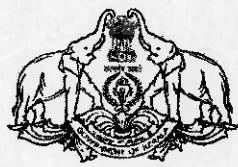


**FIFTEENTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2023-2026)**

**NINETY FIRST REPORT**

**(Presented on 28<sup>th</sup> January, 2026)**



**SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM  
2026**

**FIFTEENTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2023-2026)**

**NINETY FIRST REPORT**

**on**

**Paragraphs 2.7 to 2.16 relating to Taxes Department contained in  
the Report of the Comptroller and Auditor General of India for  
the year ended 31<sup>st</sup> March, 2015**

**(Revenue Sector)**

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**COMMITTEE ON PUBLIC ACCOUNTS**  
**(2023-2026)**  
**COMPOSITION**

**Chairperson :**

Shri. Sunny Joseph

**Members :**

Shri. Manjalamkuzhi Ali  
Shri. M. V. Govindan Master  
Dr. K. T. Jaleel  
Shri. C. H. Kunhambu  
Shri. Mathew T. Thomas  
Shri. M. Rajagopalan  
Shri. P. S. Supal  
Shri. Thomas K. Thomas  
Shri. K. N. Unnikrishnan  
Shri. M. Vincent

**Legislature Secretariat :**

Dr. N. Krishna Kumar, Secretary.  
Shri. Selvarajan P. S., Joint Secretary.  
Shri. Jomy K. Joseph, Deputy Secretary  
Smt. Beena O. M., Under Secretary.

## INTRODUCTION

I, the Chairperson, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the Ninety First Report on paragraphs 2.7 to 2.16 relating to Taxes Department contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).

The Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector) was laid on the Table of the House on 24<sup>th</sup> February, 2016.

The Committee considered and finalised this Report at the meeting held on 20<sup>th</sup> January, 2026.

The Committee place on records our appreciation of the assistance rendered to us by the Accountant General in the examination of the Audit Report.

Thiruvananthapuram,  
28<sup>th</sup> January 2026



SUNNY JOSEPH,  
Chairperson,  
Committee on Public Accounts.

**REPORT****TAXES DEPARTMENT****2.7. Short levy of tax due to escape of turnover from assessment**

Turnover conceded in the return was less than that arrived at as per Rule

**2.7.1. As per Rule 10(2)(a) of the KVAT Rules, 2005, in relation to works contract in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract, shall be arrived at after deducting labour and other charges specified thereunder from the total amount received for the execution of the works contract. However, if the taxable turnover so arrived at falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit, if any, shall be the taxable turnover in respect of such works contract. As per Explanation therein cost of goods means the price of goods together with all expenses incurred by the contractor in bringing the goods to the work site.**

Audit noticed between January 2014 and January 2015 that in the following five cases, the works contractors while filing annual returns conceded taxable turnover which were less than the turnover arrived at as per the provision of KVAT Rules, 2005. This resulted in short payment of tax, cess and interest of ₹ 4.12 crore as given in the following paras.

- **CTO (WC&LT), Ernakulam**

M/s ABB Ltd., Kochi, a works contractor filed annual return for 2011-12 conceding total and taxable turnover of ₹ 25.31 crore and ₹ 6.04 crore respectively availing ₹ 19.27 crore as exemption under Rule 10. Audit found that cost of goods transferred to the works during the year was

₹17.15 crore. Thus the taxable turnover should not be less than ₹17.15 crore against which the assessee assessed to tax ₹6.04 crore only. Escape of turnover of ₹11.11 crore from assessment due to filing of incorrect return by the assessee resulted in short payment of tax, cess and interest of ₹1.70 crore.

Government stated (July 2015) that assessment had been completed (May 2015) creating total additional demand of ₹1.52 crore. As per the application for rectification filed by the assessee, the assessment order had been rectified (May 2015). After giving credit to the TDS which was omitted to be taken earlier, the additional demand was reduced to ₹1.28 crore. Further report had not been received (January 2016).

- **CTO (WC & LT), Alappuzha**

M/s KEC International Limited, Mavelikkara, self assessed to tax a contract receipts of ₹ 2.87 crore during 2012-13 availing exemption of ₹2.94 crore from the total contract receipt of ₹5.81 crore. Audit found that cost of goods transferred to the work during the years was ₹7.99 crore. As such the taxable turnover should not be less than ₹7.99 crore. Escape of turnover from assessment resulted in short payment of tax and interest of ₹89.77 lakh.

Government stated (August 2015) that assessment had been completed (May 2015) creating additional demand of ₹2.58 crore. The demand was under conditional stay before DC (Appeal), Kollam. Assessee paid (September 2015) ₹40 lakh and bank guarantee for ₹2.18 crore as per direction of Hon'ble High Court of Kerala in writ petition filed by the assessee. Further report had not been received (January 2016).

- **CTO (WC&LT), Ernakulam**

M/s Essar Projects (India) Limited, Kochi, a works contractor self assessed to tax a turnover of ₹9.03 crore and ₹7.70 crore during 2011-12 and 2012-13 respectively. Audit found that the cost of goods transferred in the execution of work was ₹12.88 crore and ₹10.24 crore during these years. As such the taxable turnover should not be less than ₹12.88 crore and ₹10.24

crore. Escape of turnover from assessment resulted in short payment of tax, cess and interest of ₹ 74.63 lakh.

Government stated (July 2015) that assessment for the year 2011-12 had been completed (June 2015) creating additional demand of ₹ 91.64 lakh and action was being initiated to collect the demand. Though the details of action taken to collect the amount were called for from Government in October 2015, their reply had not been received (January 2016).

- **CTO (WC&LT), Alappuzha**

M/s New Modern Technomech Pvt. Ltd., Thakazhy, a works contractor filed annual return for 2010-11 to 2012-13 conceding total and taxable turnover for the above years as given in Table-2.22.

