deputation, Special Circle, Kottayam for the assessment years 2002-03 and 2004-05.

Both the appeals are filed by the same person, the issues involved and contentions raised in both the appeals are also same in nature, hence they are heard together and disposed in a common order.

STN-11a/06-2002-03 K.G.S.T.

The assessing officer re-opened the assessment for 2002-03 under section 19 (1) of the K.G.S.T. Act, 1963 and revised the order as under.

The assesses had been permitted to pay tax under section 7 of the Act and the final assessment for the year 2002-03 was originally completed as detailed below.

Total and taxable turnover fixed	Rs. 25,82,83,596.82
Compounded tax fixed for the year	Rs. 1,42,83,985.00

However on a further verification of the records, in the light of the clarification under section 59 A of the Act

by the Commissioner of Commercial Taxes vide order read above. It is noticed that an escape of turnover due to an under assessment was occurred when the final assessment was completed.

As per the order under section 59 A read above it is clarified that tax payable as concerned in the return or accounts for the immediate preceding year means tax payable on the sales turnover under sub section (1) of section 5 and the tax payable on the purchase turnover under section 5 A. However when the final assessment for the year 2002-03 was completed, the tax payable for the year under section 7 of the Act was computed considering only the sales turnover of the previous year as below.

ST & MF payable on sales turnover of the previous year	Rs. 71,41,992.50
100% of the above as Tax u/s 7 for the year 2002-03.	Rs. 42,83,985.00

Here, when the tax payable as per accounts for the previous year has been computed after excluding the turnover under section 5 A (purchase turnover). In the light of Entry No. (5) of S.L.O. No. 1090/99. However the Hon'ble Commissioner of Commercial Taxes as per the above clarification order it is clarified that "the effect of S.O. No. 1090/99 granting exemption on the purchase turnover is only in respect of purchase effected during the year in which tax was opted to be paid at the compounded rate based on the tax paid or payable as per accounts of the preceding year. The exemption is not intended to exempt liability U/s 5 A of any preceding year for fixing the amount of tax payable for the preceding year to fix the quantum of tax payable for the assessment year for which the option is made.

In the light of the above order clarifying the point and the provisions of the Act the tax liability under section 7 is to be recomputed to make good the under assessment as detailed below.

2002-03

Tax payable as per accounts for the previous year

Tax due @ 2% on purchases of old gold ornaments at Rs. 15,51,01,357.00	Rs. 15,51,014.00
Tax due @ 1% on Purchases of stones at Rs. 38,20,496.00	Rs. 38,207.00
Tax due at 2% on Sales at Rs. 15,52,60,708.84	Rs. 62,10,428.00
	Rs. 77,99,648.00

200% of the above as sales tax due for
 2002-03 Rs. 1,55,99,298.00
 AST due @ 1% Rs. 23,39,898.00
 Total tax payable for the year
 2002-03 Rs. 1,79,39,193.00

Hence it was proposed to re-open the final assessment for the year 2002-03 under section 19(1) of the Act and to be assessed to tax in the above lines as per the notice read third above. To this notice the assessee has filed reply. Most of the contentions raised in the reply are already discussed in detail in the above paragraphs. Further it is pointed out that to var the Order No.C.3-31565/04/CF 14-6-04 of the Commissioner of Commercial Taxes. In reply to a clarification sought by the assessee based u/s 29 A of the Act, it was clarified that "under explanation to section 7 (1) (a) of the Act, the tax payable on purchase turnover under section 5 A has also to be included while working out the quantum of compounded tax. But under sub clause 5 of clause (1) of sub 4090/99, the tax payable u/s 5 A relating to the purchase of gold or silver ornaments has been exempted".

I have verified the reply and the orders (1) Order No. C.3-31565/04/CF/14-6-04 of the Commissioner of Commercial Taxes and (2) Order No. C.3-31565/04/CF Dated 20-2-06 of the Commissioner of Commercial Taxes. I have to follow the latest clarification and in result the final assessment for the year 2002-03 stands revised as under.

Tax payable as per accounts for the previous year

Tax due @ 1% on Purchase of old gold ornaments at Rs. 15,51,01,357.00	Rs. 15,51,014.00
Tax due at 1% on Purchase of goods at Rs. 38,20,656.00	Rs. 38,207.00
Tax due @ 4% on sales at Rs. 15,52,60,704.84	Rs. 62,10,428.00
Total	Rs. 77,99,649.00
200% of the above as sales tax due for 2002-03	Rs. 1,55,99,298.00
AST due @ 1% x	Rs. 23,39,898.00
Total tax due for the year	Rs. 1,79,39,193.00
Total tax paid	Rs. 1,62,81,291.00
Balance if any	Rs. 16,57,902.00

These amounts shall be paid as specified in the Demand notice enclosed.

The contentions raised by the appellant against the order of the assessing authority are the following :-

1. The order of the assessing authority is against facts, law and justice.
2. The assessing authority went wrong in revising the original order.
3. The assessing authority went wrong in taking purchase turnover of Gold Ornaments amounting to Rs. 1,51,01,357/- and purchase turnover of stones worth Rs. 28,20,696/- for the purpose of computing the compounded tax.
4. The assessing authority ought to have taken the sales turnover only, to compute the compounded tax. In view of the ruling of the Hon. High Court of Kerala in P. K. J. Jewellery and another Vs State of Kerala and Alankas Jewellery Vs State of Kerala and another reported in [2001] 12 V.T.R. 342 (Ker.) where in it has held that "after the first year of compounding, the tax paid in the next year and in latter year's at the applicable percentage of previous year's tax paid in the next year and in latter year's at the applicable percentage of the compounded rate, which includes the component of tax under section 5 A also. In other words tax at compounded rate includes and is in lieu of tax payable under section 5 (1) and section 5 A of the Act. Therefore the petitioners who have opted to pay tax for the year 2001-02 under section 7 (1) (a) have to pay tax at 200% of last year's preceding year's tax paid at compounded rate. Their learned Sh. P. K. J. J. Jewellery and another Vs State of Kerala and another held that "S.O. 402/04 grants exemption from liability under section 5 A in respect of dealers who are paying tax at the compounded rate u/s 7 (1) (a) of the Act. The notification granting exemption and the clarification issued by the Commissioner are consistent with the statutory provisions. Under the provisions as clarified by the Commissioner no separate assessment is possible for the liability u/s 5 A on dealers who are paying tax at compounded rate u/s 7 (1) (a) of the Act. This is because tax payable at compounded rate is in lieu of liability u/s 5 A of the Act. In other words payment of tax at compounded rate is a substitute for liability towards sales tax and purchase tax given by sections 5 (1) and 5 A of the Act.

In fact, those who are paying tax at compounded rate after the first year will be paying compounded tax for the succeeding year's based on the earlier year's payment of tax at compounded rate".
5. The assessing authority ought to have found that as per the notification filed by the appellant, the Hon. Commissioner of Commercial Taxes in Order No. C-3-2165/04 u/s 49 A of the S.T. Act, has given clarification as follows: "Under explanation to section 7 (1) (a) of the Act. The tax payable on purchase turnover under section 5 A as also to be included while working out

- quantum of compounded tax. But, under sub clause 5 of clause (1) of SMO 1090/99, the tax payable under section 5 A relating to purchase of gold or silver ornaments has been exempted. This point is therefore clarified accordingly.
- 6 The assessing authority went wrong in not considering the clarification given to the assessee by the Hon. Commissioner of Commercial Taxes.
 - 7 The assessing authority ought to have found that order number C-3-4869/OI/CT dated 20-2-2006 of the Commissioner of Commercial Taxes is not binding on the appellant since, the first clarification is issued directly to the appellant's own case which is not yet cancelled.
 - 8 The assessing authority ought to have followed the first clarification. Since, it is related to appellant's case.
 - 9 Without prejudice the above it is submitted that there was no purchase tax liability in the year 2001-2002 on gold ornaments as it was exempted under sub-clause 5 (1) of SMO, 1090/99.
 - 10 Without prejudice to the above grounds it is submitted that the clarification issued by a Commissioner is not binding in view of the Decision of the Hon. High Court of Kerala Choles Plywood Industries Vs State of Kerala reported in 2006 (2) KLT 513. therein it has held that "S. 3 does not confer any statutory power on the Government or on the Commissioner for Commercial Taxes, to usurp the powers conferred on the Government under section 19 (1) of the Act. S. 3 has been enacted altogether for different purpose. Power has been conferred on the authorities for the effective implementation of the powers already conferred on the authorities under the Act. This power is supervisory in nature. Under the rules of S. 3, Commissioner of Commercial Taxes cannot exercise power conferred on the Government under section 10 (1) of the Act". It is further held that "letter or circular issued by the Commissioner has no legal sanctity and these letters or clarificatory orders would not fall within the scope of section 3 of the Act. It must be their understanding of the statutory provisions which is not binding upon the courts.
 - 11 The levy of interest is unwarranted in view of the following rulings of the Hon. Supreme Court in Paruthi Wire Industries case, J.K. Synthetics case and the Decision of the Hon. High Court of Kerala in Chaudhary Vs State of Kerala.
 - 12 For these and other grounds urged at the time of hearing it is humbly prayed that this Hon. Authority may be kind enough to cancel the assessment order and allow this appeal.

When the appeals were posted for hearing Advocate Sri. C.K. Kuruvilla appeared and argued the cases.

I have examined the contentions put forth by the appellant in detail, considered the arguments advanced by the learned Advocate on merits and also perused the connected records.

The only reason advanced by the assessing officer for re-opening of the assessment already completed under section 7 (1) of the Act is the issue of a clarification issued by the Hon. Commissioner of Commercial Taxes, Thiruvananthapuram. In the revised assessment order the assessing officer has specifically stated that, "Hence, when the tax payable as per accounts for the previous year has been computed after excluding the turnover under section 5 A (Purchase turnover) in the light of Entry No. (5) of S.R.O. 1090/99". But he is constrained to re-open the assessment based on the clarification of the Hon. Commissioner in this regard. So the only question to be decided is that whether the finding of the assessing officer that the clarification of the Commissioner leads him to include tax on purchase under section 5A for compounding under section 7 (1) of the Act and S.R.O. 1090/99 is correct or not.

As per Act 7 of 2002 with effect from 1-4-2002 Section 7 (1) (a) of the Act reads as under.

"any dealer in gold or silver ornaments or wares may at his option instead of paying tax in accordance with the provisions of that sub-section, pay tax at two hundred percent of the tax payable by him as computed in the return or accounts for the or the tax paid for the immediate preceding year whichever is higher".

Explanation to the above section reads as under.

"For the purpose of this clause tax payable as computed in the return or account for the immediate preceding year means, tax payable on the sales turnover under sub-section (2) of S. 5 and the tax payable on the purchase turnover under section 5 A".

From a plain reading of the Section and

explanation it can be seen that the compounded tax for the assessment year 2002-03 will be 200 percentage of the "Payable tax" for sales and purchases for 2001-02 so per return or accounts or tax paid whichever is higher.

As per S.R.O. 1090/99 the Government exempted the dealers from the liability of purchase tax if compounded under section 7(1) of the Act. Sub clause (5) of clause (1) of S.R.O. 1090/99 reads as under.

"By dealers in gold and silver ornaments who have opted for payment of tax under sub section (1) of section 7 of the said Act with regard to their turnover relating to the purchase of old gold or silver ornaments are exempted from tax under section 5 A of the said Act".

The Hon. Commissioner of Commercial Taxes, Thiruvananthapuram vide Order No. C3-21565/04/CT Dated 15-10-2004 based on the application of the appellant M/s. Vasan Jewellers dated 14-8-2004 clarified the position as under,

"The second question for clarification is whether dealers in jewelry who opt for compounding are liable to pay tax on the purchase turnover under section 5 A. Under explanation to section 7 (1) (a) of the Act, the tax payable on purchase turnover under section 5 A has also to be included while working out the quantum of compounded tax. But under sub-clause 5 of clause (1) of S.R.O. 1090/99 the tax payable under section 5 A relating to the purchase of old gold or silver ornaments has been exempted. This point is therefore clarified accordingly".

Again another clarification order was issued by the Hon. Commissioner of Commercial Taxes, Thiruvananthapuram vide Order No. C-314904/01/Tx Dated 10-2-06 as under based on the application dated 7-9-2001 by one G. Mohan Kumar, Chartered Accountant, Thampammoor. Even though this clarification is issued only on 10-2-06, this related to the position of law prior to the introduction of Finance Act, 2002 i.e. Act 7 of 2002. The relevant portion of the above order is reproduced under.

"The effect of S.R.O. 1090/99 granting exemption on the purchase turnover is only in respect of purchases effected during the year in which tax was opted to be paid at the compounded rate based on the tax paid or payable as per accounts of the preceding year. The exemption is not intended to exempt liability under section 5 A of any preceding year for fixing the amount of tax payable for the preceding year in order to fix the quantum of tax payable for the assessment year for which the option is made".

In the above clarification order the Hon. Commissioner has categorically stated that the exemption from purchase tax

as per SRO. 1090/99 is for the year in which tax was opted for compounding. The appellant M/s. Jasco Fashion Jewellers opted for compounding under section 7 (1) for the year 2001-02 and paid compounded tax. As the appellant opted compounding during the year 2001-02, she has no liability of purchase tax under section 5 A of the Act for the year 2001-02 since exempted as per SRO. 1090/99. As per Act 7 of 2002 with effect from 1-4-2002 the compounded tax for 2002-03 will be 200 percentage of the tax payable by him or her as contained in the return or accounts for the year or the tax paid for the immediate preceding year whichever is higher. The tax payable by the appellant for 2002-03 as per return and accounts are as follows:-

Sales of ornaments for M. 14,57,60,705.86	R. 62,10,428.00
Purchases of old gold ornaments, stones etc. for M. 14,57,22,043/- out of this old gold purchased exempted M. 15,21,01,357/-	R. 38,207.00
Total	R. 62,48,635.00
200% of the above	R. 1,24,97,270.00
15% of the above	R. 9,37,292.25
Compounded tax for 2002-03 will be	R. 1,34,34,562.25

It is respectfully noted that the liability of tax is the basis for fixing the compounded tax as per section 7 (1) and dependent on that system.

The appellant is paying tax at compounded rate from 1994-95 onwards till 2002-03 continuously. For the first year of compounding i.e. 1994-95 the assessing officer fixed compounded tax as R. 7,13,951.00 and surcharge as R. 71,395.00. The basis for fixing the above figures are the tax on sales and purchases under section 5 A for the year 1993-94 is R. 4,75,967/- Compounded tax for 94-95 was at 120% of tax on sales & purchases for 93-94. For 1995-96 compounded at 150% of R. 7,13,951/- being as R. 10,70,927/-, in 96-97 compounded tax fixed as R. 16,06,381/- at 150% of R. 10,70,927/- for 1997-98 compounded tax fixed as R. 24,09,587/- being 150% of R. 16,06,381/- for 1998-99 compounded tax fixed as R. 30,11,985/- being 120% of R. 24,09,587/- for 99-2000 compounded tax fixed as

... 1994-95 ...
 compounded tax fixed under the ...
 ... 1994-95 ...

... including the order for 2001-02 ...
 For 2002-03 also the appellant opted for compounding. In the
 original order the assessing officer fixed compounded tax
 for 2002-03 as Rs. 1,42,33,981/-

As the appellant is paying tax at compounded rate
 from 1994-95 onwards, continuously the observation of the
 Hon. High Court of Kerala is applicable in the appellants
 case also. The Hon. Court in Broken Jewellery and another
 vs. State of Kerala and Alankar and another vs. State of Kerala
 another (K.T.R. 2004 Vol. 12, 411) observed as under:

"The tax payable at compounded rate under section 7 (1) (a)
 so as far as the compounding for the first year is concerned,
 is the tax assessed in the return or paid in the immediately
 preceding year which includes tax under section 5 A also.
 After the first year of compounding the tax paid in the next
 year and later years is at the applicable percentage of the
 previous years tax paid at the compounded rate, which includes
 the component of tax under section 5 A also. In other words
 tax at compounded rate includes and is in lieu of tax
 payable under section 5 A and 5 (1) of the Act. Therefore
 the petitioners who have opted to pay tax for the year
 2002-03 under section 7 (1) (a) have to pay tax at 200%
 of the immediately preceding years tax paid at compounded
 rate as none of the petitioners is opting for payment
 of tax at compounded rate for the first time in the year
 2002-03.

