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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

OT.REV NO. 3 OF 2024

AGAINST THE ORDER DATED 22.07.2023 OF THE COMMISSIONER OF
STATE TAX, STATE GOODS & SERVICES TAX DEPARTMENT,
THIRUVANANTHAPURAM

REVISION PETITIONER/REVIEW PETITIONER/APPELLANT/ASSESSEE:

SAJEER.A.,
AGED 39 YEARS
PROPRIETOR, M/S. DIYA FOODS, NEAR MSM COLLEGE,
KAYAMKULAM, ALAPPUZHA, PIN - 689121.

BY ADVS.
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
TAXES DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.

SR GP VK SHAMSUDHEEN

THIS OTHER TAX REVISION (VAT) HAVING BEEN FINALLY HEARD ON
11.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



ORDER

Dr.A.K.Jayasankaran Nambiar, J.

This OT Revision impugns the order dated 22.07.2023 of the Commissioner of State Tax SGST Department, Thiruvananthapuram.

2. The brief facts necessary for the disposal of this OT Revision are as follows:

The petitioner is a registered dealer on the rolls of STO, Kayamkulam and is engaged in the manufacture of unbranded food products. The place of business of the petitioner was inspected by the Intelligence Squad of the State GST Department on 04.10.2016. On the basis of the details collected therefrom, a penalty was imposed on the petitioner under Section 67 of the Kerala Value Added Tax Act, 2003 [hereinafter referred to as the "KVAT Act"]. The said order of penalty was challenged by the petitioner by filing an appeal before the First Appellate Authority who modified the penalty. Resultantly, a consequential order was passed by the Assessing Authority reducing the penalty to Rs.69,40,006/- by an order dated 13.12.2018.

3. The aforesaid order of penalty was the basis for completion of the assessment for the assessment year 2016-17 by the Sales Tax Officer under Section 25(1) of the KVAT Act. Aggrieved by the assessment order, the petitioner preferred an appeal before the



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First Appellate Authority, who vide his order allowed the appeal by setting aside the assessment order and directing the Assessing Authority to pass a fresh order after verifying the relevant records as discussed in the appellate order. Pursuant to the remand by the First Appellate Authority, a fresh assessment order was passed by the Assessing Authority on 03.11.2020 substantially reducing the tax liability of the petitioner for the said assessment year.

4. Finding the fresh assessment order to be erroneous and prejudicial to the interest of the Revenue, the Joint Commissioner issued a notice under Section 56(1) of the KVAT Act to the petitioner asking him to show cause as to why the order of the Assessing Authority should not be revised. Although the petitioner appears to have preferred a reply to the notice, he did not choose to appear before the Joint Commissioner in the revision proceedings. As a consequence, an order was passed by the Joint Commissioner confirming the proposals in the notice issued to the petitioner and enhancing the demand of tax for the assessment year 2016-17.

5. Aggrieved by the order of the Joint Commissioner, the petitioner preferred a revision petition before the Commissioner of State Goods and Service Tax, who passed the order dated 22.07.2023 impugned in this OT Revision.



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6. In this OT Revision, the petitioner raises the following substantial questions of law:

- A) Whether on the facts and in the circumstances of the case is not the order of the Commissioner (Annexure-H) perverse and illegal?*
- B) Ought not the learned Commissioner have found that the order of assessment at Annexure-D is only an order implementing the directions in Annexure-C appellate order and hence no steps under Section 56(1) can be taken?*

7. We have heard Smt.K.Krishna - learned counsel for the revision petitioner and Sri.V.K.Shamsudheen - learned Senior Government pleader appearing for the respondent State.

8. On a consideration of the rival submissions, we find that the Commissioner in the impugned order had considered the essential contention raised by the petitioner with regard to the exercise of power under Section 56 of the KVAT Act by the Joint Commissioner. The petitioner had contended that it was not open to the Joint Commissioner to initiate proceedings under Section 56 in respect of the assessment order passed by the Assessing Authority pursuant to the remand by the First Appellate Authority, without separately impugning the First Appellate Authority's order that remanded the matter to the Assessing Authority. The Commissioner dealt with the said contention as follows in the impugned order:



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"As per Section 56 (2) The Deputy Commissioner shall not pass any order under sub-section(1), if

(a) The time for appeal against the order has not expired.

(b) The order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Assistant Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court;

or

(c) more than four years have expired from the year in which the order referred to there in was passed.