**Table - 2.22**

	(₹ in crore)		
	2010-11	2011-12	2012-13
<b>Total turnover</b>	7.34	3.98	2.80
<b>Taxable turnover</b>	3.34	0.80	0.55
<b>Cost of goods consumed</b>	3.55	1.13	1.90

Government stated (July 2015), that assessment for the year 2010-11 had been completed (March 2015) creating total additional demand of ₹ 37.68 lakh. The assessee had remitted (July 2015) an amount of ₹ 15.07 lakh as per the stay condition of DC (Appeal), Kollam. Further report for the remaining period had not been received (January 2016).

- **CTO (WC&LT), Alappuzha**

Sri. John Panackal Peter, Alappuzha, a works contractor filed annual return for 2011-12 and 2012-13 conceding the turnover given in Table-2.23.

**Table-2.23.**

(₹ in crore)

Year	Total turnover	Exemption availed	Taxable turnover
2011-12	5.42	3.05	2.37
2012-13	9.62	6.31	3.31

Audit found that the cost of goods transferred to the work during 2011-12 and 2012-13 were ₹3.03 crore and ₹4.27 crore respectively. As such, the taxable turnover during the years should not be less than ₹3.03 crore and ₹4.27 crore. Against this the taxable turnover conceded were ₹2.37 crore and ₹3.31 crore respectively. This led to short levy of tax of ₹24.34 lakh.

Government stated (July 2015) that assessments had been completed creating additional demand of ₹13.67 lakh and ₹12.47 lakh for 2011-12 and 2012-13 respectively. The assessee had remitted (July 2015) an amount of ₹3.80 lakh for the year 2012-13 and balance amount was under revenue recovery. Further reports had not been received (January 2016).

The defects pointed out above are similar to those pointed out in the previous Audit Reports. No preventive/precautionary measures were taken by Government to avoid repetition of cases pointed out by Audit. Thus, the Government did not take care to ensure system improvements to guard against the loss of revenue every year despite having been pointed out by Audit year after year.

**[Audit Paragraph 2.7.1 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

- 1) When the Committee enquired about the audit observation related to M/s. ABB Ltd., 2011-12, WC & LT, Ernakulam, the Additional Commissioner, Taxes Department submitted that the audit para was not sustainable. He

explained that as per the rule, turn over tax for the goods purchased had to be remitted by the contractor, but in that case around fifty percent of the goods purchased was pertained to 'sale in transit', ie. a system in which the goods were sold to another seller instead of the actual dealer, and a verification made after deducting the said amount would make it clear that the audit objection was not sustainable. Then the Senior Audit Officer intervened and opined that if it was sale in transit, it might not be included in the purchase. In reply, the Additional Commissioner, Taxes Department quoted the assessing authority's report that the said amount was included in the figure accounted by the AG. He added that an enhanced turnover assessment had been done in which an amount of ₹16.30 crore had been fixed, and the appeal filed in that regard was pending. The Committee directed the Department to submit the judgment regarding the appeal filed in that regard to the Committee.

2) When the Committee directed to give an explanation regarding the case related to M/s. KEC International Ltd, 2012-13, WC & LT, Alappuzha, the Additional Commissioner, GST Department submitted that the assessment had been completed and other proceedings were in progress, and the OT.Rev. 86/2019 filed was pending before the Hon'ble High Court. Then the Commissioner, GST Department submitted that many such cases were likely to be settled through the amnesty scheme to be declared in August 2024.

3) Regarding the cases related to M/s. Essar Projects (India), 2011-12 & 2012-13, WC & LT, Ernakulam, the Committee accepted the reply furnished by the Department regarding the audit observation for the year 2011-12. Then the Additional Commissioner, GST Department submitted that the audit observation for the year 2012-13 was not sustainable. The AG had accounted the purchase cost of the goods instead of the turn over tax of the materials consumed by the contractor, and the tax in that case had been remitted by assessing the exact turnover. The Senior Audit Officer stated that the reply furnished was quite confusing that only ₹ 4.00 crore out of the total ₹ 10.00 crore received had been consumed, and not any clarification regarding what happened to the liquidated

company's ₹ 6.00 crore. He added that the AG had demanded a copy of the P&L Account. The Additional Commissioner, GST Department submitted that the work might be in progress there and the assessment had to be sought from the liquidated authority. He added that in fact, the firm was liable to pay tax and a report in that regard would be submitted after verification. When the Joint Secretary, Legislature Secretariat pointed out that the AG's remark was about the purchase price in the work contract, the Additional Commissioner, GST Department submitted that as per the provisions at present, for a purchase of goods worth ₹ 10 lakh, if the consumption of materials was for ₹9 lakh, the taxable turnover could be assessed as ₹10 lakh, and if the consumption was for ₹8 lakh for a purchase of ₹10 lakh, the taxable turnover assessment made as ₹9 lakh could be accepted. As the entire goods purchased was not consumed, the taxable amount assessed was below the turnover, and hence the above mentioned case was not sustainable. He added that the liquidation case mentioned by the AG was happened recently and a report regarding the assessment made thereafter would be submitted.

4) When the Committee directed to give an explanation regarding the case related to M/s. New Modern Technomech Pvt. Ltd 2010-11 to 2012-13, WC & LT, Alappuzha, the Additional Commissioner, GST Department submitted that the assessment had been completed and the case was found sustainable. A reassessment notice had been issued in May 2024 as the case had been set aside by the Tribunal. The Committee directed to furnish a final report in that regard at the earliest, and the Additional Commissioner, GST Department agreed to do so.

5) While considering the audit observations related to Sri. John Panackal Peter, Alappuzha, 2011-12, 2012-13 CTO(WC), Alappuzha, the Additional Commissioner, GST Department explained that the assessment in that regard had been made and the collection proceedings had been completed. The Committee accepted the reply.