The Court further observed that "if the petitioners
 were paying tax at compounded rate and opted to continue it,
 then of course, the petitioners are liable to pay tax this
 year, at compounded rate under section 7 (1) (a) at 200%
 of the tax paid for the year 2001-02.

From the discussions made above and in the light of the
 10/-

S.R.O. 1080/99, clarifications of the Hon. Commissioner and observations of the Hon. High Court of Kerala etc. it is clear that the appellant has no liability to pay purchase tax under section 5 A of the Act for the year 2001-02 as the appellant paid tax on compounded rate for the year 2001-02. As the appellant had no liability of tax on purchase under section 5 A for 2001-02 the compounded tax for 2002-03 shall be computed after deducting the same. So the revised order of the assessing authority officer by computing compounded tax at 200% of tax on sales as well as entry purchases for 2001-02 is not found reasonable and legally sustainable as such. So the revised assessment order for 2002-03 needs modification. Hence the assessing authority is directed to modify the assessment for 2002-03 taking 200% of tax on sales of diamonds amounting to 155260706/- and purchase tax under section 5 A on purchase of precious stones amounting to 19,40,696/- only.

Sl. No. 125/2006 2004-05 K.G.S.F.

The assessing officer revised the assessment order for 2002-03 as under:

The appellant filed first appeal the final assessment for the year 2002-03 was originally completed and then modified on 26-4-06. Assesment notice under section 19(1) of the Act dated 16-4-06 was issued as detailed under.

Head - Assessment order dated 26-4-06

As per the above order the final assessment was completed as follows:

Tax due for 2002-03 1/2 of the tax	Rs. 1,42,83,861.00
Net due after 1/2 of the tax	Rs. 27,89,373.32

Total compounded tax due for 04-05

The sales tax due under section 7 of the Act for the year 2004-05 was computed on the basis of the tax paid/conceded as per accounts for the year 2002-03 being higher in the previous three consecutive years. Since the tax due for the year 2002-03 was proposed to be revised as per notice dated 6-5-06 the final assessment for the year 2004-05 is also proposed to be revised as under.

Tax payable for the year 2002-03, proposed to be fixed at Rs. 1,55,99,298.00
 130% of the above as sales tax due for 2004-05 Rs. 2,02,79,087.00
 AST due @ 1% Rs. 30,41,863.00
 Total tax due for the year 2004-05 proposed to be fixed Rs. 2,33,20,950.00

To this notice the assessee has filed a reply I have verified the reply as detailed in the revised assessment order for the year 2002-03 dated 5-6-05 and also considered the orders (1) Order No. G-3-31545/04/CT/14-6-04 of the Commissioner of Commercial Taxes and (2) Order No. G-3-48031/04/CT/14-6-04 of the Commissioner of Commercial Taxes. Now I have received the letter clarification and in result the final assessment for the year 2004-05 was completed as under.

Tax payable as per accounts for the previous year

Tax due at 1% on Purchases of old gold ornaments	at Rs. 15,51,03,357.00	Rs. 15,51,034.00
Tax due at 1% on Purchases of stones	at Rs. 38,20,696.00	Rs. 38,207.00
Tax due @ 4% on Sales	at Rs. 15,52,60,705.84	Rs. 62,10,428.00
Total		Rs. 77,99,649.00
200% of the above as sales tax due for 2002-03		Rs. 1,55,99,298.00
AST due @ 1%		Rs. 23,38,895.00

On the basis of the above order for the year 2002-03 the final assessment for the year stands revised under section 19414 of the Act as under.

Tax payable for the year 2002-03	Rs. 1,55,99,298.00
130% of the above as sales tax due for 2004-05	Rs. 2,02,79,087.00
AST due @ 1%	Rs. 30,41,863.00
Total tax due for the year 04-05	Rs. 2,33,20,950.00
Total tax paid	Rs. 1,99,69,183.00
Balance if any	Rs. 36,31,767.00

Interest @/s 23(1) on Unpaid portion of admitted tax due Rs. 6,57,283.00

The assessment for 2004-05 was re-opened under section 19(1) of the Act based on the revised order for 2002-03. As the revised order for 2002-03 is modified in this appeal as above, modification of assessment order for 2004-05 also became necessary. Hence the assessing authority is directed to modify the assessment for 2004-05 based on the modified order for 2002-03 and as per the existing law for 2004-05 for computing tax as per the appellant.

the admitted tax amounts only Rs. 1,45,25,272/- Tax paid during the year is Rs. 1,96,69,183/- So the Officer is directed to verify this aspect & make necessary modification in demand of interest in this order. In the result the appeals are allowed in part to the extent stated above.

(SIGNED)

DEPUTY COMMISSIONER (APPEALS),
KOLKATA

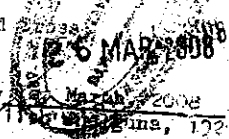
The appellant through his A/R,
Copy to the Commercial Tax Officer (On deputation),
Special Circle, Kottayam.
Copy forwarded to the Deputy Commissioner, Kottayam
Copy subd. to the Joint Commissioner, Cr., Thiruvananthapuram.
Copy to file.

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STATE GENERAL SALES-TAX APPELLATE TRIBUNAL

Tribunal Appeal No. S. 62/2007 & 63/07 and Cross Petition Nos. 10/07 & 11/07

Date of Order: 26 MAR 2008



Present

Sri. K. Venugopal Member (Judicial)
Smt. B. Sulochana Amma Member (Departmental)
Sri. K. Venugopal Member (Accounts), Addl
Bench-I, Ernakulam

Between

The State of Kerala

Appellant.

And

Smt. P.P. Alphonsa,
Joaco Fashion Jewellers,
Kottayam Respondent.

[S.T.A. No. S. 134/06 & 135/06] of the Appellant

Commissioner (Appeals), Commercial Taxes, Kollam

Order dated 15.11.2006

on deputation to the Assistant
Proceedings of the Sales-tax Officer/Commissioner (Assessment), Special Circle,
Kottayam dated 20.5.06 & 5.6.06

This appeal coming on for hearing on the 2nd Day of February, 2008 before us, in the presence of Sri. A. Mooney, Law Officer, Kottayam appellant not present for the Appellant and of Sri. S. Anilkumar, advocate, Jew. Street, Cochin-35 for the Respondent and the appeal having stood over to this day for consideration, the Tribunal passed the following.

ORDER

K. Venugopal, Member(Accounts)

These are appeals filed by the Revenue. These appeals were heard on 27.11.2007. Since the connected assessment records were not produced, the appeals were finally heard on 2.2.2008. The State Representatives were not present when the appeals were posted for hearing. We have considered the contentions raised by the Revenue in the grounds of appeal.

2: T.A. Nos. 62/07 & 65/07 and
C.O. Nos. 10/07 & 11/07

2. The respondent assessee is a dealer in gold ornaments. The Head Office is at Kottayam and the assessee have branches at Thiruvananthapuram and Ernakulam. In respect of the KGST assessment for the year 2002-03 and 2004-05, the assessee opted to pay sales tax at the compounded rate of tax under Section 7(1)(a) of the KGST Act, 1985 (hereinafter referred to as the Act). The assessing authority accepted the compounding application filed by the assessee for the above two years and the assessee was permitted to pay tax at the compounded rate. Subsequently the assessments were reopened under Section 19 of the KGST Act. According to the assessing authority, the assessment under the compounding system was not done in accordance with the clarification under Section 59A of the Act issued by the Commissioner of Commercial Taxes in Order No. C3.48091/01/OT dt. 20.2.2006. The assessing officer's case is that it has been specified in the clarification issued by the Commissioner of Commercial Taxes that the purchase turnover assessable under Section 5A is also to be reckoned for the purpose of working out the compounded rate of tax under Section 7(1)(a) of the Act and that the original assessments were completed without reckoning the purchase turnover assessable under Section 5A. Accordingly, the assessments for the above two years were revised under Section 19 of the Act in terms of the clarification issued by the Commissioner of Commercial Taxes under Section 59A of the Act.

3. Aggrieved by the above revised order under Section 19, the assessee went in appeal before the Deputy Commissioner (Appeals). The Deputy Commissioner (Appeals) found that the revised assessment under Section 19 were bad in law in the xxxxxx light of the earlier clarification issued by the Commissioner

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TA Nos. 10 & 11/07

of Commercial Taxes to the assessee in order No. 03.31565/04/CT dt. 16.10.2004 and the decision of the Hon'ble High Court of Kerala in Prakash Jewellery and Another Vs. State of Kerala, (2004) 12 KTR 543 (Ker). Accordingly, he directed the assessing authority to modify the assessment excluding the purchase turnover of old gold ornaments assessable to tax under Section 5A. Aggrieved by the above findings of the Deputy Commissioner (Appeals), the Revenue has come in appeal before this Tribunal. The respondent assessee has filed Cross Objection against the appeals filed by the Revenue.

4. As mentioned earlier, the State Representatives were not present when the appeals were posted for hearing. We have taken the appeals for orders after considering the grounds raised by the Revenue in the appeal memorandum. In the grounds of appeal for the year 2002-03, the following grounds have been raised:

1. The first appellate authority went wrong in interfering with the assessment order passed by the assessing authority.
2. The first appellate authority did not consider SRO.1090/94 and the clarification No. C3-48091/01/CCT of the Commissioner of Commercial Taxes granting exemption on the purchase turnover only in respect of purchases effected during the year in which

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tax was opted to be paid at the compounded rate based on the tax paid or payable as per accounts of the preceding year. The exemption is not intended to exempt liability under Section 5A of quantum of tax payable for the preceding year in order to fix the tax payable for the assessment year for which option is made.

7. For such other grounds that may be raised at the time of hearing."

5. Identical grounds have been raised by the Revenue in the appeal for the subsequent year 2004-05.

To the respondent assessee's learned counsel filed an argument note for our consideration. According to him the findings of the Deputy Commissioner (Appeals) is in accordance with the decision of the Hon'ble High Court of Kerala in Prakash Jewellery's case, 12 EIT 543 and the clarification issued by the Commissioner of Commercial Taxes under Section 59A of the Act to the respondent assessee in order No. G3-31565/GA/OT dt. 16.10.2004. It is prayed that the order of the Deputy Commissioner (Appeals) may be upheld and the appeals filed by the Revenue may be dismissed.

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CO. Nos. 10 & 11/07

7. We have considered the contentions raised by the Revenue in the grounds of appeal for the two years and the contentions advanced by the respondent assessee's learned counsel. The short question for our consideration in these two appeals is whether the Deputy Commissioner (Appeals) was justified in holding that the purchase turnover of old gold ornaments assessable under Section 5A of the Act is not to be reckoned while computing the compounded rate tax under Section 7(1)(a) of the Act.

8. Section 7(1)(a) of the Act as it stood during the relevant years read as under:

*7. Payment of tax at compounded rates:-

- (1) Notwithstanding anything contained in sub-section (1) of Section 5,
- (a) Any dealer in gold or silver ornaments or wares, may, at his option instead of paying tax in accordance with the provisions of that sub-section, pay tax at two hundred percent of the tax payable by him as conceded in the return or accounts for the immediate preceding year or the tax paid for the immediate preceding year whichever is higher.

Explanation:- For the purpose of this clause "tax payable as conceded in the return or accounts for the immediate preceding year" means tax payable on the sales turnover under sub-section (1) of section 5 and

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Provided that where during the preceding year, the dealer had not transacted business for any period the tax payable for the whole year shall be calculated proportionately on the basis of the tax payable for the period during which such dealer had transacted business:

Provided also that where such a dealer acquires any running business or a branch of a business with respect to gold, silver ornaments or wares during the year, the amount of compounding tax payable in respect of such business shall be calculated in accordance with the provisions of this clause as if it were an independent business, taking into account the turnover conceded in the return or accounts thereof for the previous year with respect to that business or on the quantum of compounded tax fixed for the previous year in accordance with clause (a).

Provided also that where a dealer paying tax in accordance with the provisions of this sub-section opens a new branch during a year, such branch shall be treated as if it were an independent place of business and the provisions of this sub-section shall apply to it accordingly."

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COO Nos. J 10 & 11/07

99. Analysing the above provisions, the Hon'ble High Court of Kerala in Prakash Jewellery and Another Vs. State of Kerala and Others, (2004) 122 KTR 545 (Ker) had said as under:

"55. Another common issue raised by the petitioners is that there is exemption available from the tax payable at compounded rate on the purchase tax component of tax paid for the previous year. It finds no basis for this contention because what is payable under Section 7(1)(a) is the tax at compounded rate in lieu of the tax otherwise payable by a dealer on the sale turnover under Section 5(1) and the purchase tax payable under Section 7A of the Act. The tax payable at compounded rate under Section 7(1)(a) so far as the compounding for the first year is concerned, is the tax assessed in the return or paid in the immediately preceding year which includes tax under Section 5A also. After the first year of compounding, the tax paid in the next year and later years is at the applicable percentage of the previous year's tax paid at the compounded rate, which includes the component of tax under Section 5A also.

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After the first year of compounding, the tax paid in the next year and later years is at the applicable percentage of the previous year's tax paid at the compounded rate, which includes the component of tax under Section 5A also. In other words tax at compounded rate includes and is in lieu of tax payable under Section 5(1) and Section 5A of the Act.

Therefore the petitioners who have opted to pay tax for the year 2002-03 under Section 7(1)(a) have to pay tax at 200% of the immediately preceding year's tax paid at compounded rate as none of the petitioners is opting for payment of tax at compounded rate for the first time in the year 2002-03. Petitioners have heavily relied on the notification SRO.No. 402/94 and the clarification issued by the Commissioner to substantiate their claim of exemption under Section 5A. SRO.402/94 grants exemption from liability under Section 5A in respect of dealers who are paying tax at the compounded rate under Section 7(1)(a) of the Act. The notification granting exemption and the clarification issued by the Commissioner are consistent with the statutory provisions. Under the notification, as clarified by the Commissioner, no separate assessment is possible for the liability under Section 5A on dealers who are paying tax at compounded rate under Section 7(1)(a) of the Act. This is because tax payable at compounded rate is in lieu of liability under Section 5(1) and 5A of the Act. In other words payment of tax at compounded rate is a substitute for liability towards sale tax and

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purchase tax governed by Sections 5(1) and 5A of the Act. The charging Sections 5(1) and 5A are different and distinct and incidence of tax is also different. Therefore in order to clarify the position and to avoid confusion in the minds of the assessing officers, notification SRO. 402/94 was issued granting exemption against any separate demand of tax under Sections 5(4) of the Act on dealers who have paid tax under Section 7(1)(a) of the Act. However, a dealer paying tax under Section 7(1)(a) is not entitled to claim exemption of purchase tax component from the tax payable at compounded rate. In fact those who are paying tax at compounded rate after the first year will be paying compounded tax for the succeeding years based on the earlier year's payment of tax at compounded rate. Therefore Section 5A component of compounded tax of the preceding year cannot even be identified. Therefore the claim of exemption made by the petitioners is totally misconceived. However, so far as the petitioner in O.P.No.37040 of 2002 is concerned, since the petitioner's application for compounding fee was rejected, petitioner cannot be compelled to pay tax under Section 7(1)(a) but the department has to make regular assessment and demand tax. The petitioners prayer for direction to accept compounding fee at 120 per cent of the previous year's tax for the year 2002-03 is not tenable and is rejected."

(Emphasis added by us)

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GO. Nos. 10 & 11/07

10. In the present case now before us, it is an admitted fact that the respondent assessee had been paying tax for the earlier years at the compounded rate of tax under Section 7(1)(a) of the Act. From the order of the Deputy Commissioner (Appeals) it can be seen that the respondent assessee has been paying tax at the compounded rate since 1994-95 onwards. Hence as far as the year 2002-03 is concerned, it is not the first year of compounding.