The modified order was one which was issued by the State Tax Officer after examining the books of accounts produced by the Petitioner and after verifying the purchase ledger and it assumes independent status and existence even though it was issued consequent on the order of the appellate authority. This separate order has never been made a subject matter of an appeal to any appellate forums and therefore sub section 2 of Section 56 is not attracted in this case.

The contention that the assessment order in question is a modified order based on the appellate order and therefore the original assessment order has merged with the appellate order doesn't hold good either by the statutory provisions or even in common parlance. The appellate authority has not directed to delete the purchases treated as unaccounted in the original order of assessment. Instead it was directed to re-examine the books of accounts of the Petitioner and to redo the assessment. The modified order is thus a de-novo order and has not been made the subject matter of any appeal.

*Moreover, an order of Revision under Section 56 (1) cannot be passed until and unless the time limit for filing appeal against the order in question has expired (**Section 56 (2) (a)**) and therefore the plea that the Revision order was passed to overcome the failure to file appeal doesn't gain any merit.*



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The Joint Commissioner, Tax Payer Services, Alappuzha found that the modified order was prejudicial to the interest of revenue and issued show cause notice to the petitioner to file objections if any against the proposal to cancel that order, in order to protect the principle of natural justice but the petitioner discarded that opportunity. Subsequently another notice was also served upon the petitioner requesting him to appear for a personal hearing on 27-03-2023 at 11.30 AM by the Joint Commissioner which was also not availed of by the petitioner. The Joint Commissioner was therefore constrained to issue the order cancelling the modified order directing the assessing authority to complete the assessment afresh. The interest of the petitioner is in no way curtailed by this order because he still has opportunity to produce all evidences before the assessing authority, in order to substantiate his claim while doing the modified order afresh. The order of the Joint Commissioner Alappuzha is therefore found to be in accordance with the statutory provisions and in compliance with the principle of natural justice.”

9. On a consideration of the findings of the Commissioner, we are inclined to agree with the same since, although the contention was raised before us, we find it difficult to sustain the contention regarding absence of jurisdiction in the Joint Commissioner to initiate proceedings under Section 56 against the assessment order that was passed pursuant to the remand. In our view, the First Appellate Authority had set aside the original assessment order and directed a fresh assessment order to be passed by the Assessing Authority.



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There was no finding in the order of the first appellate authority that resulted in a continued validity of the original order of assessment, since the Assessing Authority was directed by the First Appellate Authority to pass a fresh order of assessment. When the fresh assessment order was passed consequence to the remand, the original assessment order ceased to exist in law and thereafter the only assessment order that survived for the purposes of exercise of the power of revisions under Section 56 was the subsequent order passed by the Assessing Authority. Thus we don't see any reason to interfere with the order passed by the Commissioner that is impugned before us.

The OT Revision fails and is accordingly dismissed by answering the questions of law raised against the petitioner – assessee and in favour of the Revenue.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/

EASWARAN S.
JUDGE



APPENDIX OF OT.REV 3/2024

PETITIONER ANNEXURES

Annexure A	COPY OF ORDER ISSUED BY THE STATE TAX OFFICER, SGST DEPARTMENT, ALAPPUZHA AT CHENGANNUR DTD. 13-12-2018
Annexure B	COPY OF ORDER ISSUED BY THE STATE TAX OFFICER, KAYAMKULAM DTD. 07-01-2020
Annexure C	COPY OF APPELLATE ORDER IN KVATA (ALPY) 291/19 ISSUED BY THE DEPUTY COMMISSIONER OF (APPEALS), ALAPPUZHA DTD. 10-08-2020
Annexure D	COPY OF ORDER ISSUED BY THE ASSISTANT COMMISSIONER, KAYAMKLULAM DTD. 03-11-2020
Annexure E	COPY OF NOTICE ISSUED BY THE JOINT COMMISSIONER, SGST DEPARTMENT, ALAPPUZHA DTD. 17-10-2022
Annexure F	COPY OF LETTER ISSUED BY THE STATE TAX OFFICER, KAYAMKULAM TO THE JKJOINT COMMISSIONER, ALAPPUZHA DTD. 15-10-2022
Annexure G	COPY OF THE ORDER ISSUED BY THE JOINT COMMISSIONER, SGST DEPARTMENT, ALAPPUZHA DTD. 17-04-2023
Annexure H	CERTIFIED COPY OF ORDER ISSUED BY THE COMMISSIONER OF STATE TAX SGST DEPARTMENT, THIRUVANANTHAPURAM DTD. 22-07-2023