### **Conclusion/Recommendation**

- 6) The Committee directs the Department to furnish present status of the appeal filed by M/s. ABB Ltd., 2011-12, WC & LT, Ernakulam and the case filed by M/s. KEC International Ltd, 2012-13,WC & LT, Alappuzha.**
- 7) The Committee directs the Department to submit a report regarding the assessment made in connection with M/s. Essar Projects (India), 2011-12 & 2012-13, WC & LT, Ernakulam within two months.**
- 8) The Committee directs the Department to submit a detailed report on assessment and realisation of dues in connection with M/s. New Modern Technomech Pvt. Ltd 2010-11 to 2012-13, WC & LT, Alappuzha within two months.**

**2.7.2 Explanation VII under Section 2(lii) of the KVAT Act, 2003** stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.

Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self-assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of ₹ 140.63 lakh along with interest by not taking in to account the amount of discount received by them subsequent to sale at a price lower than purchase price. The details of the amount of tax evaded by these dealers are given in the following Table 2.24.

Audit brought above cases to the notice of Department between October 2013 and December 2015 and to Government between February 2015 and December 2015. In response to audit observations, the Government stated that assessments have been revised by creating additional demand of ₹ 64.93 lakh in

Table-2.24

Sl. No.	Name of the dealer	Assessing authority	Period	Amount of discount	Short levy of tax including interest (₹ in lakh)
1	M/s A.B Traders, Amaravila	CTO, Special Circle, Thiruvananthapuram	2011-12	208.00	30.71
2	Sri. M. Abubaker		2011-12	91.39	13.50
3	M/s Star Traders, Thiruvananthapuram		2009-10 to 2011-12	212.61	34.53
4	M/s Arya Agencies, Malayinkeezhu		2010-11 & 2011-12	83.73	12.37
5	M/s Kizhakkedathu Enterprises, Pazhavangadi	AIT & CTO, Ramni	2008-09 to 2012-13	180.42	31.23
6	M/s Krishna Hardwares, Kalpetta	AIT & CTO, Vythiri	2009-10 to 2011-12	67.90	11.89
7	M/s Akhil Ansu Agencies, Kidangoor	CTO, Pala	2011-12	42.96	6.40
				<b>Total</b>	<b>140.63</b>

six cases.

It was further observed by the Audit that after paying mandatory amount of tax (which is quite small when compared with total tax amount), these dealers had filed appeals against the demand for additional tax created by the assessing authorities. Further action taken by the Department and the Government was awaited (January 2016).

Audit had pointed out many such instances (37 cases involving tax effect of ₹ 4.40 crore) repeatedly in the past. Present position of those cases is given in the following Table 2.25:

Table-2.25

Year of Report		2010	2011	2012	2013	2014	Total
No. of cases		1	Nil	10	20	6	<b>37</b>
Amount (₹ in crore)		0.34	Nil	2.07	1.38	0.61	<b>4.40</b>
Assessment not completed				3	1	1	<b>5</b>
Assessment completed	Full payment			2	4		<b>6</b>
	Part payment				2		<b>2</b>
	Nil payment					1	<b>1</b>
Appeal	Court			1	3		<b>4</b>
	AC/DC	1		2	6	2	<b>11</b>
	Tribunal			2	4	2	<b>8</b>
Amount remitted in appeal cases (₹ in lakh)		0.01		0.01	0.12	0.06	<b>0.20</b>

Further audit scrutiny of the records revealed as under:

- Out of 37 cases pointed out in earlier Reports, 23 cases are under approval/court out of which in eight, second appeal has been filed against the decision on first appeal. Out of eight cases pending before Tribunal, six cases were filed by the Department.
- No action had been taken by the Department and the Government in cases after appeals were filed.
- There had been delays in taking decision in appeal cases.
- Government had taken action only in individual cases pointed out by Audit and issued instructions in such cases.

There had been no action on the part of the Government to stem the problem by issuing instructions in a consolidated manner to carry out systemic changes to avoid reoccurrence of such cases in future.

- **CTO, Special Circle, Palakkad**

M/s Ramesh Iron and Steel Company India Private Limited was a dealer in iron & steel and its products. During 2012-13, the dealer self assessed tax on a sales turnover of ₹ 109.72 crore while its purchase cost was ₹ 111.22 crore. Though the assessee sold goods at a price lower than the purchase price discount of ₹ 240.19 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in the short payment of tax and interest of ₹ 10.73 lakh.

Government stated (July 2015) that assessment had been completed (May 2015) creating additional demand of ₹ 14.05 lakh. The assessee paid ₹ 4.22 lakh and the balance amount was under collection. Though the details of action taken to collect the amount had been called for from Government in October 2015, their reply was still awaited (January 2016).

**[Audit Paragraph 2.7.2 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

9) When the Committee wanted to give an explanation regarding the case related to M/s. AB Traders, 2011-12, Special Circle, Tvpn, the Additional Commissioner, GST Department submitted that the case was partially sustainable. The AG's observation was to assess ₹ 2 crore received as discount amount. Assessment was made up to ₹ 90 lakh and the AG's objection was found sustainable. He added that the remaining was not found sustainable.

10) When the Committee enquired an explanation regarding the case related to Sri.M.AbuBaker 2011-12, Special Circle, Tvpn, the Additional Commissioner, GST Department submitted that the case was sustainable and the collection measures had been completed. The Committee accepted the reply.

11) When the Committee directed to give an explanation regarding the case related to M/s. Star Traders, 2009-10 to 2011-12, Special Circle, Tvpm, the Additional Commissioner, GST Department submitted that the case was not sustainable. The eligibility of the discount provided was proved in the assessment, and a revised RMT in that regard had been submitted. The Committee wanted a detailed report on the present status of the case regarding the assessment for the year 2011-12, which was pending before the Hon'ble High Court, and the Additional Commissioner, GST Department agreed to submit the report.

12) While considering the audit observations related to M/s. Arya Agencies, 2010-11 2011-12, Special Circle, Tvpm, the Committee accepted the reply furnished by the Department.

13) When the Committee wanted to give an explanation regarding the case related to M/s. Kizhakkedathu Enterprises, 2008-09 to 2012-13, AIT & STO, Ranni, the Additional Commissioner, GST Department replied that revenue recovery measures in that regard was being taken.