11. In this connection, it is pertinent to note that the respondent assessee has specifically sought a clarification from the Commissioner of Commercial Taxes whether purchase tax is liable to be paid by the dealer in addition to sale tax, when purchase tax has been exempted under SRO.1090/99 for dealers who opt for compounding. On this question, the Commissioner of Commercial Taxes in order No. 523/1565/04/07 dated 12.04.2004 clarified as under:

"The second question for clarification is whether dealers in jewellery who opt for compounding are liable to pay tax on the purchase turnover under Section 5A. Under explanation to Section 7(1)(a) of the act, the tax payable on purchase turnover under Section 5A has also to be included while working out the quantum of compounded tax. But under Sub-clause 5 of clause (1) of SRO.1096/99, the tax payable under Section 5A relating to the purchase of old gold or silver ornaments has been exempted. This point is therefore clarified accordingly."

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CO. Nos. 10 & 11/07

12. In deciding the issue, the Deputy Commissioner (Appeals) has relied on the above decision of the Hon'ble High Court of Kerala in Prakash Jewellery's case, 12 KTR 543 and the clarification under Section 59A issued by the Commissioner of Commercial Taxes to the respondent assessee vide order No. C3-31565/04/CT dt. 16.10.2004. The Deputy Commissioner (Appeals) held as under in the order relating to the appeal for the year 2002-03:

"The only reason adduced by the assessing officer for re-opening of the assessment already completed under section 7(1) of the Act is the basis of a clarification issued by the Hon. Commissioner of Commercial Taxes, Thiruvananthapuram. In the revised assessment order the assessing officer has specifically stated that, "Here, when the tax payable as per accounts for the previous year has been computed after excluding the turnover under section 5A (Purchase turnover) in the light of

2002-03 = 55/07
CC. Nos. 10 & 11/07

Entry No. (5) of S.R.O.1090/99". But he is constrained to re-open the assessment based on the clarification of the Hon. Commissioner in this regard. So the only question to be decided is that whether the finding of the assessing officer that the clarification of the Commissioner leads him to include tax on purchase under section 5A for compounding under Section 7(1) of the Act and S.R.O.1090/99 is correct or not.

As per Act 7 of 2002 with effect from 1.4.2002 Section 7(1)(a) of the Act reads as under:

"Any dealer in gold or silver ornaments or wares may at his option instead of paying tax in accordance with the provisions of that sub section, pay tax at two hundred percent of the tax payable by him as conceded in the return or accounts for the or the tax paid for the immediate preceding year whichever is higher".

Explanation to the above section reads as under:

"For the purpose of this clause tax payable as conceded in the return or account for the immediate preceding year means, tax payable on the sales turnover under sub section (1) of S. 5 and the tax payable on the purchase turnover under Section 5A".

From a plain reading of the Section and explanation it can see that the compounded tax for the assessment year 2002-03 will be 200 percentage of the 'payable tax' for sales and purchase for 2001-02 as per return or accounts or tax paid whichever is higher.

T.A. Nos. 62 & 65/07
C.U. Nos. 10 & 11/07

As per SRO.1090/99 the Government exempted the dealers from payability of purchase tax is compounded under Section 7(1) of the Act. Sub clause (5) of clause (1) of SRO.1090/99 reads as under:

"By dealers in gold and silver ornaments who have opted for payment of tax under sub section (1) of section 7 of the said Act with regard to their turnover relating to the purchase of old gold or silver ornaments are exempted from tax under Section 5A of the said Act."

The Commissioner of Commercial Taxes, Thiruvananthapuram vide order No. Ce-31665/04/CT dated 16.10.2004 based on the application of the appellant M/s. Jesco Fashion Jewellers dated 14.5.2004 clarified the position as under:

"The second question for clarification is whether dealers in jewellery who opt for compounding are liable to pay tax on the purchase turnover under Section 5A. Under explanation to section 7(1) (a) of the Act, the tax payable on purchase turnover under Section 5A has also to be included while working out the quantum of compounded tax. But under sub-clause 5 of clause (1) of SRO.1090/99 the tax payable under section 5A relating to the purchase of old gold or silver ornaments has been exempted. This point is therefore clarified accordingly."

TE. Nos. 62 & 65/07
CO. Nos. 10 & 11/07

Again another clarification order was issued by the Commissioner of Commercial Taxes, Thiruvananthapuram vide Order No. C-3348091/01/TX dated 20.2.2006 as under based on the application dated 7.9.2001 by one G. Mohan Kumar, Chartered Accountant, Thampanoor. Even though this clarification is issued only on 20.2.2006, this related to the position of law prior to the introduction of Finance Act, 2002 i.e. Act 7 of 2002. The relevant portion of the above order is reproduced under:

"The effect of SRO.1090/99 granting exemption on the purchase turnover is only in respect of purchases effected during the year in which tax was opted to be paid at the compounded rate based on the tax paid or payable as per accounts of the preceding year. The exemption is not intended to exempt liability under Section 5A of any preceding year for fixing the amount of tax payable for the preceding year in order to fix the quantum of tax payable for the assessment year for which the option is made."

In the above clarification order the commissioner has categorically stated that the exemption from purchase tax as per SRO. 1090/99 is for the year in which tax was opted for compounding. The appellant M/s. Josco Fashion Jewellers opted for compounding under Section 7(1) for the year 2001-02 and paid compounded tax. As the appellant opted compounding during the year 2001-02, she has no payability of purchase tax under Section 5A

Annexure 12 to 117/07
Annexure 12 to 117/07

of the Act for the year 2001-02 (since exempted as per SRO.1090/95. As per Act 7 of 2002 with effect from 1.4.2002 the compounded tax for 2002-03 will be 200 percentage of the tax payable by him as conceded in the return or accounts for this or the tax paid for the immediate preceding year whichever is higher. The tax payable by the appellant for 2001-02 as per return and accounts are as follows:-

Sales of ornaments for		
Rs. 15,52,60,705.84 at 4%	:	Rs. 62,10,428.00
Purchase of old gold ornaments		
stones etc. for Rs. 15,89,22,053/-		
Out of this old gold purchases		
exempted Rs. 15,51,01,357/-	:	Rs. 38,207.00
Total		Rs. 62,48,635.00
200% of the above	:	Rs. 1,24,97,270.00
Addl. ST at 15% of the above	:	Rs. 18,74,591.00
Compounded tax for 2002-03		Rs. 1,43,71,861.00
will be		

It is pertinent to note that the payability of tax is the basis for fixing the compounded tax as per Section 7(1) and Explanation to that section.

The appellant is paying tax at compounded rate from 1994-95 onwards till 2002-03 continuously. For the first year of compounding i.e. 1994-95 the assessing officer fixed compounded tax as Rs. 7,13,951.00 and surcharge Rs. 71,395.00. The basis for fixing the above figure are the tax on sales and purchase under Section 5A for the

Page No. 42 & 63/0
 Page No. 10 & 11/03

year 1993-94 i.e. Rs. 4,79,967/- compounded tax for 94-95 was at 150% of tax on sales & purchase for 93-94. For 1995-96 compounded at 150% of Rs. 7,13,951/- fixed as Rs. 10,70,927/-, in 96-97 compounded tax fixed as Rs. 16,06,391/- at 150% of Rs. 10,70,927/- for 1997-98 compounded tax fixed as Rs. 24,09,587/- being 150% of Rs. 16,06,391/- for 1998-99 compounded tax fixed as Rs. 30,11,988/- being 125% of Rs. 24,09,587/- for 99-2000 compounded tax fixed as Rs. 33,13,187/- being 110% of Rs. 30,11,988/- for 2000-01 compounded tax fixed was Rs. 36,79,112/- being 110% of previous years tax and 25% for new branch. For 2001-02 the officer fixed compounded tax at 120% of previous years tax as Rs. 50,58,780/-. But demanded the tax collected while finalising the order for 2001-02 since the same was excess. For 2002-03 also the appellant opted for compounding. In the original order the assessing officer fixed compounded tax for 2002-03 as Rs. 1,42,83,985/-.

As the appellant is paying tax at compounded rate from 1994-95 onwards continuously the observation of the Hon: High Court of Kerala is applicable in the appellants case also. The Hon: Court in Prakash Jewellery Vs. State of Kerala and Alukas Jewellery Vs. State of Kerala, another (K.T.R. 2004 Vol. 12 page 543) observed as under:

"The tax payable at compounded rate under section 7(1)(s). So as far as the compounding for the first year is concerned, is the tax conceded in the return or paid in the immediately preceding year which includes tax under section 5A also. After the first year of compounding the tax paid in the next year and later years is at the applicable percentage of the previous years tax paid

Law No. 62 of 65/01

GU. No. 10 of 11/01.

at the compounded rate, which includes the component of tax under section 5A also. In other words tax at compounded rate includes and is in lieu of tax payable under section 5A and 5(i) of the Act. Therefore the petitioners who have opted to pay tax for the year 2002-03 under Section 7(1)(a) have to pay tax at 200% of the immediately preceding years tax paid at compounded rate as none of the petitioners is opting for payment of tax at compounded rate for the first time in the year 2002-03.

The Court further observed that "if the petitioners were paying tax at compounded rate and opted to continue it, then of course, the petitioners are liable to pay tax this year, at compounded rate under Section 7(1)(a) at 200% of the tax paid for the year 2001-02.

From the discussions made above and in the light of the SRO.1090/99, clarifications of the Commissioner and observations of the Hon: High Court of Kerala etc. it is clear that the appellant has no liability to pay purchase tax under Section 5A of the Act for the year 2001-02 as the appellant paid tax on compounded rate for the year 2001-02. As the appellant had no payability of tax on purchase under Section 5A for 2001-02 the compounded tax for 2002-03 shall be computed after deducting the same. So the revised order of the assessing officer by computing compounded tax at 200% of tax on sales as well as entire purchase for 2001-02 is not found reasonable and legally

I.A. Nos. 62/07 & 55/07 and
C.O. Nos. 10/07 & 11/07

sustainable as such. So the revised assessment order for 2002-03 needs modification. Hence the assessing authority is directed to modify the assessment for 2002-03 taking 200% of tax on sales of ornaments amounting to Rs. 15,52,60,706/- and purchase tax under Section 5A on purchase of precious stone amounting to Rs. 38,20,696/- only."

13. We concur with the above finding of the Deputy Commissioner(Appeals) which is in accordance with the decision of the Hon'ble High Court of Kerala in Prakash Jewellery's case, 12 KTR 543. We, therefore, uphold the order of the Deputy Commissioner(Appeals).

14. In the Cross Objection filed by the respondent assessee, they have only supported the order of the Deputy Commissioner(Appeals). No other issue arises for our consideration in the Cross Objection filed by the respondent- assessee.

15. In the result, the appeals filed by the Revenue and the Cross Objection filed by the respondent assessee stand dismissed.

Order accordingly.

Dated this the 1st Day of March, 2008.

Sd/-
Member(Judicial)

Sd/-
Member(Accounts)

Sd/-
Member(Departments)

::// By Order :::

Assistant Secretary

Copy to:

The Appellant(D.C., Ktm)/The Respondent thr' A/R.
The S.R./The A.C.(Assmt), Spl. Circle, Ktm.
The D.C.(Appeals), Kollam/The D.C.(A), C/T., Tvm.
The D.C.(Law), Ernakulam/The Secretary, STAT., Tvm.
The Addl. Benches, Ekm/Plkd/Kozkd.
File/Stock File.

"CR"

C.N. RAMACHANDRAN NAIR, J.
&
C.K. ABDUL REHIM, J.

R.P. Nos. 335 & 336 OF 2011
IN
S.T. (Rev.) Nos. 275 & 265 OF 2008

DATED THIS THE 14th DAY OF JUNE, 2012

ORDER

Ramachandran Nair, J.:

Heard senior counsel Sri. A.K. Jayasankar Nambiar who appeared for Review petitioners and also special Government for respondents. Review petitions are filed to review the judgment for the reason that liability under Section 7 (1) (a) i.e. Payment of tax at compounded rates should be with reference to the preceding year's tax liability as reduced by exemption available under notification SRO No.1090/1999. On a plain reading of Section 7 (1) (a) it is clear that tax payable under the said provision is 200% of the highest amount from among the following.

- (1) Tax payable by the dealer as conceded in the return.
- (2) Tax payable based on accounts for the immediately preceding year.
- (3) The tax paid for the immediately preceding year.

RP Nos. 335 & 356/2011

2. It may so happen that the dealer would have concealed tax payable in the return at variance with the tax payable based on turnover of sales and purchases, available in the accounts. So much so liability is the higher amount of tax payable between the two. Tax paid by the dealer as referred to in item 3, obviously is the tax liability as reduced by all exemptions available to the dealer. Even though the appellant's contention that tax paid in the preceding year is also to be reckoned for the purpose of determining liability for payment of tax under the compounding scheme under Section 7(1)(a) is correct, it happens to be lower than the tax payable based on the accounts that is tax payable on sales turnover and purchase turnover disclosed from the accounts. So much so the demand of tax based on accounts being the highest is absolutely correct. Review petitions are therefore dismissed as devoid of any merit.

Sd/

C.N. RAMACHANDRAN NAIR, JUDGE.

Sd/

C.K. ABDUL REHIM, JUDGE

True copy

P.A. to Justice

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 14TH DAY OF JUNE 2012/24TH JYAISHTA 1934

RP.No. 336 of 2011 IN S.T.(Rev) No. 265 OF 2008

AGAINST THE ORDER/JUDGMENT IN STRV.265/2008 DATED 29-05-2009

PETITIONER/RESPONDENT:

P.P.ALPHONSA
THE JOSCO FASHION JEWELLERS, KOTTAYAM.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENT(S)/PETITIONER:

STATE OF KERALA
REPRESENTED BY THE JOINT COMMISSIONER OF
COMMERCIAL TAXES (LAW), ERNAKULAM - 682015.

BY GOVERNMENT PLEADER SRI. SOJAN JAMES

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
14-06-2012, ALONG WITH RP. 335/2011, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.N.RAMACHANDRAN IAIR

&

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 14TH DAY OF JUNE 2012/24TH JYAISHTA 1934

RP.No. 335 of 2011 IN S.Y.(Rev) No. 275 OF 2008

AGAINST THE ORDER/JUDGMENT IN STRV.175/2008 DATED 29-05-2009

PETITIONER(S)/RESPONDENT:

P.P.ALPHONSA
FASHION JEWELLERS, KOTTAYAM

BY ADV. SRI.SANIL KUMAR (TRIVANDRUM)

RESPONDENT(S)/PETITIONER:

STATE OF KERALA REPRESENTED BY
THE JOINT COMMISSIONER OF COMMERCIAL TAXES
(LAW) ERNAKULAM-682011

BY GOVERNMENT PLEADER SRI SOHAN JAMES

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
14-06-2012 ALONG WITH RP. 335/2011 THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

2002-03

DEPARTMENT OF COMMISSIONER (K VAT) DUPLICATE
 COMMERCIAL TAXES
 KOTTAYAM
 (To be prepared in duplicate)
 (By Remittance of Money into State Government)
 (Sec. Rule 27)

39

No. XXXXXXXXXX CIRCLE

TIN 32050295355 Return Period 2002-03 & Run 2 2405232
 Name of the Dealer P. P. Alphonse Assessing Office 204 or W. 25263534
 (with Trade Name if any)
 Address of the Dealer DOSC Commodity Code No. 704 27662766
Fusion Jewellery Total Turnover Reported 240767100
Kottayam Taxable Turnover Reported 150588614

PURPOSE OF REMITTANCE		SPACE FOR BANK	
HEAD OF ACCOUNT	MAJOR HEAD CD-10 Tax on Sales/Trade Tax	AMOUNT PAID	Sl. No. in Transfer
MINOR HEAD 110-Trade Tax			
1. VAT	13576229		
2. PT			
3. Compensation Tax			
4. Registration Fee			
5. Interest			
6. Penalty			
7. Corresponding Fee			
8. Demand Fee			
9. Other			
Total	13576229		
Total amount (in words) <u>One crore thirty five lakh seventy six thousand two hundred and twenty nine only</u>			
Details of Payment (Cheque/DD/Bank Particulars)		SPACE FOR TREASURY	

TRANSFER

ASST. COMMISSIONER (K VAT)
 COMMERCIAL TAXES
 KOTTAYAM

Name of the Treasury _____
 Original to Bank _____
 Duplicate to Treasury _____
 Triplicate to Assessing Officer _____
 Quadruplicate to Dealer _____

Abbreviations:
 VAT = Value Added Tax
 PT = Preemptive Tax

See 42(c) & (3)

FD-724 (Cont.) (See FD-723)



B4
35
007392
311114

for remittances
Transmittal

for remittance of money

Account at

Pay to the order of

Name and address

of the payee

Name of

Account

Number

Date

Amount

Pay to the order of

Name and address

of the payee

Name of

Account

Number

Date

Amount

Pay to the order of

Name and address

of the payee

Name of

Account

Number

Date

Amount

Pay to the order of

Name and address

of the payee

Name of

Account

Number

Date

Amount

TRANSFER

125000

125000

RESIGNER (EVAT)



PROCEEDINGS OF THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, KOTTAYAM

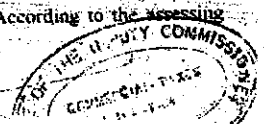
Present : Sri.M.L.Tomy.

