

Annexure - I - Detailed Report

The C & AG has included the audit case relating to M/s. St. Thomas Wood Industries, Avinissery for the year 2006 - 07 in the audit report for the year ended 31.03.2009 (Vol. II) vide para 4.4.1.1.

As per the observations in the Local Audit Report, the books of accounts of the assessee were called for and verified in detail. On verification, it was found that the entire purchase of packing cases was not effected by the assessee from 5 persons pointed out in the audit note. As per the purchase bills and vouchers produced for verification, the purchases were effected from unregistered dealers numbering to more than 70 persons. As per the records, the above 5 dealers had no turnover exceeding Rs. 5,00,000/- and they were found to be not liable for registration under the KVAT Act. This aspect was confirmed by the Chartered Accountant who had conducted the compulsory audit under section 42 of the Act, a copy of which was already forwarded along with the reply to audit. The observation in audit was that as per the purchase list filed by the assessee, the major share of the purchases is effected from 5 unregistered dealers. The explanation of the assessee was that it was due to the laziness and mistake of the accountant that the purchases were shown as only from 5 persons instead of listing the 70 odd suppliers. He has mentioned that name of only 5 persons in the purchase list. Assessing authority examined the contentions of the dealer with the books of accounts produced including purchase vouchers and on personal enquiry revealed that there is some merit in the contention of the assessee. The verification of accounts also revealed that the five persons have the following turnover only during the year 2006-07 and found that all these five persons have not exceeded the turnover of 5 lakhs to get registered under KVAT Act 2002. The details of their turnover as per books of accounts are given below.

1. Vasu Vallachir	Rs. 479640/-
2. Jose Vallachira	Rs. 287481/-
3. Sunil Perinchery	Rs. 175425/-
4. Davis Perinchery	Rs. 192699/-
5. Unnikrishnan Pattambi	Rs. 193873/-

The contention of the assessee was found to be acceptable as per the books of accounts produced and in the light of the above facts; the objection in audit was found to be unsustainable.

Without prejudice to the above, coming to the quantification of the escape of Registration Fee and Penalty arrived on by the audit, it is also seen that there are some factual mistakes. The registration fee stated to be escaped is fixed at Rs. 1,00,000/- i.e., maximum registration fee of Rs. 20,000/- each from 5 dealers. The maximum registration fee has been estimated solely for the reason that the turnover of the purchasing dealers would be above crores of rupees considering the sales effected by them to other dealers. This observation of the audit is purely based on presumptions and surmises. As per the details of purchases relied on by the audit in estimating the tax due for the purpose of determination of the penalty, the details of sales turnover is as follows:

Vasu Vallachira	Rs. 17,95,680/-
Jose Vallachira	Rs. 19,56,990/-
Sunil Perinchery	Rs. 11,12,890/-
Davis Perinchery	Rs. 12,68,400/-
Unnikrishnan Pattambi	Rs. 10,06,570/-

In order to levy Registration fee of Rs. 20,000/- each from the dealer, they should have turn over above Rs. 4,10,00,000/-

Apart from the above purchase details available in the assessment records, there are no other material evidences either with the assessing authority or with the audit party to show that the turnover of the purchasing dealers have exceeded Rs. 4,10,00,000/- There are no evidences to show that the above dealers have effected sales of packing cases to any other dealers in Kerala. In the absence of such evidences, the observation that the turnovers of the above dealers are above crores of rupees and thereby, they are liable to pay the maximum registration fee of Rs. 20,000/- each is not legally sustainable. The entire findings of audit are based on the purchase details available in the assessment records. If this is to be regarded as the purchase turnover of the above 5 dealers, though no such evidences are revealed on verification of the accounts the estimation of the quantum of penalty is arrived at double the rate

of tax on the turnover conceded in the purchase list, the audit is not justified in estimating another turnover for the purpose of levy of registration fee. Based on the turnover conceded in the purchase list, the registration fee, if any, due from the above 5 dealers as per the table to Section 16(1) of the Act are as follows.

	<u>Turnover</u>	<u>Registration fee due</u>
Vasu, Vallachira	Rs. 17,95,680/-	Rs. 1,200/-
Jose, Vallachira	Rs. 19,56,990/-	Rs. 1,250/-
Sunil, Perincherry	Rs. 11,12,690/-	Rs. 1,050/-
Davis, Perincherry	Rs. 12,68,400/-	Rs. 1,075/-
Unnikrishnan, Pattambi	Rs. 10,08,670/-	Rs. 1,025/-

		Rs. 6,600/-
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As per the third provision to section 6(1) of the KVAT Act where the total turnover of a dealer, other than an importer or casual trader or agent of a non-resident dealer or dealer in jewellery of gold, silver and platinum group metals and silver articles or contractor, exceeds ten lakh rupees for the first time during the course of an year, such dealer shall be liable to pay tax under this sub-section only on the turnover in excess of ten lakh rupees. By virtue of the above provisions, the above dealers are liable to pay tax only on the turnover exceeding Rs. 10,00,000/- as the assessment year under question is the first year of their business and their turnover has exceeded Rs. 10,00,000/- for the first time. The audit has no case that the above 5 dealers have done business in the previous years or no such material evidence is available with the assessing authority. The above 5 dealers are liable to pay tax only on the turnover exceeding Rs. 10 lakhs during the assessment year 2006-07. So, the tax liability, if any, of the above 5 dealers has to be worked out as follows.

	<u>Total Turnover</u>	<u>Taxable Turnover</u>	<u>Tax due @ 4%</u>
Vasu, Vallachira	Rs. 17,95,680/-	Rs. 7,95,680/-	Rs. 31,827/-
Jose, Vallachira	Rs. 19,56,990/-	Rs. 9,56,990/-	Rs. 38,280/-
Sunil, Perincherry	Rs. 11,12,690/-	Rs. 1,12,690/-	Rs. 4,508/-
Davis, Perincherry	Rs. 12,68,400/-	Rs. 2,68,400/-	Rs. 10,736/-

Janikrishnan Pattambi Rs. 10,08,570/-	Rs. 8,570/-	Rs. 343/-

	Total	Rs. 85,694/-
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The total tax due from the above 5 dealers come to Rs. 85,694/- only and penalty at twice the rate comes to Rs. 1,71,388/-. Hence, it can be seen that the escape of registration fee and penalty amounts to Rs. 1,77,988/- only as against Rs. 8.57 lakhs pointed out in the audit report. It is also pertinent to note that levy of penalty at twice the amount of tax due is not mandatory. The penalty contemplated under section 67(1) of the Act is an amount not exceeding twice the amount of tax sought to be evaded.

Considering the above facts, the observation of the audit is not sustainable.

Joint Commissioner(A&I)