14) While considering the audit observations related to M/s. Krishna Hardwares, 2009-10 to 2011-12, Vythiri and M/s. Akhil Ansu Agencies, 2011-12, CTO, Pala, the Additional Commissioner, GST Department submitted that the cases had been settled, and the Committee accepted the reply.

15) While considering the audit observations related to M/s. Ramesh Iron and Steel Company India Pvt. Ltd. 2012-13, Special Circle, Palakkad, the Committee accepted the reply furnished by the Department.

#### **Conclusion/Recommendation**

16) **The Committee directs the Department to furnish present status of the case filed before the Hon'ble High Court in connection with M/s. Star Traders, 2011-12, Special Circle, Thiruvananthapuram.**

17) The Committee directs the Department to submit report on the present status of the revenue recovery proceedings in connection with M/s. Kizhakkedathu Enterprises, 2008-09 to 2012-13, AIT & STO, Ranni, within two months.

**2.7.3. Under Section 42(2) of KVAT Act, 2003 where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file along with the audit certificate, revised annual return rectifying the mistake or omission and if the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon and twice the interest as penal interest. Under Section 91 of the Act, when payment towards tax or any other amount due is made, it shall be appropriated first towards interest accrued, the balance available shall be appropriated towards principal outstanding.**

- **CTO, Special Circle, Kottarakkara**

M/s. Sree Vinayaka Motors, Kottarakkara, a dealer in motor vehicles submitted (May 2012) annual return for 2011-12, after remitting tax of ₹6.20 crore. Subsequently, the assessee revised the annual return with total tax liability of ₹7.20 crore. Audit found that though the assessee had paid differential tax and cess payable as per the revised annual return, they had not remitted the interest and penal interest due thereon. Moreover, payment made by the assessee amounting to rupees one crore was not appropriated first towards interest. Non levy of interest and non appropriation of payment first towards interest resulted in short payment of tax, interest and penal interest of ₹33.74 lakh.

Government stated (July 2015) that assessment had been completed (December 2014) creating additional demand of ₹13.74 lakh and the demand had been advised for revenue recovery. Commissioner of Commercial Taxes (November 2015) informed that the assessing authority had demanded (November 2015) penal interest of ₹21.19 lakh. Further

report had not been received (January 2016).

**[Audit Paragraph 2.7.3 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2015 (Revenue Sector)]**

[Note furnished by the Government on the above audit paragraphs is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

18) When the Committee enquired about the case related to M/s. Sree Vinayaka Motors, 2011-12, Special Circle, Kottarakkara, the Additional Commissioner, GST Department submitted that the entire amount had been remitted under the amnesty scheme, and the Committee accepted the reply.

**Conclusion/Recommendation**

**19) No comments**

**2.7.4 Section 2 (xli) of the KVAT Act, 2003 provides that sale price includes any sum charged for anything done by the dealer in respect of the goods or services at the time of or before delivery thereof.**

**• CTO, Special Circle, Palakkad**

M/s. Sivasakthi Engineering and Fabrications, Walayar, was a manufacturer of cement products. The sales turnover disclosed by the assessee as per the annual returns and transportation charges received by the assessee as per P&L account during the years 2008-09, 2009-10, 2010-11 and 2012-13 are as detailed in Table - 2.26.

Audit found that the assessee had entered into agreement with KSEB for supply of electric poles to various electrical circles during the above period. In the agreement with KSEB, it was stipulated that contract was for manufacture and delivery of poles within or outside the concerned electrical

Table - 2.26

Year	2008-09	2009-10	2010-11	2012-13
Sales turnover disclosed	₹ 5.83 crore	₹ 4.60 crore	₹ 2.26 crore	₹ 9.63 crore
Transportation charges received	₹ 51.67 lakh	₹ 59.44 lakh	₹ 31.61 lakh	₹ 1.56 crore

circles. As such, the transportation charges received would form part of the turnover. However, the assessee did not assess to tax the above turnover. This resulted in short payment of tax and interest of ₹ 17.51 lakh.

Government stated (July 2015) that assessment for 2012-13 had been completed (January 2015) creating additional demand of ₹ 9.38 lakh. The assessee had remitted 30 *per cent* of the demand as per the stay condition of DC (Appeal), Ernakulam. Further report for the remaining period had not been received (January 2016).

**[Audit Paragraph 2.7.4 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2015.  
(Revenue Sector)]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

20) When the Committee enquired about the case related to M/s. Sivasakthi Engineering and Fabrications, 2008-09 to 2012-13, Special Circle, Palakkad, the Additional Commissioner, GST Department submitted that the entire amount as per the amnesty scheme had been remitted, and the Committee accepted the reply.

#### **Conclusion/Recommendation**

**21) No comments**

## 2.8 Non / Short Payment of surcharge

Surcharge leviable under Kerala Surcharge on Taxes (KST) Act, 1957 was either not levied or short levied.

**Under Section 3(1A) of the KST Act, 1957, in the case of national or multinational companies functioning in the State as retail chains or direct marketing chains who import not less than 50 per cent of their stock from outside the state or country and not less than 75 per cent of whose sales are retail business, and whose total turnover exceeds five crore rupees *per annum*, tax payable under Section 6 of KVAT Act, 2003 shall be increased by a surcharge at the rate of ten per cent.**

Audit noticed between January 2013 and September 2015 that in the case of following six assessees having annual sales turnover above rupees five crore, though more than 75 per cent of sales of the assessee were through retail business and more than 50 per cent of their stock were imported from outside the State/country, the output tax payable was not increased by a surcharge at 10 per cent as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of ₹ 6.09 crore as detailed below:

- **CTO, Special Circle I, Emakulam**

M/s Joy Alukkas India Private Ltd., Ernakulam, a multi-national company dealing with gold jewellery imported more than 50 per cent of their stock from outside the State or country during 2008-09 and 2009-10. Though their sales turnover for 2008-09 and 2009-10 amounting to ₹ 546.68 crore and ₹ 568.02 crore respectively, exceeded rupees five crore *per annum* and more than 75 per cent of their sales were retail business, they had not paid surcharge at the rate of ten per cent on the output tax payable. This resulted in short payment of surcharge and interest of ₹ 4.30 crore.