Date of order	29-09-2008
Agricultural Income tax Appeal No	
Sales tax Appeal No	STA 709/07
Instituted on the	15-10-2007
From the order of the	Assistant Commissioner (Assmt.), Special Circle, Kottayam.
1. Year of assessment	2002-03
2. Name of appellant	M/s Josco Fashion Jewellers, Kottayam.
3. Income/Turnover assessed	
4. Tax demanded Income-tax/Super-tax Surcharge Central sales tax	
5. Section/Rule under which assessment was made	

Due of hearing	26-07-2008
Present for appellant	Sri. Sabu Thomas, Accountant & Authorized Representative

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant is a registered dealer on the rolls of the Sales Tax Office, Special Circle, Kottayam. The appellant is a dealer in jewellery, ornaments of gold, silver etc. The appellant had applied for compounding facility under section 7 (1) (a) of the KGST Act. The application was accepted and assessment was completed accordingly. Later the assessing authority has reopened the said compounded assessment under Section 19 of the KGST Act. In the said revised assessment order, it is stated that, the original assessment was reopened because, when the tax payable for the previous year is reckoned, the tax payable on the purchase turnover of gold ornaments under Section 5-A has been escaped assessment. According to the assessing



authority, the tax liable under Section 5 A during the immediate previous year is also to be included in computing the tax payable for the previous year. Aggrieved by this revised assessment order under Section 19 for the year 2002-03, the appellant has filed the above appeal.

On posting this appeal for hearing, Sri.Sabu Thomas, Accountant and Authorised Representative of the appellant appeared and argued the case. He contended that, the appellant had opted for compounding facility under Section 7 (1) of the KGST Act. As per Section 7 (1)(a) of the KGST Act, the compounded tax for the year 2002-03 is 200% of the tax payable as conceded in the return or accounts or tax paid in the immediate preceding year, whichever is higher. That the tax payable or paid will not include the purchase tax under Section 5 A for the year. So he argued that, the Section 19 assessment for the year 2002-03 is against law and is illegal. He also contended that, in the case of appellant itself, the same matter was in issue for the previous two years. The said dispute was decided in favour of the appellant in those two previous years in appeal as decided by the Deputy Commissioner (Appeals), Kottayam. The same issue was there in the case of sister concern of the appellant, Smt. P.P.Alphonsa, Josco Fashion Jewellers, Kottayam. The same matter was in issue for the year 2002-03. But it was decided in favour of the appellant dealer both by the Deputy Commissioner (Appeals), Kollam and Honourable/STAT, Kottayam. That the appellant has no tax liability under Section 5 A as per SRO Notification 1030/99. That the appellant was availing compounding facility, since the assessment year 2002-03 onwards till now. When the tax payable was determined for the first year, both the tax due under Section 5 (1) and under Section 5 A had been included. So the purchase tax compounded is carried forward to the future years in the compounded tax to be payable. Therefore further inclusion of purchase tax under Section 5 A, is not necessary. The learned Authorized Representative has referred the clarification issued by the Honourable Commissioner also in this respect. So he requested that the irregular Section 19 assessment is to be set aside and the appeal is to be allowed. To substantiate the claim, he also referred Prakash Jewellery's case reported in 12 KTR 543.

I have perused the connected records, documents and the argument notes filed by the appellant. I have also examined the contentions offered in detail. The dispute involved in this appeal is whether the purchase tax under Section 5 A for the immediate previous year is to be included or not in the tax payable or paid in the case of compounded case, as per the concerned

Section 7 (1) (a) of the KGST Act. It is a settled matter that the payment of compounded tax under Section 7 (1) (a) of the KGST Act, is in lieu of the payment of tax under Section 5 (1) and

5A. During the year 2002-03, Section 7 (1) (a) reads as follows:-

"... any dealer in gold or silver ornaments or wares, may at his option instead of paying tax in accordance with provisions of that subsection, pay tax at two hundred percent of the tax payable by him as conceded in the return or accounts for the immediate preceding year or the tax paid for the immediate preceding year whichever is higher". In Prakash Jewellery and Another Vs State of Kerala and Others reported in 12 KTR 543, the Honourable High Court of Kerala has observed as follows:- "The tax payable at compounded rate under Section 7 (1) (a) so far as the compounding for the first year is concerned, is the tax conceded in the return or paid in the immediate preceding year which includes tax under Section 5 A also. After the first year of compounding, the tax paid in the next year and later years is at the applicable percentage of the previous year's tax paid at the compounded rate, which includes the component of tax under Section 5 A also. After the first year of compounding, the tax paid in the next year and the later years is at the applicable percentage of the previous year's tax paid at the compounded rate, which includes the component of tax under Section 5 A also. In other words tax at compounded rate includes and is in lieu of tax payable under Section 5 (1) and Section 5 A of the Act. Therefore the petitioners who have opted to pay tax for the year 2002-03 under Section 7 (1) (a) have to pay tax at 200% of the immediately preceding year's tax paid at the compounded rate as none of the petitioners is opting for payment of tax at compounded rate for the first time in the year 2002-03".

The Honourable Commissioner of Commercial Tax in Order No.C3-31565/04/CT dt. 16-10-2004 clarified as under:

"...The second question for clarification is whether dealer in jewellery who opt for compounding are liable to pay tax on the purchase turnover under Section 5 A. Under explanation to Section 7 (1) (a) of the Act, the tax payable on purchase turnover under Section 5 A has also to be included while working out the quantum of compounded tax. But under Sub-clause 5 of clause (1) of SRO. 1090/99, the tax payable under Section 5 A relating to the purchase of old gold or silver ornaments has been exempted. This point is therefore clarified

On plain reading of the Section 7 (1) (a) and explanations it can be seen that the compounded tax for the year 2002-03 will be 200% of the purchase tax on sales and purchases of 2001-02 as per return or accounts or tax paid, whichever is higher. As per SRO 1090/99, the Government exempted the dealers from payability of purchase tax who has compounded under Section 7 (1) of the Act.

In another clarification issued to the appellant here in, the Honourable Commissioner of Commercial Taxes, observed as under:

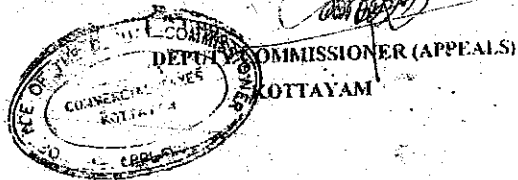
"---The effect of SRO.1090/99 granting exemption on the purchase turnover is only in respect of purchases effected during the year in which tax was opted to be paid at the compounded rate based on the tax paid or payable as per accounts of the preceding year. The exemption is not intended to exempt liability under Section 5 A of any preceding year for fixing the amount of tax payable for the preceding year in order to fix the quantum of tax payable for the assessment year for which the option is made."

From what is stated above, it can be seen that, the appellant is opting for the compounded payment of tax, since the assessment year 1994-95 onwards, and not for the first year. The compounded payment of tax under Section 7 (1) (a) is in lieu of payment of tax under Section 5 (1) and Section 5 A. As per Government Notification 1090/99, a dealer in gold who has opted for payment of tax under compounded rate is exempted from purchase tax of gold under Section 5 A. This aspect has been clarified by the Commissioner in the clarification dated 16-10-2004. But as per the other clarification under Section 59 (A), the Honourable Commissioner has clarified that, his purchase tax exemption of old gold is available only for the year of option of compounded tax alone. The appellant was opting compounded tax from the year 1994-95 onwards. For the year 2001-02 (the relevant year in this case), the appellant has paid tax at compounded rate. This definitely shows that, the appellant has no liability of purchase tax for the purchase turnover of old gold during the year 2001-02.

In Prakash Jewellery's case, the Honourable High Court of Kerala has further observed that: "--- if the petitioners were paying tax at compounded rate and opted to continue it, then of course, the petitioners are liable to pay tax this year, at compounded rate under Section 7 (1) (a) at 200% of the tax paid for the year 2001-02."

In the light of the above facts and circumstances, clarifications issued by the Honourable Commissioner, observations of the Honourable High Court of Kerala, the Government Notification in SRO No.1090/99, I am of the view that, the appellant has no liability to pay purchase tax on old gold under Section 5 A of the Act for the year 2001-02, as the appellant paid tax on compounded rate for the year 2001-02. As the appellant had no payability of tax of purchase of old gold under Section 5 A for 2001-02, the compounded tax for 2002-03 is to be computed after deducting the same, i.e. excluding the purchase tax of old gold under Section 5 A for 2001-02. So the revised assessment under Section 19 for the year 2002-03, needs modifications, as stated above. The purchase tax of old gold under Section 5 A for the year 2001-02 need not be considered, in reckoning the compounding tax for the year 2002-03, in respect of the appellant here in, on the given facts and circumstances of the case. Similarly additional sales tax is to be included only at one time. If the tax liability and payability for the year 2001-02, is fixed excluding AST element for that year, AST is to be assessed and is to be included @ 15% in the tax liability for the year 2002-03, i.e. for one time only. The assessing authority will revise the assessment order, under Section 19 for the year 2002-03, on the lines as stated above. Order accordingly.

Result:- 2002-03 - Modified.



To: The Appellant/Copy to file.

Copy to: The Asst. Commissioner (Assmt), Special Circle, Kottayam.

Copy forrd.to: The D.C. Kottayam

Copy submitted to: The Joint Commissioner-1, Tvm.

(Assessment Order to be issued in this form)
 COMMERCIAL TAXES DEPARTMENT
 (Rules 18 and 21 of the Kerala General Sales Tax Rules, 1963)
 PROCEEDINGS OF THE ASSISTANT COMMISSIONER
 COMMERCIAL SPECIAL CIRCLE, KOTTAYAM.

Present: Aji. V. Dev

Dated: 10-11-08

- 1. Assessment No. : 21010269/2002-03/Modified
- 2. Name of the assessee : Smt. P.A. Jose, Josco Fashion Jewellers.
- 3. Nature of business : Jewellery
- 4. Place or Places of business : Kottayam.

Year of Assessment: 2002-03

7. Documents produced in support of the return :

Read:-1.This Office Order dated : 10-09-07 [Revised]
 2. Order No. STA- 709/07/ 29-09-2008 of the Deputy Commissioner (Appeals), Kottayam.

ASSESSMENT ORDER (MODIFIED)

In the light of the above appellate order the final assessment for the year stands modified as under.

Sales turnover conceded for 2001-02 : Rs. 11, 29, 67,415.62
 Sales tax due @ 4% : Rs. 45, 18,696.62
 Compounded tax payable for 02-03 : Rs. 90, 37,393.00
 [At 200 % of the previous year]

Branch

KGST due on Rs. 83, 02,610.00 @ 4% : Rs. 3, 32,100.20
do Rs. 5, 08,660.00 @ 1% : Rs. 5,086.60
 : Rs. 3, 37,187.00
 Total : Rs. 93, 74,580.00
 AST due @ 15% : Rs. 14, 06,187.00
 Total tax due for the year : Rs. 1, 07, 80,767.00
 Total tax paid : Rs. 1,07,86,471.00
 Excess paid : Rs. 5,704.00

ASSISTANT COMMISSIONER - I
 COMMERCIAL TAXES - SPECIAL CIRCLE, KOTTAYAM.



Received
24/11/08

To
 Sri. P.A. Jose, Josco Fashion Jewellers, K.H. Road, Kottayam.

Section 5A of the Kerala General Sales Tax Act, 1963, which provides for tax on the purchase of bullion, including silver, is not applicable to the purchase of gold and silver ornaments.

Section 5A of the Kerala General Sales Tax Act, 1963, which provides for tax on the purchase of bullion, including silver, is not applicable to the purchase of gold and silver ornaments. Section 5A of the Kerala General Sales Tax Act, 1963, which provides for tax on the purchase of bullion, including silver, is not applicable to the purchase of gold and silver ornaments.

Section 7(1) (a) of the Kerala General Sales Tax Act, 1963, which provides for tax on the purchase of gold and silver ornaments, has been given the option to pay compounded tax under that sub-section instead of paying tax in accordance with the provisions of sub-section (i) of section 5. So the operation of the provisions of Section 5A has not been specifically excluded by Section 7(1) (a). But as per para 9 of notification S.K.O.172/93, inserted by SRO.402/94 with effect from 1-4-94, the dealers opting for payment of tax at compounded rates under Section 7(1) (a) of the Kerala General Sales Tax Act have been exempted from payment of tax under Section 5A of the Kerala General Sales Tax Act. So dealers opting for the compounding scheme under section 7(1) of the Kerala General Sales Tax Act for an year are not liable to pay tax under section 5A on the purchase turnover of old gold and silver for that year. But notification SRO 172/93 does not specifically exempt such dealers from tax payable under section 5A on bullion or specie purchased if the conditions prescribed under section

CIRCULARS UNDER THE E.G.S.T. ACT

631

5. Doubts have also been raised as to whether for determining the compounded tax payable by a dealer opting for compounding for the second or subsequent time, the tax payable as per return filed by the dealer during the previous year (s) to which he had paid tax at the compounded rate should be taken to include the tax on the purchase turnover of old gold and silver under Section 5A of the Kerala General Sales Tax Act, also. Tax payable under section 7(11A) by a dealer opting for composition will be as follows:

(1) In the case of a dealer opting for composition for the first time, the quantum of compounded tax will be 150% of the maximum amount of tax payable by him for a period of twelve months in a financial year as conceded in the return or accounts in any of the three financial years immediately preceding the assessment year to which the compounding relates. So while reckoning the tax payable by the dealer for any of the periods prior to the year to which the option is filed for the first time will include the tax under section 5A also.

(2) In the case of a dealer opting for compounding for the second or subsequent year, the compounded tax to be paid by him for the second or subsequent year will be-

- a) 125% of the compounded tax paid during the previous year or.
- b) 150% of the maximum tax payable by him for a period of twelve months in a financial year as conceded in the return or accounts in any of the 3 financial years immediately preceding the assessment year, which ever is higher.

So while computing the tax under item (b) above, tax payable in any year for which he had opted for compounding will not include tax under Section 5A computed in respect of the purchase turnover of old ornaments, because as per notification SRO 1727/93 as amended by SRO 402/94 with effect from 1-4-94 no tax is payable under section 5A on the purchase turn over of old ornaments for the year during which the dealer had opted for compositions. If the tax payable by a dealer during the year in which he had opted for composition is assumed to include tax under Section 5A also, it will go against the spirit of the notification exempting the dealers opting for compounding from the payability of tax under Section 5A.

4. All officers shall bear in mind the above legal position.
5. Deputy Commissioners shall acknowledge receipt of this Circular and obtain acknowledgement from their sub-ordinates.

THE KERALA GENERAL SALES TAX NOTIFICATIONS - S.R.O. No. 1090/99

G.O(P) No. 179/99/TD

Dated: Thiruvananthapuram, 31st December, 1999

S.R.O. No. 1090/99. In exercise of the powers conferred by section 10 of the Kerala general Sales Tax Act, 1963 (15 of 1963) and in supersession of all the earlier notifications issued under section 10 and in force as on the 31st day of December, 1999, the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption:-

E. In respect of the tax payable under the Kerala General Sales Tax Act, 1963:-

(1) by dealers mentioned in column (2) of Schedule I, on their turnover of sale or purchase, as the case may be, of goods mentioned in column (3) subject to the conditions and restrictions, if any, specified in column (4) thereof, against each;

(2) by co-operative societies specified in column (2) of Schedule II on their turnover of sale or, as the case may be, purchase of goods specified in column (3) subject to the conditions, if any, specified in column (4) thereof, against each;

(3) (i) by dealers on their turnover of sale of goods mentioned in column (2) of Schedule III to industrial undertakings or manufacturers mentioned therein; and

(ii) by industrial undertakings or manufacturers on their turnover of purchase of goods mentioned in column (2) of the said Schedule subject to the conditions, if any, specified in column (3) thereof, against each;

(4) on the turnover of sale of goods or, as the case may be, turnover of sale or purchase of goods by charitable institutions or charitable trust mentioned in column (2) of Schedule IV, subject to the conditions, if any, specified in column (3) thereof, against each;

(5) by dealers in gold and silver ornaments who have opted for payment of tax under sub-section (1) of section 7 of the said Act with regard to their turnover relating to the purchase of old gold or silver ornaments under section 5A of the said Act;

(6) by dealers on the turnover of sale of computer peripherals, sub-systems, components, Accessories and Consumables included in Schedule V to manufacturers of computers within the State subject to the conditions that tax is paid on the sale of Computer manufactured by them within the State either under the Kerala General Sales Tax Act, 1963 or under the Central Sales Tax Act, 1956 and the seller produces a certificate in Annexure I obtained from the manufacturing unit;

(7) by dealers on their turnover relating to transfer of right to use goods, under clause (ii) of sub-section (1) of section 5 of the said Act; provided that tax has been paid under the said Act on such goods at the time of purchase within the State;

(8) by dealers on their turnover relating to transfer of right to use cinematographic films under clause (ii) of sub-section (1) of section 5 of the said Act;

... (10) by oil companies referred to in the explanation under serial No. 106 of the First Schedule to the Act, other than Cochin Refineries Ltd., under section 5A(i) (c) of the said Act on the purchase of goods specified in serial No. 106 of the First Schedule to the Act from the Cochin Refineries Ltd.

[(11) by industrial units within the State in respect of the tax payable under section 5A of the Act on their turnover of purchase of materials for use in the manufacture of other goods, where such purchase is effected from another small scale industrial unit within the State and such goods are manufactured by the selling industrial unit.]

[(12) by manufacturers of quilts and pillows within the State in respect of the tax payable under Section 5A of the Act on their turnover of purchase of silk cotton pods used for manufacturing quilts and pillows.]

[(13) by manufacturers of coffee powder sold under a brand name which is not registered under the Trade and Merchandise Marks Act or sold without a brand name, provided the coffee powder is produced out of coffee seeds which has suffered tax under the Kerala General Sales Tax Act, 1963.]

ii. In respect of the turnover tax payable under, sub-section (2c) of section 5 of the said Act by oil companies mentioned under serial No. 106 of the First Schedule to the said Act, other than oil refineries.

Note: For the purpose of this Notification, the term "Manufacture" shall mean the use of raw materials and production of goods, commercially different from the raw materials used. The term "Manufacture" shall not include mere packing, polishing, cleaning, grading, drying of goods, blending or mixing different varieties of the same goods, sawing, garbling, processing one form of goods into another form of the same goods by mixing with chemicals or gas, fumigation or any other process; conversion of rubber latex into centrifuged latex, raw rubber sheet, ammoniated latex, crepe rubber, crumb rubber or any other item falling under serial No. 123 of the First Schedule to the Kerala General Sales Tax Act, 1963 or treating the raw rubber in any form with chemicals to form a compound of rubber by whatever name the same is called.

1. Sub-clause 9 omitted by SRO No.802/2001 GO (P) No 99/2001/TD dt. 16th August 2001 KG Ex. No. 1214 dt. 16th August 2001
2. Sub-clause 11 added by SRO 281/2000 w.e.f 1.4.2000 (GO (P) No. 53/2000/TD dt.31st March, 2000 KG EX. No 614 dt.31st March, 2000.
3. Sub-clause 12 added w.e.f 1.1.2000 by SRO No.936/2000 GO (P) No.140/2000/TD dt.29th September 2000 KG Ex. No.1814 dt.6th October 2000
4. Sub-clause 13 added w.e.f 1.1.2000 by SRO No. 290/2001 GO (P) No.23/2001/TD dt. 14th March 2001 KG Ex. No.423 dt. 19th March 2001

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N. RAMACHANDRAN NAIR

MONDAY, THE 16TH DECEMBER 2002 / 25TH AGRANAYANA, 1924

OP.No. 1650 of 2002(U)

PETITIONER:

M/S. MAHILA JEWELLERS, BROADWAY, ERNAKULAM,
REPRESENTED BY ITS MANAGING PARTNER, P. J. THOMAS.

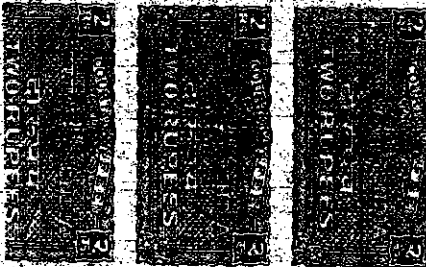
BY ADV. SRI. V. P. SUKUMAR

RESPONDENTS:

1. THE ADDITIONAL SALES TAX OFFICER-
THIRD CIRCLE, ERNAKULAM.
2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.
3. THE APPELLATE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SHRI RAJU JOSEPH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/12/2002, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



C.N. RAMACHANDRAN NAIR, J.

O.P. NO.1650 OF 2002-U

DATED THIS THE 16TH DECEMBER, 2002.

JUDGMENT

This is a case where the assessment is completed for the year 1997-98 ignoring the circular issued by the Commissioner dated 23.10.1998 against liability under Section 5-A being again taken into account for payment of tax at compounding rate for the 4th year. The Commissioner has clarified that Section 5-A has to be a component of the compounding fee payable for the first year and since subsequent years' tax is based on the first year's compounding fee, Section 5-A happens to be a component of the compounding fee payable for every subsequent year and therefore the liability under Section 5-A need not be taken into account for determination of compounding fee for every year. The clarification issued by the Commissioner is consistent with Section 7(1)(a) of the Act. Therefore, the assessment to the extent of inclusion of Section 5-A liability again while demanding compounding fee is vacated. The Assessing Officer is directed to demand tax at compounded rate based on the previous years' compounded tax. However, he will ensure that while reckoning tax at

compounded rate for the first year, Sections 5-A and 5(B) liability conceded for the previous year was taken as the basis

The Original Petition is disposed of as above.

Sd/-
C.N. RAMACHANDRAN NAIR,
JUDGE.

ORDER ON CMP NO.2850/2002 IN O.P.1650/02

DISMISSED.

16.12.2002

SD/- C.N. RAMACHANDRAN NAIR, JUDGE

APPENDIX

EXT.P1- TRUE COPY OF THE CIRCULAR NO.29/98/CT DATED 23.10.1998 ISSUED BY THE 2ND RESPONDENT.

EXT.P2- TRUE COPY OF THE NOTICE DATED 20.10.2001 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.

EXT.P3- TRUE COPY OF THE REPLY DATED 12.11.2001 SUBMITTED BY THE PETITIONER BEFORE B1.

EXT.P4- TRUE COPY OF THE ASSESSMENT ORDER DATED 27.11.2001 PASSED BY THE 1ST RESPONDENT.

EXT.P5- TRUE COPY OF THE APPEAL DATED 22.12.2001 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P6- TRUE COPY OF THE APPLICATION FOR STAY DATED 22.12.2001 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P7- TRUE COPY OF THE APPLICATION DATED 5.1.2002 SUBMITTED BY THE PETITIONER FOR RECTIFICATION OF MISTAKE BEFORE THE 1ST RESPONDENT.

EXT.P8- TRUE COPY OF THE ORDER DATED 9.1.2002 PASSED BY THE FIRST RESPONDENT.

// TRUE COPY //

P.S. TO JUDGE

True Copy

RECEIVED

PROCEEDINGS OF THE SALES TAX OFFICER
COMMERCIAL TAXES
NEDUMANGAD.

PRESENT: SRI. G. SANTHOSHKUMAR

Sub: KGST - Compounding of tax under section 7(1)(a) of the KGST Act -
 Rectification of defect apparent on the face of the records.

- Ref: 1. Notice of provisional assessment and demand for payment of tax
 under Section 7(1) (a) dated 16.08.2002.
 2. Notice under section 43 dtd 17.06.2006.

ORDER NO. 11151923/2002-03 Dated 26.06.2006

Sri. Chandrakumar, M/s Saraswathy Jewellery, Nedumangad have opted for compounding for the year 2002-03. The compounded tax due for the year 2002-03 was 200% of the tax payable as per the accounts for the year 2001-02 or 200% of the compounded tax paid for the immediate previous year whichever is higher. Your tax due for 2001-02 was Rs. 89372/-. Hence the compounded tax due for 2002-03 is to be worked out at Rs. 178744/-. But you have paid only Rs. 91500/-. The balance amount of Rs. 178744 - 91500 = 87244 is due to be collected from you with interest.

The compounding proceedings was issued to you by the then officer erroneously. This being an error apparent on the face of the record it is proposed to rectify under section 43 of the KGST Act as under.

Compounded tax due for 2001-02	Rs. 89,372.00.
Compounded tax due for 2002-03 200% of 2001-02	Rs. 1,78,744.00
Compounded tax paid	Rs. 91,500.00
Balance due	Rs. 87,244.00

This will be paid with interest.

A notice in the above was served on the assessee inviting his objections. The assessee filed the following by way of reply.

I have received the notice referred to above and do have strong objections to the proposals therein.

Under section 43 rectification has to be done at any time within three-years from the date of any order passed by it. Here the compounding proceedings sought to be rectified was dated 16.08.2002. So the proposal is barred by limitation and may be dropped.

Section 7(1) (a) KGST Act reads as follows.

"Any dealer in gold or silver ornaments or wares, may at his option instead of paying tax in accordance with the provisions of that sub section pay tax at two hundred percent of the tax payable by him as conceded in the return or accounts for the immediate preceding year or the tax paid for the immediate preceding year whichever is higher". Here you have proposed 200% of the compounded tax due for the previous year whereas the Act provided for 200% of the tax conceded or paid whichever is higher for the previous year. Again as per the notice, what is sought to be made the basis is the tax due which takes in tax under section 5A also. It is not permitted under SRO 1090/99 which excludes purchase tax from compounded tax. In that respect also the proposal is against law.

Hence it is requested that the above proposal may be dropped.

I have gone through the reply. The contention of the assessee that the purchase turnover of a dealer in Gold and Silver are exempted from levy of tax as per SRO 1090/99 is right. Hence the tax payable as per accounts is limited to sale turnover of the assessee.

The tax due on the sale turnover was Rs. 36089/- and hence the tax payable worked out was at 200% of the compounded tax paid for 2001-02.

Compounded Tax paid including AST	Rs. 45750.00
Tax payable for 2002-03	
45750 x 2 + AST	Rs. 105225.00
Tax paid	Rs. 91500.00
Balance due	Rs. 13725.00

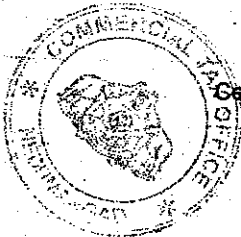
This will be paid as per the demand notice attached.

Sd/-
Commercial Tax Officer
Nedumangad

To

The dealer

Copy submitted to the IAC, NTA



Certified copy

[Signature]
16/11/2004
Commercial Tax Officer
COMMERCIAL TAX OFFICE
KVAT
NEDUMANGAD

Typed by: *Raji D.K., U.O. Typist, Raji*

Compared by: *Rajesh R., U.O. clerk, Rajesh*

Checked by: *Sandhya D., LDC, S*

FORM 24

[See Section 69(2)]

Requisition for recovery of amount other than public revenue due on land which is recoverable under the Act.

Whereas Sri/M/s... S. Chandrakumar, Srivasthly Jewellery Village Nadimangal S/o.....

Rs. 1,41,20/- on account of Sales Tax and surcharge as specified below: Taluk has to pay a sum of Rs. 1,41,20/- (one lakh forty one thousand and twenty only)

And whereas the said demand arose in your District Thiruvananthapuram.

I hereby request you to collect the amount as it were an arrear of public revenue due on land which is accrued in your District.

YEAR	VAT	INTEREST	PENAL INTEREST	TOTAL	Current
2002-03	9549		3704	13273-	11412
2003-04	72558		28298	100856	

Duly verified and certified by me this the 20th day of 2009 /2013.



[Signature]
Requisition authority

inspected by : Rajesh R, U.D. Clerk, Refale

checked by : Sandhya O. LDC

INPUT FORM

Demand details

Collectorate File No.

Defaulter's Name

Guardian/Firm's Name

S. CHANDRA KUMAR

Tahuk Code

Village Name

Address Line -1

Line- 2

Line- 3

Line- 4

S. CHANDRA KUMAR

SARASWATHY JEWELLERY

NEDUMANGADE

Department Code

Requisition authority

COMMERCIAL TAX OFFICER, VAD

Nature of amount

SALES TAX APPEALS

Amount involved

11,129/-

Principal amount

82/09/-

Date of demand amount

25/06/2006

Interest Rate-1

1% P.M

Interest rate-2

Interest Rate- 1 Appl date

Interest Rate-2 Appl date

Date of receipt of requisition

23/10/2009

Department Code

Tahuk Code

- 1 Nationalised Banks
- 2 Sales Tax
- 3 Agricultural Income-Tax
- 4 Excise
- 5 Motor Vehicle Tax
- 6 Motor Accident Claims Tribunal
- 7 Kerala Agro Industries Corporation
- 8 Toddy Workers Welfare Fund Board
- 9 K.M.T.W.Welfare Fund Board
- 10 All other Government Departments



Complied by: *Refector R, Asst. U.D. Clerk*

True Copy Attached
25/10/2014
 COMMERCIAL TAX OFFICER
 VADAKKANGUDI
 KOLLAM DISTRICT
 KERALA

നമ്പർ

17155

No 1715439

നമ്പർ

തൊഴിലാളി

മെമ്പർ

നമ്പർ

ജില്ല

Amal Kumar

തൊഴിലാളി

Amal Kumar

സർവ്വേർ സബ് ഡിവിഷൻ നമ്പർ നമ്പർ	വിസ്തീർണ്ണം		പട്ടണത്തിൽ പട്ടണത്തിൽ	പട്ടണത്തിൽ പട്ടണത്തിൽ	പട്ടണത്തിൽ പട്ടണത്തിൽ	പട്ടണത്തിൽ പട്ടണത്തിൽ	മുക്		റിമാർക്കുകൾ
	ഹെ.	ആർ.					മു.	സ.	
			<i>21-4382/09</i>						
			<i>S. J. J. J. J.</i>						
<i>Sale TAX due.</i>			<i>Amal Kumar</i>					<i>2</i>	<i>25000</i> <i>1250</i> <i>26250</i>

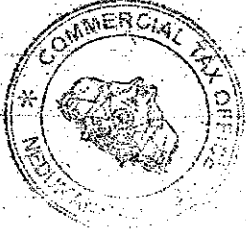
മേൽ വിവരിച്ചപ്രകാരം *26250/-* രൂപയുടെ *Amal Kumar* നമ്പർ *21-4382/09* നമ്പർ *3-10* മാസം *12-10* തീയതിയോടെ നിവാരണ സർവ്വേർ വില്ലേജ് കണക്കിൽ മുതൽ വച്ചിടുന്നു.