Government stated (October 2015) that the levy of surcharge was applicable only to big retail chains and direct marketing chains. Moreover, the assessee had not given any franchisee agreement to anybody to conduct business in their name. As such, the assessee is not liable to pay surcharge.

As per the Explanation 1 below Section 3(1A), big retail chains and direct marketing chains means retail sales outlets or part of retail sales outlet of companies having a registered business name which share a registered business name or commercial name by way of franchisee agreement or otherwise with standardized sales, purchase and promotional activities. As per Explanation II, retail business shall mean sales to persons other than registered dealer. M/s. Joy Alukkas India Pvt. Ltd. is a company having retail sales outlet and a registered business name. Besides, more than 75 *per cent* of the sale were effected to persons other than to registered dealers. Hence, the assessee will come under the meaning of big retail chain. As such, the assessee is liable to pay surcharge. Hence the reply furnished by the Government was not acceptable.

- **CTO, Special Circle, Thiruvananthapuram**

➤ M/s Pothys Garments, Thiruvananthapuram, an assessee in garments had more than 75 *per cent* of sales through retail business and more than 50 *per cent* of their stocks were imported from outside the State/ country during 2012-13 and 2013-14. Though their total turnover exceeded rupees five crore *per annum*, the output tax of ₹ 4.80 crore and ₹ 4.98 crore respectively were not increased by a surcharge at 10 *per cent* as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of ₹ 1.18 crore.

➤ M/s Pothys Textiles, Thiruvananthapuram, an assessee in textile business had more than 75 *per cent* of sales through retail business and more than 50 *per cent* of their stocks were imported from outside the State/ country during 2012-13 and 2013-14. Though their total turnover exceeded rupees five crore *per annum*, the output tax of ₹ 20.56 lakh and ₹ 28.70 lakh respectively were not increased by a surcharge at 10 *per cent* as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of ₹ 5.86 lakh.

Government stated (December 2015) that the above points would be verified and final reply submitted on completion of verification. Further reports had not been received (January 2016).

- **CTO, Special Circle II, Emakulam**

➤ M/s. Lulu International Shopping Mall Private Ltd. was a retail venture by the Lulu Group. Audit found that during 2012-13, more than 75 *per cent* of sales of the assessee were through retail business and more than 50 *per cent* of their stocks were imported from outside the State/ country. Though their total turnover exceeded rupees five crore *per annum*, the output tax of ₹ 195.63 lakh was not increased by a surcharge at 10 *per cent* as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of ₹ 23.13 lakh.

Government stated (July 2015) that assessment had been completed (December 2014) creating additional demand of ₹ 23.52 lakh. The assessee had remitted an amount of ₹ 19.60 lakh. Balance amount was under revenue recovery. Further report had not been received (January 2016).

➤ M/s Fab India Overseas (P) Ltd., Kochi, a shopping mall was liable to pay surcharge under Section 3(1A) since their entire purchase were from outside the State and entire sales were to customers within the State. Audit found that during 2012-13 surcharge of ₹ 14.35 lakh was due from the assessee on the out put tax of ₹ 143.52 lakh disclosed by them. But the assessee paid ₹ 2.29 lakh only towards surcharge. Short remittance of surcharge and interest worked out to ₹ 14.23 lakh.

Government stated (July 2015) that assessment had been completed (February 2015) creating additional demand of ₹ 17.65 lakh. The assessee remitted (March 2015) an amount of ₹ 7.50 lakh as per the conditional stay granted by Hon'ble High Court of Kerala in writ petition filed by the assessee. Further report had not been received (January 2016).

- **CTO, II Circle, Kalamassery**

M/s Monavie India Enterprises Private Limited, Palarivattom, was a multinational company involved in direct marketing of health drinks. As per Annual returns for 2011-12 and 2012-13 filed by the assessee, the entire product for sale were stock transferred from outside the state and sales

turnover for the years were ₹6.70 crore and ₹5.40 crore respectively. Though their entire sales were through direct marketing/retail chain the output tax of ₹83.70 lakh and ₹69.39 lakh were not increased by a surcharge at 10 *per cent* as per the provisions of the KST Act, 1957. This resulted in short payment of surcharge and interest of ₹18.31 lakh.

Government stated (July 2015) that assessment of the year 2011-12 had been completed (June 2013) creating additional demand of ₹9.54 lakh. The appeal filed by the assessee had been allowed (July 2014) by the AC (Appeal) Ernakulam. Against this order, the DC, Ernakulam filed (January 2015) second appeal before Hon'ble Tribunal, Ernakulam. Further report for 2012-13 had not been received (January 2016).

Though similar cases were pointed out by Audit in previous Audit Reports, no preventive/ precautionary measures were taken by Department/Government to avoid the defect during succeeding years. Details of action taken by the Government on the previous paras though called for had not been received (January 2016).

**[Audit Paragraph 2.8 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

22) When the Committee enquired about the case related to M/s. Joy Alukkas India Pvt. Ltd., 2008-09, 2009-10, Special Circle I, Ernakulam, the Additional Commissioner, GST Department submitted that the provision in the Act based on which the observations were made in the audit para 2.8 had been quashed by the Hon'ble High Court and all the cases mentioned in the said audit para were not sustainable and a general reply regarding all the cases mentioned in the audit para 2.8 had been submitted accordingly. The Committee accepted the report furnished by the Department regarding M/s. Joy Alukkas India Pvt. Ltd., 2008-

09, 2009-10, Special Circle I, Ernakulam, M/s. Pothys Garments, 2012-13, 2013-14, Special Circle, Tvpm, M/s. Pothys Textiles, 2012-13 2013-14, Special Circle, Tvpm, M/s. Lulu International Shopping Mall Pvt. Ltd, 2012-13, Special Circle II, Ernakulam, M/s. Fab India Overseas (P) Limited, Special Circle II, Ernakulam and M/s. Monavie India Enterprises Pvt. Ltd. 2011-12, 2012-13, II Circle, Kalamassery.