നമ്പർ: *Amal Kumar*
തീയതി: *12/3/10*

വില്ലേജ് ഓഫീസറുടെയും വില്ലേജ് അസിസ്റ്റന്റുടെയും

Amal Kumar

TCPT: 1912247/2008/5,000*100*2/DTT



True Copy *Atted*
Amal Kumar
16/4/14

DEPARTMENT OF COMMERCIAL TAXES
THE NERALA VALUE ADDED TAX RULES, 1967

(To be completed in quadruplicate)
(For Remittance of Money into State Government's
A/c Rule 27)

No. [REDACTED]

TIN: 32011048124 Return Period: [REDACTED]

Name of the dealer: Chandrakumar Assessing Office: EYANDP
(with Trade Name if any) (with District)

Address of the Dealer: [REDACTED] Commodity Code No. [REDACTED]

Total Turnover Reported: [REDACTED]

Usable Turnover Reported: [REDACTED]

PURPOSE OF REMITTANCE		SPACE FOR BANK	
HEAD OF ACCOUNT	AMOUNT PAID	SI No. in the Scroll	
MAJOR HEAD 0040-Tax on Sales Trade etc.			
MINOR HEAD 110-Trade Tax			
1. VAT	Rs. 15000/-	Cheque/DD enclosed for [REDACTED]	
2. PT		[REDACTED]	
3. Compounded Tax		[REDACTED]	
4. Registration Fee		[REDACTED]	
5. Interest		[REDACTED]	
6. Penalty		[REDACTED]	
7. Compounding Fee		[REDACTED]	
8. Licence Fee		[REDACTED]	
9. Others		[REDACTED]	
Total	15000/-	CASH RECEIVED [REDACTED] 29 APR 1970 [REDACTED]	
Total amount (in words)	15000/-	[REDACTED]	
Details of payment: (Cheque/DD/Bank Particulars)		SPACE FOR TREASURY	

Name of the Treasury: [REDACTED]

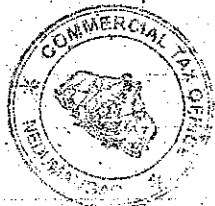
Original to Bank

Duplicate to Treasury

Triplicate to Assessing Officer

Quadruplicate to dealer

Abbreviations:
VAT = Value Added Tax
PT = Presumptive Tax



The Copy Attached

[Signature]

12/4/74

COMMERCIAL TAX OFFICER
KVAT
NEDUMANGAD

00066

117

നമ്പർ	വർഷം	പ്രകാരം	മൂല്യം	പി.എസ്. ടി.സി. നമ്പർ	പി.എസ്. ടി.സി. തീയതി	പി.എസ്. ടി.സി. സ്ഥലം	പി.എസ്. ടി.സി. വില	പി.എസ്. ടി.സി. ചാർജ്ജ്	പി.എസ്. ടി.സി. മൊത്തം
31-4382109	2011	അടവു	21,000				20,000	1000	21,000

Handwritten:
 അടവു
 അടവു
 Sales Tax one
 രൂപയ്ക്ക് 2

Handwritten:
 20,000
 1000
 21,000

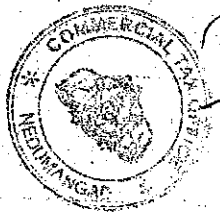
മൊത്തം പി.എസ്. ടി.സി. മൂല്യം: 21,000/-
 2011-ലെ അടവു: 29-11 (അടവു തീയതി)
 1-12 (അടവു തീയതി)

നമ്പർ: *Handwritten:* 29-1-11
 തീയതി: *Handwritten:* 29-1-11

വിജ്ഞാപനം: *Handwritten:* 29-1-11
 വിജ്ഞാപനം: *Handwritten:* 29-1-11

Handwritten signature

CCF, 19/2442010DP



Handwritten: True Copy Attached
Handwritten signature: [Signature]
 COMMERCIAL TAX OFFICER
 KVAT
 NEDUMANGAD

ബുക്ക് നമ്പർ : ജി. നമ്പർ No 09763 നമ്പർ No 0976260

BI-4382/09 നമ്പർ തിരുവല്ല ജില്ല കടലാസ് ആക്ടുകാർക്ക് നേരിട്ട കടലാസ്

Nedumangad താലൂക്ക് Nedumangal വില്ലേജ്

സർവ്വതല സംവിധാന സംവിധാനം	വിസ്തീർണ്ണം		പുനഃനിർമ്മാണ പദ്ധതികൾക്ക് അനുബന്ധ ഭവനം	ഭൂമിയിൽ സ്ഥലം	പണം ഒരുക്കിയ ആളിന്റെ പേര്	ഏറ്റെടുത്ത കരാററനുബന്ധ ഭവനം	ബുക്ക് നമ്പർ		വിരലിടുകൾ
	പേര്	സ്ഥലം					ബുക്ക് നമ്പർ	ശൃംഖല നമ്പർ	
					BI-4382/09				

Sale Tax

ട. 4382/09
Nedumangal

അ. 1165
CC 3581
4376

75196 / 75196
Subudhaya (Sudha) / Subudhaya (Sudha)
20/12 00/00

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7/16/14
COMMERCIAL TAX OFFICER
KVAT
NEOUMANGAD

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.ILHAMACHANDRA MENON

FRIDAY, THE 17TH DECEMBER 2010 / 26TH AGRAHAYANA 1932

WP(C) No. 25086 of 2007(A)

PETITIONER :

M/S SENEH COMPUTER FORMS,
DHARMAKAM, THALASSEY,
REPRESENTED BY ITS MANAGING PARTNER -
V.A. VASUDEVAN.

BY ADV. SELU RAMADAS

RESPONDENT(S) :

1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.
2. THE SALES TAX OFFICER, I CIRCLE,
THALASSEY.

RI & E2 BY GOVERNMENT PLEADER SEL. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17/12/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P. (C) No. 25000 of 2007

2

entry No. 106 of the first schedule to the KGST Act, which is taxable only at the first point of sale in the State. It is also stated that, the assessment was finalized earlier as borne by Exts. P1 and P2, without fixing any tax liability, in view of the above factual position; but later, because of some audit objection, it was sought to be revised, leading to issuance of Exts. P4 and P5, revised assessment notices, proposing to fix the liability, stating that it was a different commodity, which is under challenge.

3. Heard the learned Government Pleader as well.

4. The learned counsel for the petitioner submits that, the issue is squarely covered by Ext. P8 judgment dated 13.10.2005 in O.P. 37169 of 2002. In the said case, the contention raised from the part of the State/Department of Revenue was that there was no such manufacturing activity, in respect of exactly similar operation, so as to extend the benefit contemplated under SRO 1729 of 1993. A specific finding was arrived at by this Court therein, that the activity of processing of paper by the petitioner to make it fit for use in computer printers or fax machines does not involve any manufacturing process making the goods commercially different from the raw materials used by the petitioner. It was accordingly, that the original petition was dismissed, holding that there was no 'manufacture', so as to have the benefit of exemption provided under SRO 1729 of 1993 cited supra.

W.P. (C) No. 23030 of 2037

5. Coming to the instant case, the learned Government Pleader appearing for the respondents submits that, the question is slightly different as specifically pointed in the counter affidavit filed from the part of the respondents. Referring to the specific averments in paragraphs 4 to 6, the learned Government pleader submits that the commodity is being marketed by the petitioner under a 'brand name' and this being the position, the liability is stated as attracted. The learned Government Pleader also makes a reference to the specific observation in Ext. P4 notice issued in this regard, referring to the nature of activity being pursued, particularly with regard to the marketing of product under the brand name 'Sinex'.

6. The learned counsel for the petitioner submits that, the proceedings are still to be finalized and the petitioner has already preferred Exts. P6 and P7 explanation in response to Exts. P4 and P5 and that the product is never marketed under any brand name, to attract the tax liability. In view of the disputed question of fact, this Court finds that the matter requires to be considered by the second respondent, as to the actual nature of transaction, also with reference to the observations made by this Court in Ext. P8 judgment.

In the above circumstances, the Writ Petition is disposed of, directing the second respondent to consider and finalize the proceedings pursuant to Exts. P4 and P5, taking note of the explanation offered from

M.P. (C) No. 25000 of 2007

the part of the petitioner as borne by Exts. P6 and P7 and also the contents of Ext. P8 verdict passed by this Court. The proceedings as above shall be finalized in accordance with law, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

sd/

P. R. RAMACHANDRA MENON, JUDGE

kmd

1 P. Ramachandra Menon
20/10/07
P. R. Menon Judge

WFO(C) No. 25682 of 2007(A)

APPENDIXPETITIONER'S EXHIBITS:

- EXT.P1 : COPY OF THE ASSESSMENT ORDER DATED 27-12-2005 FOR THE PERIOD 2003-2004 ISSUED BY THE 2ND RESPONDENT.
- EXT.P2 : COPY OF THE ASSESSMENT ORDER DATED 29-12-2005 FOR THE PERIOD 2004-2005 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3 : COPY OF THE REVISED ASSESSMENT ORDER DATED 25-4-2006 FOR THE PERIOD 2004-2005.
- EXT.P4 : COPY OF THE NOTICE DATED 21-7-2007 ISSUED BY THE 2ND RESPONDENT FOR THE PERIOD 2003-2004.
- EXT.P5 : COPY OF THE NOTICE DATED 21-7-2007 ISSUED BY THE 2ND RESPONDENT FOR THE PERIOD 2004-2005.
- EXT.P6 : COPY OF REPLY DATED 9-8-2007 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE PERIOD 2003-2004.
- EXT.P7 : COPY OF THE REPLY DATED 4-8-2007 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE PERIOD 2004-2005.
- EXT.P8 : COPY OF THE JUDGMENT DATED 13-10-2005 OF THIS HON'BLE COURT IN OP.NO.17129 OF 2002.

RESPONDENT'S EXHIBITS

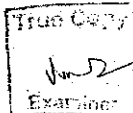
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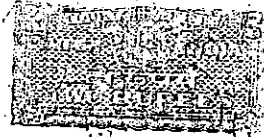
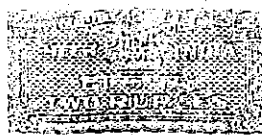
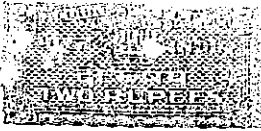
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P.A. TO JUDGE

Ma





Petition

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N. RAMACHANDRAN NAIR

THURSDAY, THE 13TH OCTOBER 2005 / 21ST ASWINA 1927

OP.No. 37169 of 2002(Y)

PETITIONER:

SUJA MATHW, M/S. S.M.CONVERSIONS,
UDUMPANNOOR P.O., THODUPUZHA.

BY ADV. SRI.MATHW ZACHARIAH
SRI.KOSHY GEORGE

RESPONDENTS:

1. THE ADDITIONAL AGRICULTURAL INCOME TAX & SALES TAX OFFICER, II CIRCLE, THODUPUZHA
2. THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, IDDKKI.
3. THE DIRECTOR OF INDUSTRIES & COMMERCE, THIRUVANATHAPURAM.
4. THE DEPUTY TAHSILDAR, THODUPUZHA.

GOVERNMENT PLEADER SRI. JULIAN XAVIER.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/10/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DP 37/99/02

conversion of one form of goods into another form of the same goods does not involve any manufacture. In the present case, petitioner is not manufacturing paper and is buying paper rolls. The process done by the petitioner is cutting of paper into various dimensions for use in standard computer printers and fax machines. Of course in the case of computer rolls paper is also perforated for easy cutting and for making it suitable for use in computer printers. The activity of processing of paper by the petitioner to make it fit for use in computer printers or fax machines does not involve any manufacture or production of goods commercially different from the raw materials used by the petitioner which is paper. The item used is paper and the item produced is also paper, though with different dimensions and with little changes as stated above. "So long as there is no manufacture of products commercially different from the raw materials used, there is no manufacture as contemplated under SRO 1729 of 1993 and so much as the denial of sales tax exemption is only to be upheld and I do so. O.P. is therefore devoid of any merit and is dismissed."

sd/-
(C.N. RAMACHANDRAN NAIR)
Judge

for M/s. SENEX COMPUTER SYSTEMS

MANAGING PARTNER

C. N. RAMCHANDRAN NAIR, J.

O. P. No. 37169 OF 2002

Dated this the 13th day of October, 2005



JUDGMENT

Petitioner is challenging Ext.P9 order whereunder the State Level Committee for Sales Tax exemption has confirmed Ext.P7 order of the District Level Committee rejecting the petitioner's claim for sales tax exemption made under SRO 1729 of 1993. Petitioner is engaged in processing of paper to make it fit for use in computer printers, fax machine, etc. Counsel for the petitioner contended that paper rolls purchased by the petitioner are cut and processed to make it suitable for use in computer printers, fax machine, etc. According to him, there is value addition and the products are commercially different. However, it is seen from the impugned orders that both the District Level Committee as well as State Level Committee held that there is no manufacturing activity in the cutting and processing of paper by the petitioner to make it fit for use in computer printers, fax machine, etc. I also heard Govt. Pleader appearing for the respondents, who contended that there is no manufacturing activity and what the petitioner does is cutting and perforation of paper to make it suitable for use in computer printers, fax machines, etc.

2. Government notification, SRO 1729 of 1993 under which exemption is claimed by the petitioner defines "manufacture" with an exclusion clause which states that



O.P. NO. 37169/2002

ORDER ON CMP NO. 62767/2002 IN O.P. 37169/2002

DISMISSED //

13TH OCTOBER, 2005.

SD/-
C.N. RAMACHANDRAN NAIR,
JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE BOOKLET CONTAINING REGISTRATION NO. & OTHER DETAILS IN RESPECT OF THE INDUSTRIAL ESTABLISHMENT.
- EXT.P2 TRUE COPY OF THE NOTICE DATED 31.8.2000.
- EXT.P3 TRUE COPY OF THE NOTICE DATED 4.9.2000.
- EXT.P4 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT.
- EXT.P5 TRUE COPY OF THE NOTICE DATED 6.2.2001.
- EXT.P6 TRUE COPY OF THE NOTICE RECEIVED ON 19.2.2001.
- EXT.P7 TRUE COPY OF THE ORDER DATED 19.7.2001.
- EXT.P8 TRUE COPY OF THE JUDGMENT IN O.P. NO. 7444/2001 DATED 5.3.2001.
- EXT.P9 TRUE COPY OF THE ORDER DATED 19. 10.2002 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS:

NPL.

// TRUE COPY //

P.S. TO JUDGE.

True Copy.

[Signature]
Examiner

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.M. JOSEPH

MONDAY, THE 15TH SEPTEMBER 2008 / 24TH BHADRA 1930

WP(C) No. 37831 of 2007(N)

PETITIONER:

M/S. PARAGON RUBBER INDUSTRIES,
PARAGON BUILDINGS, GREENWASAYER ROAD,
CHALLAKUNJI, KOTTAYAM DISTRICT, REPRESENTED BY
MANAGING PARTNER, BEGI ABRAHAM.

BY ADV. SRI.C.K.THANU PILLAI

RESPONDENTS:

1. THE ASSISTANT COMMISSIONER-1,
COMMERCIAL TAXES, SPECIAL CIRCLE, KOTTAYAM.

2. THE DEPUTY COMMISSIONER (APPEAL),
COMMERCIAL TAXES, KOLLAM.

3. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KOTTAYAM.

BY GOVERNMENT PLEADER SHRI C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15/09/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 37931 OF 2007 N

Dated this the 15th September, 2008

JUDGMENT

Petitioner calls in question Exts.P5 and P6. Briefly put, the case of the petitioner is as follows:

Petitioner is a small scale industrial unit registered as such under the Industries (Development and Regulation) Act, 1951 vide Ext.P7. It is manufacturing hawai chappals. The assessments for the years 2002 - 2003 and 2003 - 2004 were completed vide Exts.P1 and P2 orders in the year 2005. The assessments were completed on the basis that the petitioner is entitled to pay concessional rate of tax on the basis that it is enjoying exemption as a small scale industrial unit. Subsequently, Exts.P5 and P6 notices were issued under Section 19(1) of the KGST Act, 1963, proposing to reopen the matter for the years 2002 - 2003 and 2003 - 2004. The basis of the re-assessment notices is that a perusal of the Balance Sheet would reveal that the investment in the Plant & Machinery for

WPC.37531/07 N

the year 2002 - 2003 is in excess of Rs.3 Crores. In Ext P5, stated that the value of the Plant and Machinery (Office shown as Rs.51,27,888/= and further, Machinery & Equipment is shown as Rs.2,92,06,799/= In Ext P6, the value of Plant & Machinery (Office) is shown as Rs.58,93,976/= and the value Machinery & Equipments is shown as Rs.3,32,25,842/. According to the assessing authority, the petitioner was illegal granted the benefit of concessional rate of tax, treating it as small scale industrial unit and entitled to exemption. It is accordingly that Exts.P5 and P6 notices were issued.

2. I heard shri C.K. Thanupillai, learned counsel appearing for the petitioner and the learned Government Pleader. Learned counsel for the petitioner would submit that the notices are issued without jurisdiction. It is his case that the matter is governed by the Industries (Development And Regulation) Act, 1951. He refers to Section 3(c), (d) and (j) which define "Factory", "Industrial Undertaking" and "Small Scale Industrial Undertaking". He then pointed out that Section 11B refers to

WPC.3793/07 N

factors which render a unit as eligible for being treated as small scale unit. He also points out that there is authority with the Central Government to revoke the Certificate. He would further refer to Section 25 of the Act to contend that it is open to the Central Government to delegate the power in this regard to the State Government or to any Officer of the State Government. He would point out Ext.P9. Ext.P9 is dated 3.12.2007. It was issued by the General Manager, District Industries Centre, Kottayam to the assessing authority. Therein, it is stated as follows:

"Kindly refer the above cited letters. M/s. Paragon Rubber Industries, Kottayam is a Small Scale Industrial Unit as per Reg. No.09-04-1398 dated 15-04-1974. In reply to your letter cited first, we intended that no financial assistance for SSI units like Sales Tax Exemption, State Investment Subsidy etc. had not enjoyed by M/s. Paragon Rubber Industries during the period 2002 - 03 and 2003 - 04.

I may clarify that M/s. Paragon Rubber Industries, Kottayam had SSI status during 2002 -

WPC.37931/07 N

03 and 2003 - 04. Unit is keeping the SSI status till now."

He would also take me through Exts.P10 to.B16. According to him, the petitioner's unit was granted registration way back in 1975 and was enjoying the status of "small scale Industrial Unit" since then. The authority competent to determine whether the Unit is entitled to enjoy the status of "Small Scale Industrial Unit" is the General Manager of the District Industries Centre. After having issued Ext.P9 dated 3.12.2007, which would conclusively show that the Unit of the petitioner continued to enjoy the status of "Small Scale Industrial unit" during the years 2002 - 2003 and 2003 - 2004, the action of the assessing authority in purporting to proceed to re-assess the matter disregarding the communication issued by the General Manager is illegal, he contends. Counsel for petitioner also relied on the decisions of the Apex Court in Vadilal Chemicals Ltd. v. State of Andhra Pradesh and Others (142 STC 76) and Pondicherry State Co-operative Consumer Federation Ltd. v. Union Territory

WTC.37931/Q7 N

of Pondicherry ((2007) 10.VST:630).

3. A Statement is filed on behalf of respondents 1 and 2, wherein the case of the respondents is as follows:

Petitioner filed audited Statement of Accounts for the year ended on 31.3.2003 and 31.3.2004 before the first respondent and it disclosed investment in Plant and Machinery exceeding Rs.3 Crores and, therefore, it is a Medium Scale Industry and not a Small Scale Industry. From 2002 - 2003 onwards the petitioner is not at all a SSI Unit and it is not entitled to claim as such from 1.4.2002 onwards. During the year 2002 - 2003, investment exceeded the limit prescribed by the Industries Department. It is stated that the third respondent informed the first respondent that the Unit is not a SSI Unit vide letter dated 11/10/2007. It is stated that the case was pointed out by the Accountant General while auditing the files. It is stated that it was issued as a pre-assessment notice and what all objections are raised by the petitioner will be verified judiciously and finality made.

WPC.37931/07 N

4. A Reply Affidavit is filed by the petitioner, essentially taking the stand that the first respondent cannot take an independent decision in the light of the direction issued by the Accountant General and that the matter has already been decided and no purpose will be served. It is stated that the first respondent has no powers or jurisdiction to decide whether the petitioner is a Small Scale Industrial Unit and the power is vested with the third respondent General Manager who has issued Exts.P9 and P10 Certificates. This Court came to pass an interim order dated 30.7.2008. Therein, it was noted that the petitioner on the one hand relied on Ext.P9 dated 3.12.2007 and Ext.P10 dated 14.12.2007 which confirmed Ext.P9 and the learned Government Pleader relied on a letter dated 11.10.2007 issued by the third respondent General Manager to the first respondent, Assistant Commissioner. In that letter, which had been made available to this Court, it was stated as follows:

"With reference to the above, M/s. Paragon Rubber Industries, Kottayam is a permanently registered SSI Unit bearing No.09-04-1398 dated 15-

WPC.37931/07 N

04-1974. They have not enjoys the status of SSI unit during the period 2002-03 and 2003-04 as per the prescribed norms of the Ministry of Industry. This is for your information."

Noting this, this Court directed the third respondent, namely the General Manager, District Industries Centre, Kottayam to file an Affidavit. Accordingly, the third respondent filed an Affidavit on 14.8.2008. Therein, it is, inter alia, stated as follows:

"In the case of M/s. Paragon Rubber Industries, the Gross Block of investment in plant & machinery as mentioned in the audited balance sheet for the years 2002 - 03 and 2003 - 04 was Rs.292.07 lakhs and Rs.332.26 lakhs respectively. However, for computing the value of plant & machinery for determining the status of SSI, the investment in the heads as per the note 2 to the SO 857(E) dated 10/12/97 should be excluded. After excluding the same, the investment in plant & machinery of M/s. Paragon Rubber Industries comes within the prescribed limit of Rs.3 crores. Therefore, the factory of M/s. Paragon Rubber Industries situated at Kumaranalloor, Kottayam enjoys the status of SSI during the years 2002-03

and 2003-04, as per the norms prescribed by Government of India."

It is further stated in paragraph 9 as follows:

"In this respect, it is to be submitted that the status of SSI as mentioned above is applicable only to the factory run by the petitioner unit at Kumaranallur, the plant & machinery of which have been accounted for in the balance sheet and the production activities undertaken in the industrial unit, and does not cover any business that may be done by the petitioner in the same name and style utilising any other external production facilities, the plant and machinery of which are not accounted for in the books of the petitioner unit."

5. There is no dispute before me by the respondents that the matter is to be decided actually by the General Manager and the assessing authority cannot go beyond the Certificate issued by the General Manager or the concerned authority under the Central Act. In the light of the stand of the third respondent before this Court, it would appear to be clear that the very basis

W.P.C. 3793, 107 N

of the notice that the investment in plant and machinery in the unit of the petitioner exceeds Rs.3 Crores, may not stand scrutiny and it may not be open to the assessing authority to proceed with the notice, in view of the position in law that the assessing authority cannot go beyond the Certificate issued by the General Manager. In the light of this, Exts.P5 and P6 have no legs to stand on and accordingly Exts.P5 and P6 are quashed. But, this will be without prejudice to any action which the first respondent or the competent authority may take in accordance with law in the light of the statements contained in paragraph 9 of the Affidavit filed by the third respondent.


The Writ Petition is allowed as above.

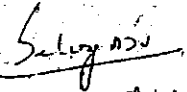
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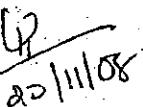
K. M. JOSEPH, JUDGE

Hbk.

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 PS to Judge


 Section Officer


 22/11/08

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT.

THE HONBLE THE CHIEF JUSTICE M.C.H. DATTA
&
THE HONOURABLE MLC JUSTICE K.J. SANKARAN

TUESDAY, THE 29TH MAY 2007 / BITH / YAISHTA 1929

ST.Rev.No. 201 of 2005J

TA.5252904 of S.T.A.T.ADDL.BENCH-I, ERNAKULAM

PETITIONER.

THE GULBANI CO-OPERATIVE MILK MARKETING
FEDERATION LTD., CHITTUR ROAD, KOCCHI-682 013,
REPRESENTED BY THE SENIOR EXECUTIVE
GOVIND RAMACHANDRAN

BY ADV. BRICK THARU PILLAI

RESPONDENT.

STATE OF KERALA

BY SPL. GOVERNMENT PLEADER (TAXES) SHRI V.V. ASHOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

H.L.DATTU, C.J. & K.T.BANKARAN, J.

S.T.Revision No.201 of 2005

Dated, this the 29th day of May, 2007

H.L.Dattu, C.J.

ORDER

M/s. Gujarat Co-operative Milk Marketing Federation Ltd. is the revision petitioner in this Sales Tax Revision Petition. It is a co-operative society dealing in milk and milk products. The petitioner is a registered dealer both under the Kerala General Sales Tax Act and the Central Sales Tax.

2. Petitioner had filed its annual returns claiming exemption on the sales turnover of "Amul Tazza Milk" which according to it is only "pasteurised milk", coming under Entry 23 of Third Schedule to Kerala General Sales Tax Act. The assessing authority while concluding the assessment for the assessment year 2000 - 2001 has levied the tax at 12% treating "Amul Tazza Milk" as a milk product as such an item falling under Entry 92 of the First Schedule to the Act.

3. The assessee being aggrieved by the said finding and conclusion reached by the Assessing Authority had approached the higher forum by filing an appeal. The Appellate Authority has concurred with the findings and conclusion reached by the Assessing Authority. Thereafter the assessee has carried the matter by way of second appeal before the Kerala Sales Tax Appellate Tribunal. The Tribunal by order dated 30.9.2004 has rejected the appeal and has confirmed the orders passed by the Assessing Authority. The

Tribunal would hold that the "Amul Tazza Milk" is a milk product and therefore, it falls under Entry 92 of the First Schedule. The reasoning and conclusions reached by the Tribunal is as under:-

"Evidently and admittedly Tazza Milk has undergone pasteurization and toning. It is also subjected to Ultra High Temperature. Besides, there is an addition of Vitamin A and D to the Tazza Milk. According to the appellant, pasteurization at 63°C and the subsequent treatment at Ultra High Temperature of 135°C for three seconds, there occurs a deduction in nutrition and hence vitamins A and D are added to compensate the loss of nutrition due to treatment of UHT pasteurization. It is argued by the appellant that this treatment will not change the identity of the commodity. The appellant would practically admit that the milk has undergone a degree of processing, but the argument is that the product is still retaining its functional identity, since there is no difference in identity before and after processing. Evidently, the Tazza Milk has undergone a degree of processing and the appellant himself has treated it as manufacture by indicating it on the cover of the package. After having endorsed as a manufactured item, the appellant is estopped from contending otherwise. In that view of the matter, it is not necessary for us to go into the meaning of the term in commercial parlance and common parlance and the functional character of the item."

4. Aggrieved by the aforesaid order passed by the Tribunal, the assessee has come before us in this revision petition. The question of law raised for our consideration and decision is whether the Tribunal is justified in classifying "Amul Tazza Milk" as not pasteurised milk after admitting that the

process adopted by the assessee is only pasteurisation?

5. Learned counsel for the revision petitioner would submit that the Tazza Milk sold by the assessee would fall under Entry 23 of the Third Schedule to the Kerala General Sales Tax Act (the Act for short) and therefore, is exempt from payment of tax under the Act. It is further contended that merely because vitamins A and D are added to the pasteurized milk, it would not lose its identity as a pasteurized milk. He, therefore, submits that the authorities under the Act and the Tribunal were not correct in holding that "Amal Tazza Milk" is a milk product and would fall under Entry 92 of the First Schedule to the Act.

6. Per contra, Sri Advocate, learned Special Government Counsel (Taxes) would submit that the Tazza Milk cannot be construed as a pasteurized milk for the reason that when Tazza Milk is processed and sold, the assessee would add vitamins A and D to the pasteurized milk and thereby a process is involved and in view of that, the Tazza milk requires to be construed as a milk product falling under Entry 92 of the First Schedule to the Act.

7. In order to answer the question of law framed for our consideration and decision, the relevant entries required to be extracted. Entry 92 of the First Schedule to the Act reads as under:

Milk products including milk powder, baby food, ghee, cheese and butter except curd, butter milk, Horlicks, Boost, Bournvita, Complan and similar items whether or

S.T. Revision No. 201/2005



not bottled, canned or packed. The point of levy is sale point and the rate of tax is 42%.

Entry 75 of the Third Schedule to the Act is as under:

"Fresh milk including pasteurised, toned or re-constituted milk"

8. The goods falling under the Third Schedule are exempted under sec.9 of the Act.

9. According to the Assessing authority "Amul Tazza Milk" is a Milk Product. Therefore, the first question that requires to be answered is what is a Milk Product. In our view, when milk is processed a commodity which is entirely different from milk and which cannot be identified as such may be obtained and the commodity so obtained can be described as a "milk product". Its composition and use will be basically different from that of the milk obtained in the natural form. In the alternative, it can be said, whenever a commodity is subjected to a process and some change is brought about in its constitution, it can be said that the resultant commodity is the product of the original commodity.

The entry is both inclusive and exclusive. It includes milk powder, baby food, ghee, cheese and butter. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words occurring in the body of the entry. When it is so used, those words and phrases must be construed as comprehending not only such things as may signify according to their nature and import, but also those things which the

S.T. Revision No. 291/2005

Interpretation clause declares that they shall include. (See C.I.T. vs. Tazma Milk, 201 (1971) 3 SCC 550.

The word 'excluding' is also used in the entry to exclude curds, butter, milk, solids, Boost, Bournvita and Complan and similar products from the entry Milk Products, because these products are brought to tax under different entry in the Third Schedule to the Act.

10. It is not the case of the assessee before this court that what is sold by the assessee is fresh milk. Therefore, we need not have to look into the meaning of the expression "fresh milk". Then the next question that arises for our consideration is whether the "Tazza Milk" is a pasteurized milk or ultra high temperature pre-constituted milk. The assessee in the memorandum of revision has explained the meaning of the expression "pasteurization". According to the assessee "pasteurization" is the process of heating milk to 63°C for thirty minutes in approved and properly operated equipment and immediately cooling to 5°C and it renders the milk safe for human consumption by destruction of all spoilage organisms. The method of pasteurization adopted by the petitioner is Ultra High Temperature pasteurization. It also keeps the milk for long duration when compared to fresh milk. Pasteurization refers to the process of heating every particle of milk to at least 63°C for 15 seconds. In approved and properly operated equipment. After pasteurization the milk is immediately cooled to 5°C or below.

11. The process of heating, holding and rapid cooling called



S.T. Revision No. 201/2005

pasteurization (named after Louis Pasteur, the French Scientist) ensures that the bacteria is destroyed. This mild form of heat treatment kills any pathogenic bacteria that may be present without affecting minimal value of the flavour. It also extends the shelf life by reducing the spoilage bacteria.

12. Shri Ashokan, learned counsel appearing for the Revenue, has brought to our notice the meaning of the expression "pasteurization" by referring to 'The World Book of Encyclopedia, 1992 Edition'. In the said book the meaning of the expression "pasteurization" is as under:

"Pasteurization" involves heating milk to kill disease-causing bacteria. Nearly all milk sold in industrialised countries is pasteurized. Most is pasteurized by the *high-temperature short-time, or HTST, method*. This method involves heating milk to 72°C for 15 seconds and then quickly cooling it. Some milk is pasteurized by the *batch method*—that is, by heating it to 63°C for 30 minutes. In a method called *ultrapasteurization*, milk is heated to at least 138°C for 2 or more seconds and then cooled rapidly.

Immediately after explaining the meaning of the expression "pasteurization" there is a sub-heading which speaks of 'fortification' which says to improve the food value of the milk by adding certain nutrients especially vitamins and proteins. Some dairies add vitamin A and D because the quantity is low in milk. They fortify skimmed milk with protein and vitamin A as well as vitamin D. A few dairies also add other vitamins and some minerals to milk.