### **Conclusion/Recommendation**

#### **23) No comments**

##### **2.9 Short levy of tax due to misclassification**

Commodities were misclassified which resulted in short levy of tax.

- **CTO, Special Circle II, Ernakulam**

M/s Crompton Greaves Ltd., Kochi, was a dealer in electrical goods, pump sets and parts etc. During 2012-13, sales turnover of Home UPS for ₹ 110.91 lakh was classified as that of computer systems and peripherals and assessed at five *per cent* instead of at the applicable rate of 13.5 *per cent*. The misclassification resulted in the short payment of tax and interest of ₹ 11.22 lakh.

Government stated (July 2015) that assessment had been completed (June 2015) creating total additional demand of ₹ 17.89 lakh and the assessee had remitted (July 2015) ₹ 5.50 lakh. Further report had not been received (January 2016).

- **CTO, I Circle, Thrissur**

M/s Sreehari Metals, Thrissur was a dealer in rubber products and lubricants. During 2011-12, the assessee self assessed to tax the turnover of lubricants for ₹ 166.01 lakh assessable at the rate of 12.5 *per cent* at a lower rate of four *per cent*. Application of incorrect rate of tax resulted in short

payment of tax, cess and interest of ₹ 16.82 lakh.

Government stated (October 2015) that the assessment of the dealer had been completed (December 2013) creating additional demand of ₹ 19.87 lakh incorporating other defects also. The dealer filed appeal against the assessment.

The Assistant Commissioner (Appeal), Thrissur set aside the above assessment order (January 2014) and directed the assessing authority to re-examine the assessment. The reassessment was pending for disposal. The current status though called for (November 2015) had not been received (January 2016).

- **CTO, II Circle, Ernakulam**

M/s. Malabar Laminates, Kochi a dealer in bamboo and plywood products conceded in their annual return for 2012-13 sales turnover of ₹ 2.38 crore and ₹ 50.08 lakh respectively. The inter-State purchase turnover of these products conceded in the return were ₹ 1.71 crore and ₹ 84.92 lakh respectively. However as per the certified annual accounts of the company the purchase turnover accounted was ₹ 2.17 crore and ₹ 38.97 lakh respectively for the same sales turnover returned. Audit found from the check post module<sup>1</sup> of KVATIS that the inter-State purchase turnover of plywood of this company was more than ₹ 85 lakh. Thus, the assessee misclassified the purchase turnover and corresponding sales turnover of plywood as that of bamboo products to evade tax. This resulted in short payment of tax and interest of ₹ 8.02 lakh.

Government stated (September 2015) that assessment had been completed (June 2015) creating additional demand of ₹ 8.76 lakh. The assessee had remitted ₹ 2.63 lakh and furnished security for the balance amount as per the stay condition of Assistant Commissioner (Appeal) Ernakulam. No action was taken to get the stay vacated. Further report had not been received (January 2016).

<sup>1</sup> Module of the KVATIS in which the transactions of check post are recorded.

- **CTO, Special Circle, Thodupuzha**

M/s Sree Vijayalekashmi Traders, Thodupuzha was a dealer in grocery and pulses. Audit cross verified the annual return of the assessee for 2012-13 with the check post transaction in KVATIS module and found that the interstate stock transfer in to the state and interstate purchase turnover of items taxable at five *per cent* conceded in the annual return was less than that in the KVATIS check post transaction while the turnover of goods taxable at one *per cent* conceded was more than that in the KVATIS check post transaction. It was evident that the assessee had wrongly classified five *per cent* taxable goods as one *per cent* taxable goods. Misclassification of goods resulted in the short payment of tax and interest of ₹ 7.59 lakh.

Government stated (July 2015) that assessment had been completed (February 2015) creating additional demand of ₹ 9.17 lakh. Further report had not been received (January 2016).

**[Audit Paragraph 2.9 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

24) The Committee considered the audit observations and accepted the reply furnished by the Department in regard to M/s. Crompton Greaves Ltd. 2012-13, Special Circle II, Ernakulam, M/s. Sreehari Metals, 2011-12, I Circle, Thrissur, M/s. Malabar Laminates, 2012-13, II Circle, Ernakulam and M/s. Sree Vijayalekshmi Traders, 2012-13, Special Circle, Thodupuzha.

**Conclusion/Recommendation**

**25) No comments**

## 2.10 Non-payment of purchase tax

The assessee did not pay purchase tax for the purchases made from unregistered dealers

- **CTO, Special Circle, Kollam**

**Under Section 6(2)(b) of the KVAT Act, 2003 every dealer who purchases taxable goods from unregistered dealers and despatches the goods to any place outside the State otherwise than by way of sale in the course of inter-state trade or export, shall pay tax on the purchase turnover of the goods at the rates specified under Section 6(1), provided that the maximum rate leviable under this clause shall not exceed four *per cent*.**

M/s. Kalyan Jewellers, Kollam, a dealer in gold jewellery stock transferred gold jewellery amounting to ₹ 51.18 crore and ₹ 94.06 crore outside the State, which constituted 29.59 *per cent* and 42 *per cent* of their total disposal during the year 2011-12 and 2012-13. They made local purchase of gold jewellery from unregistered dealers for ₹ 43.98 crore and ₹ 60.14 crore in the year 2011-12 and 2012-13 respectively. Though the assessee was liable to pay purchase tax proportionate to the purchases made from unregistered dealers, they had not paid any purchase tax. This resulted in non-payment of tax, cess and interest amounting to ₹ 2.31 crore.