13. Keeping in view the dictionary meaning of the expression

S.T. Revision No.291/2005



...and also how the product is understood in the common
 ...get back to the ... under the Act. Entry 92 of the First
 ... the list speaks of milk product including milk powder, baby food,
 ... milk product means a product which is not used a milk
 ... processed a commodity which is entirely different from milk and
 ... to be identified as such may be obtained and the commodity so
 ... can be called as milk product. Its composition and use will be
 ... different from that of fresh milk or pasteurized milk.

14. Entry 23 of the Third Schedule speaks of a fresh milk
 ... to pasteurized, toned or reconstituted. Before us it is not a case of
 ... or his learned counsel that what is being sold is a fresh milk,
 ... pasteurized milk. Admittedly, the milk is heated to a particular
 ... temperature which is already mentioned and immediately thereafter cooled
 ... and to supplement the pasteurized milk, vitamins A and D is added because
 ... the quantity of vitamins A and D is low. Merely because vitamins A and D are
 ... added to the milk which is pasteurized, it would not cease to be pasteurized
 ... milk. By adding vitamins 'A' and 'D' also to the pasteurized milk, the milk
 ... retains all its natural flavours and characteristics. In that view of the matter
 ... the authorities under the Act as well as the Tribunal had interdicted itself to
 ... come to a conclusion that what is being sold by the assessee is a milk
 ... product, not a pasteurized milk. In view of the above, the orders passed by
 ... the assessing authority and the Tribunal requires to be set aside and a
 ... direction requires to be issued to the assessing authority to re-quantify the tax

S.T. Revision No. 201/2005

liability of the petitioner treating the Tazza Milk sold by the assessee as
pasteurized milk which would fall under Entry 23 of the Third Schedule to the
Kerala General Sales Tax Act. Ordered accordingly.

Sd/-

H.L. DAYTU,
Chief Justice.

Sd/-

K.T. SANKARAN,
Judge.

SDK.

- true copy -

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PS to Judge

TRUE COPY

M. Shankar *[Signature]*
EXAMINER

IN THE HIGH COURT, OF KERALA AT KUNNINGHAM

PRESENT

THE HONOURABLE MR. JUSTICE C.N. RAMACHANDRAN

MONDAY, THE 16TH DECEMBER 2002 / 25TH ASRANAYANA, 1523

OP.No: 1650 of 2002(U)

PETITIONER:

M/S. MAHILA JEWELLERS, BROADWAY, ERNAKULAM,
REPRESENTED BY ITS MANAGING PARTNER, F.J. THOMAS.

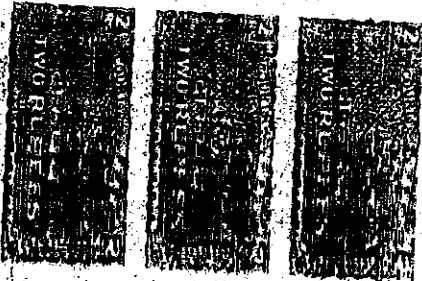
BY ADV. SRI. V. P. SUKUMAR

RESPONDENTS:

1. THE ADDITIONAL SALES TAX OFFICER-1,
THIRD CIRCLE, ERNAKULAM.
2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.
3. THE APPELLATE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SHRI RAJU JOSEPH

THE ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/12/2002, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



U. N. KAMMURKURU BAJR. J.

O.P. NO. 1890 OF 2002-U

DATED THIS THE 16TH DECEMBER, 2002.

JUDGMENT

This is a case where the assessment is demanded for the year 1997-98 ignoring the circular issued by the Commissioner dated 23.10.1998 against liability under Section 5-A being again taken into account for assessment tax or compounding rate for the 1st year. The Commissioner has clarified that Section 5-A has to be a component of the compounding fee payable for the first year and for subsequent years tax is based on the first year's compounding fee. Section 5-A happens to be a component of the compounding fee payable for every subsequent year and therefore the liability under Section 5-A need not be taken into account for determination of compounding fee for every year. The clarification issued by the Commissioner is consistent with Section 7(1)(a) of the Act, therefore, the assessment to the extent of inclusion of Section 5-A liability again while demanding compounding fee is voidable. The Assessing Officer is directed to demand the compounding fee based on the previous year's compounding fee. However, he will ensure that while calculating tax at

...for the first year. ... and ...
... to the ... year ...
...
...
...
...

OFFICE OF THE DEPUTY COMMISSIONER (Appeals)
SPECIAL CIRCLE, ERNAKULAM

Date of order: 25.04.2009

Present: Just A. Bijukumar Amma

Income tax / Sales tax Appeal No. STA - 7188-05
Dated of the 23.12.2005
From the order of the Assistant Commissioner (Asstnt), Special Circle, Ernakulam

- 1 Year of assessment : 1996 - 97
- 2 Name of Appellant : M/s Lakme Ltd.,
Ernakulam
- 3 Income/Turnover assessed
- 4 Tax demanded Income tax/Super tax/Sales tax/Surcharge/Central tax
- 5 Section/Rule under which assessment was made

Date of hearing : 02.04.2009

Present for Appellant : Sri Anil D. Nair, Advocate.

24 AUG 2009



APPELLATE ORDER AND GROUNDS OF DECISION

This appeal is filed by M/s.Lakme Ltd., Ernakulam, against the best judgment assessment completed by the Asst.Commissioner (Asstnt), Special Circle, Ernakulam for the year 1996 - 97. The assessment for the year 1996 -97 was originally completed on 06.03.2001 and the assessment was remanded back to the assessing authority for fresh disposal by the Hon'ble Appellate Tribunal, Ernakulam. Accordingly, fresh assessment was completed on 16.08.2005 against which the above appeal is filed. Though the appeal was dismissed by the Deputy Commissioner (Appeals), Ernakulam the Hon'ble High Court of Kerala in WRC no:7206/09 dated 26.03.09 remanded back the case to the Deputy Commissioner (Appeals), Ernakulam for fresh disposal according to law

Sri Anil D.Nair, Advocate, appeared for the appellant and was heard. He argued on the following grounds:

1. The Appellant had duly produced an Affidavit from the then Officer Sales Tax Mr.Raghavan on his admittance to the fact that the F-forms were wrongly issued in Kerala alone for completing the assessment of Karnataka instead of taking F-forms from AP, Tamilnadu, Maharashtra and West Bengal. The entire details of Stock Transfers containing the stock transfer Note, Delivery Notes and Loans, wherever available, were produced to the Assessing Officer. It is pertinent to note here that the appellant had filed a letter to the Assessing Authority Karnataka informing their mistake of issuance of F-forms from Kerala alone instead of from other states which itself acts as a conclusive submission before the assessing officer and appellant's true accounts.
2. The assessing officer has wrongly overlooked the fact that the affidavit of the appellant contains an indelible fact of inclusion of Stock Transfers from other states, under itself, but he is unable to accept the same. Even though the appellant is admitting that the business was not originally transacted in Kerala, it was not stated of the officer in the order of issuing F-forms.

- ...not used for opening stock under Lakme Lever Ltd. itself a clear proof that the stocks were audited and assessed later for Lakme Lever Ltd. The appellant is not clear of the allegation that on the one side the officer included the closing stocks of Lakme Ltd. (Treat Ltd) as there is no business transaction but on the other hand he failed to acknowledge the fact that the stocks arrived and audited were only as per the books of accounts audited and assessed under Lakme Lever Ltd.
- The Appellant had written to the TN Assessing authority to confirm that the stock from Karnataka were moved to TN during the period to enable us to complete the entire stock transfers were made to the respective states and to prove before the officers that the admissions of mistake supported with confirmation from the Departments of Sales Tax from Appellate and TN will complete the whole issue in our favour.
 - The appellant strongly object to the assessing officers observation that the Assessee of preparing the computerized statements to overcome the situation in the place of original accounts. The appellant is unable to comprehend his objection as they had produced the original document sales and stock register for the relevant period which consists of getting stock receipts from Godown/factory and issues and closing stocks with a separate details in a statement form to comprehend the details of a easier manner. The AO will see that no additional generation of documents produced as per the AO allegation.
 - Even though the Assessing Officer is requested vide the Appellant's letter dated 11.05.2003 and vide order on 16.05.2003 to give them an opportunity to explain the details by attaching a detailed books if (not less than two weeks time) in case he is not willing to accept the assessee's submissions, the Appellant was not called upon by the officer to produce a statement which is totally illegal and unjust and contrary to the basic principles of law.

I have examined the quotations and perused the relevant records. The main issue raised by the appellant is with regard to the assessment of stock transfer receipt from Bangalore as disclosed by the counterfoils of F forms and F form register. The case of the assessing authority is as follows:-

As per the F form Register and counterfoils of F-forms produced the assessee has used F-forms 88501, 802 & 503 for the year 1996-97 for April, May and June '96. Unused F-forms 88504 to 88506 have been produced.

The F-forms disclosed the following stock transfers to Kerala from Karnataka.

Transfers to Kerala from Karnataka

F-Form 88501 - April '96	Rs. 58,16,298/-
88502 - May '96	Rs. 68,95,424/-
88503 - June '96	Rs. 41,37,253/-
Total	Rs. 1,68,49,075/-

But as per the stock transfer statement filed by the assessee the stock transfers are as under:

From factory	Rs. 27,90,872.50
Sec: Arambad	Rs. 3,01,153.00
Bangalore	Rs. 38,30,693.42
	Rs. 69,22,718.92

The stock transfer notes and the amounts and quantity mentioned in the F-forms and the statement filed are different, denoting different

The stock transfer notes, and the amounts and quantity mentioned in the F-forms and the statement filed are different, denoting different transactions.

The appellant submitted that they had declared interstate stock transfer from Bangalore, Karnataka to Ernakulam for an amount of Rs.1,65,49,016/- and filed F-Forms and other documents. Though there is no change in the total value of the stock transfer of Rs.1,65,49,016/- the entire stock transfer was not to Kerala alone, but to other states as detailed below.

Madras	Secunderabad	Ernakulam	Bh-wandi	Calcutta
5377574.33	5977607.38	4335386.10	308208.19	450240

Total : 1,65,49,016/-

The appellant produced a detailed statement showing stock wise stock transfer from Karnataka totalling to Rs.1,65,49,016/- and submitted that the mistake was bonafide, unintentional and there has been no evasion of tax on this count.

The appellant produced copy of assessment order in respect of M/s.Lakme Ltd, Bangalore issued by Deputy Commissioner, Commercial Taxes, Bangalore for the year 1996-97 wherein deductions has been allowed in respect of stock transfer to outside branches for Rs.1,65,19,016/- against F-forms. But the above assessment order did not states the branch wise stock transfer against F-forms. Further to that, the appellant failed to produce evidences as to cancellation of F-forms issued mistakenly, even at the time of finalization of the remanded assessment order. Therefore, in view of the above mentioned reasons, I find that there is no error or infirmity in the order passed by the assessing authority. In the circumstances, the appeal fails and stands dismissed.

RESULT : 1996-97 (KGST) - DISMISSED

DEPUTY COMMISSIONER (APPEALS),
ERNAKULAM

To

The Appellant thru A/R

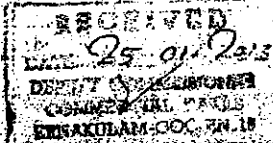
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Copy submitted to : The Joint Commissioner -I, Thiruvananthapuram.

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**IN THE KERALA AGR. INCOME TAX AND SALES TAX
 APPELLATE TRIBUNAL ERNAKULAM**

TA No 97/2010

Date of Hearing: 06.12.2011

Date of Order: 12.02.2012

21st Agrahayana 1934

PRESENT

Sri. K. George Gommen
 Sri. P.V. John
 Sri. P.J. Jose Das

Chairman
 Member (Appellate)
 Member (Departmental)

APPELLANT

M/s. Lakme Ltd.
 (Now known as Lakme
 Unilever Ltd.) Wellington Place,
 Kochi-682003

Appellant

State of Kerala

Respondent

STA No. STRH 20370 Proceedings of the Deputy Commissioner
 (Appeals), Kottayam, Camp, Ernakulam, Order dtd 30.11.09

Order No. 23090/89/97 (renewed) Proceedings of the Asst
 Commissioner (Asstt.) Sr Circle-I, Commercial Taxes, Ernakulam
 Order dtd 30.12.2008

The appeal coming on for hearing on 06.12.2011 in the
 presence of Sri. Mahesh R. Debnath, Advocate for the appellant, and of
 Sri M. Gopalakrishnan, J., Officer, Ernakulam, for the respondent, and
 the Tribunal passed the following

ORDER

K. George Gommen, Chairman

1. The order of the Duty Commissioner (Appeals), Kottayam, Camp
 Siting at Ernakulam in STI 203708 dtd. 30.11.09 for the assessment year
 96-97 against the appellant be challenge in this second appeal.

T.A.No.97/2010

2. The appellant is M/s. Lakshmi Ltd. The appellant has filed a revision petition before the Deputy Commissioner (Appeals), against the order passed by the Asst. Commissioner, Special Circle-1, Ernakulam imposing a penalty of Rs. 76,19,566 u/s 23A(1) (b) and (c) of the RTSE Act, 1962 (herein after referred to as 'the Act'). The revision petition was dismissed by the Deputy Commissioner on 30.11.09 since Mr. Raghavanan, Advocate appeared and submitted further facts and documents on 16.3.09 for settlement of account involved in this case under the amnesty scheme and hence the revision petition was being withdrawn.

3. According to the order, the Deputy Commissioner has dismissed the application for withdrawal of the application and hence the dismissal of the revision petition is not maintainable.

4. It is the material fact that the appellant was not eligible for amnesty scheme for settlement of account and the said application has been rejected by the Assistant Commissioner, Ernakulam during the amnesty scheme. Revised application for amnesty, the appellant has submitted the fact of the matter to the appellant and requested to keep the revision petition pending until the orders are passed on the said application. The appellant has submitted that without adhering to the conditions of the appeal, the revisional authority concluded that the revision petition ought to be dismissed on the basis of the application under the amnesty scheme and thereby the revision petition. It is the case of the appellant that the authority has not been following the amnesty scheme and all the facts and circumstances have been considered by the appellant, the revisional authority has considered the petition of amnesty application filed by the appellant and should have passed

The stock transfer notes and the amounts and quantity mentioned in the F-forms and the statement filed are different, denoting different transactions.

The appellant submitted that they had declared interstate stock transfer from Bangalore, Karnataka to Ernakulam for an amount of Rs. 1,65,49,016/- and filed F-Forms and other documents. Though there is a change in the total value of the stock transfer of Rs. 1,65,49,016/- the entire stock transfer was not to Kerala alone, but to other states as detailed below.

Madras	Secunderabad	Ernakulam	Bihar	Calcutta
537874.33	2272607.38	435385.10	308209.19	450740
Total : 1,65,49,016/-				

The appellant produced a detailed statement showing stock wise stock transfer from Karnataka totaling to Rs. 1,65,49,016/- and submitted that the mistake was bonafide unintentional and there has been no evasion of tax on this count.

The appellant produced copy of assessment order in respect of M/S. Latrine Ltd. Bangalore issued by Deputy Commissioner, Commercial Taxes, Bangalore for the year 1996-97 wherein assessor has been directed to transfer of stock transfer to Punjab branches for Rs. 1,65,49,016/- as per F-Forms. But the above assessment order did not state the transfer wise stock transfer against F-Forms. Further to that the appellant failed to produce evidence as to cancellation of F-Forms issued, if any, even at the time of finalization of the reworked assessment order. Therefore, in view of the above mentioned reasons, I feel that there is no error or vitiation in the order passed by the assessing authority. In the circumstances, the appeal fails and stands dismissed.

RESULT: 1996-97 (KGST) - DISMISSED

DEPUTY COMMISSIONER (APPEALS),
ERNAKULAM

To

The Appellate Unit A/T

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The Assistant Commissioner (Audit), Special Circle, Ernakulam
The D.C., Ernakulam, File / 38

Copy submitted to

The Joint Commissioner - I, Thiruvananthapuram

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