Government stated (July 2015) that the assessee had opted for Gold Compounding Scheme under Section 8 of KVAT Act, 2003 and the Section does not permit a portion of the turnover being taxed under Section 6(1) over and above the quantum of tax fixed under Section 8(f). Hence, purchase tax assessable on portion proportionate to stock transfer out and the disallowance of special rebate for the same vide provision to Section 12 of the KVAT Act, 2003 is ultra vires to the provision of Section 8 of the KVAT Act, 2003. The reply was not acceptable since the compounded dealers had not been specifically exempted from payment of purchase tax. Further report had not been received (January 2016).

**[Audit Paragraph 2.10 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2015.  
(Revenue Sector)]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

26) When the Committee enquired about the audit observations related to M/s Kalyan Jewellers, 2011-12 and 2012-13, Special Circle, Kollam, the Joint Secretary, Legislature Secretariat brought to the attention of the Committee that the Judgment of the Hon'ble High Court in that case had been sought by the Accountant General. Then the Senior Audit Officer informed that the Judgment was received and the said case might be exempted. The Committee agreed with that.

**Conclusion/Recommendation**

27) **No comments**

**2.11 Short payment of tax due to incorrect exemption allowed**

The assessee availed exemption in excess of that admissible as per Rule

**Rule 10(2)(b) of KVAT Rules, 2005 stipulates that where the actual turnover, in respect of the works contract in which the transfer of goods takes place not in the form of goods but in some other form, is not ascertainable from the books of accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges as given in the table below the Rule from the total amount of contract. Labour and other charges deductible in works contract in respect of Annual Maintenance Contract (AMC) is 50 per cent of contract receipts. As per Section 6(1) (f) of KVAT Act, 2003 in the case of transfer of goods involved in the execution of works contract, where the transfer is not in the form of goods, but in some**

**other form the rate of tax shall be 13.5 *per cent.***

• **CTO, Special Circle II, Emakulam**

➤ M/s HCL Infosystems Ltd., Kochi, was a dealer in computer and accessories. During 2011-12, they claimed exemption of ₹ 4.95 crore from the total receipt of ₹ 5.95 crore towards AMC against the actual eligible exemption of ₹ 2.97 crore. During 2012-13, they claimed exemption of ₹ 4.65 crore from the total receipt of ₹ 6.40 crore towards AMC, against the actual eligible exemption of ₹ 3.20 crore. Availing of excess exemption resulted in short payment of tax and interest of ₹ 29.42 lakh and ₹ 8.53 lakh during 2011-12 and 2012-13.

Government stated (July 2015) that the assessment for the year 2012-13 had been completed (June 2015) creating additional demand of ₹ 9.68 lakh and the amount is under collection. Further report for the remaining period had not been received (January 2016).

➤ M/s Crompton Greaves Limited, Kochi, was a dealer in electrical goods, pump sets and parts etc. During 2012-13, they self assessed to tax at five *per cent* turnover of AMC amounting to ₹ 57.66 lakh after availing deduction under Rule 10(2) (b) for ₹ 60.54 lakh from the total turnover of ₹ 118.19 lakh. Since the turnover was arrived at under Rule 10(2) (b), the deduction admissible is ₹ 59.10 lakh (50 *per cent*) only and the balance turnover should have been assessed at 13.5 *per cent*. Failure to do this resulted in short payment of tax and interest of ₹ 6.06 lakh.

Government stated (July 2015) that assessment had been completed (June 2015) creating additional demand of ₹ 17.89 lakh. Further report had not been received (January 2016).

**[Audit Paragraph 2.11 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as

## Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

28) While considering the audit observations related to M/s. HCL Infosystems Ltd, 2011-12 and 2012-13, Special Circle II, Ernakulam, the Joint Secretary, Legislature Secretariat brought to the attention of the Committee that the case had been settled, and the Committee accepted the reply furnished by the Department.

29) While considering the audit observations related to M/s Crompton Greaves Ltd. 32070379915/2012-13, Special Circle II, Ernakulam, the Committee accepted the report submitted by the Department.

### **Conclusion/Recommendation**

**30) No comments**

**2.12 Short payment of tax due to incorrect claim of input tax credit / special rebate allowed**

Excess input tax credit/special rebate was availed resulting in short payment of tax

**2.12.1 Section 11(m) of KVAT Act, 2003, read with Rule 58(10)(i) of KVAT Rules, 2005, stipulates that no input tax credit shall be allowed for the purchases of goods where tax invoice in form No.8 is not available with the dealer or there is evidence that the same has not been issued by the selling dealer.**

• **CTO, II Circle, Ernakulam**

M/s Sreeragh General Finance Limited, Kochi, a dealer in motor vehicles and computer products, availed input tax credit of ₹ 1.09 crore during 2012-13, on the purchase of goods for ₹ 8.13 crore. Audit found from the KVATIS that this included input tax credit of ₹ 16.15 lakh on the purchase of goods for ₹ 1.20 crore from two dealers; but not supported by proper invoices

issued to the assessee. The invoices filed by the assessee were issued by these two dealers in Form 8B applicable to end customers. Availing input tax credit without proper invoice was not in order. The incorrect availing of input tax credit had resulted in short payment of tax and interest of ₹ 19.21 lakh.

Government stated (October 2015) that necessary instructions had been given (August 2015) to the DC, Ernakulam to re-examine the case. Further report had not been received (January 2016).

**2.12.2 Under proviso 3 to Section 11(3) of KVAT Act, 2003, where any goods purchased in the State are subsequently sent outside the State or used in the manufacture of goods and the same are sent outside the State otherwise than by way of sale in the course of inter- State trade or export, input tax credit shall be limited to the amount of input tax paid in excess of five per cent on the purchase turnover of such goods sent outside the State.**

- **CTO, II Circle, Palakkad**

M/s Mascon Tillers and Tractors, Palakkad, was a dealer in tillers, tractors etc. During 2010-11, 2011-12 and 2012-13, the assessee purchased tillers and tractors for ₹ 6.48 crore, ₹ 4.15 crore and ₹ 9.42 crore respectively and availed input tax credit of ₹ 27.68 lakh, ₹ 33.23 lakh and ₹ 47.08 lakh respectively. Audit found that out of the total disposal of goods for ₹ 9.09 crore, ₹ 10.06 crore and ₹ 12.61 crore, 9.41 *per cent*, 6.23 *per cent* and 9.39 *per cent* respectively were stock transferred outside the State during the above period. As such four/five *per cent* input tax credit proportionate to interstate stock transfer to outside the State had to be reversed which was not done. Availing of excess input tax credit resulted in short payment of tax and interest of ₹ 10.57 lakh.

Government stated (July 2015) that assessment for the year 2012-13 had been completed (February 2015) and the assessee had remitted the amount of ₹ 5.26 lakh. Further report for the remaining period had not been received (January, 2016).

- **CTO, Tirurangadi**

M/s Classic Foot Care (India) Private Limited, Malappuram, was a manufacturer of footwear. During 2012-13, they availed input tax credit of ₹ 41.02 lakh on a local purchase of ₹ 5.78 crore. They reversed input tax of ₹ 7.43 lakh against stock transferred to outside the State, goods for ₹ 3.29 crore. Audit found that five *per cent* input tax credit to be reversed proportionate to inter-State stock transfer would come to ₹ 13.42 lakh. Availing of excess input tax credit resulted in short payment of tax and interest of ₹ 7.07 lakh.

Government stated (July 2015) that assessment had been completed (January 2015) creating total additional demand of ₹ 7.12 lakh. The assessee had remitted (between March, 2015 and May, 2015) an amount of ₹ 4.50 lakh. Further report had not been received (January, 2016).

**2.12.3 Under Section 12(2) of KVAT Act, 2003 dealer paying compounded tax under Section 8 shall not be eligible for rebate under Section 12(1).**

- **CTO, Chalakudy**

M/s Institute of Indian Therapies, Annamanada was a dealer in medicine paying tax under Section 8(e) of the Act. Audit found that during 2010-11, the assessee availed special rebate of ₹ 5.19 lakh corresponding to the purchase turnover of ₹ 119.06 lakh. Incorrect availing of special rebate resulted in short payment of tax, cess and interest of ₹ 6.44 lakh.

Government stated (August 2015) that assessment had been revised disallowing special rebate of ₹ 4.86 lakh. Special rebate of ₹ 0.32 lakh was allowed for the raw materials for the manufacturing of medicine. Further report had not been received (January 2016).

**[Audit Paragraphs 2.12.1 to 2.12.3 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015(Revenue Sector).]**

[Note furnished by the Government on the above audit paragraphs is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

31) When the Committee directed to give an explanation regarding the case related to M/s. Sreeragh General Finance Ltd. 2012-13, II Circle, Ernakulam, the Additional Commissioner, GST Department submitted that the case was sustainable. He added that assessment had been completed and notice as per the modified assessment had been issued. The Committee directed to furnish a report after completing the final assessment, and the Additional Commissioner, GST Department agreed to do so.

32) The Committee considered and accepted the reply furnished by the Department regarding the audit observations related to M/s Mascon Tillers and Tractors, Palakkad, 32090634101/ 2010-11 to 2012-13 and M/s. Classsic Foot Care (India) Ltd., 2012-13 Commercial Tax Officer, Tirurangadi.

33) When the Committee wanted to give an explanation regarding the case related to M/s. Institute of Indian Therapies, CTO, Chalakkudy/2010-11, the Additional Commissioner, GST Department explained that at first, the assessment was done by disallowing the claim of any special rebate. Later reassessment was done as per the provision in the Kerala Finance Act that all Ayurvedic Cosmetics manufactured using drug license would be treated as manufacturer of medicine and would be eligible for special rebate, and the same had been accepted by both the Appellate Authority and the Assessing Authority. He added that the assessment as manufacturer of medicine had been completed. The Committee directed to submit the collection details as per modified assessment.

#### **Conclusion/Recommendation**

34) **The Committee directs the Department to submit a detailed report on assessment and collection of dues in respect of M/s Sreeragh General Finance Ltd. 2012-13, II Circle and M/s Institute of Indian Therapies, CTO, Chalakkudy/2010-11, Ernakulam within two months.**

### 2.13 Non-imposition of penalty

Penalty leviable as per CST Act, 1956 was not levied.

- CTO, Chittur

**As per Section 8 of the CST Act, 1956, goods purchased by issuing declaration in Form C should be intended for re-sale or for use in the manufacturing or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power. Under Section 10A read with Section 10(d) of the Act, for the misuse of C form, penalty not exceeding one and a half times of the tax which would have been levied under sub-section (2) of Section 8 should be levied.**

M/s Five Star Metals (P) Ltd., Pallavur, a metal crushing unit purchased (December 2010) an electric generator set for ₹ 31.21 lakh. The assessee in response to a notice issued by the Intelligence officer declared (January 2011) that the generator set with accessories purchased by them was for own use and had no direct connection to their business. Though the generator was purchased for purposes other than that connected with the manufacturing or processing of goods, the assessee issued Form - C declaration for the above purchase (March 2011) which would attract penalty under Section 10(d) of the CST Act, 1956. Amount of penalty that could be imposed comes to ₹ 5.85 lakh.

Government stated (July 2015) that assessment of the dealer had been completed (November 2013) creating additional demand of ₹ 5.85 lakh. The appeal filed by the dealer had been allowed (February 2014) by the AC (Appeal) Palakkad. The second appeal filed by the State was dismissed (March 2015) by the Appellate Tribunal. Further report had not been received (January 2016).

Audit found that most of the cases mentioned above are cases pointed out in earlier Reports. The defects could have been detected and addressed, had the monthly/annual returns were scrutinised by the assessing officers.

**[Audit Paragraph 2.13 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

35) The Committee considered and accepted the reply furnished by the Department regarding the audit observation related to M/s Five Star Metals (P) Ltd. CTO, Chittur, 32090990782/2010-11.

#### **Conclusion/Recommendation**

#### **36) No comments**

#### **Sales Tax**

##### **2.14 Short levy of turnover tax due to non revision of assessment order**

The revision of turnover tax for the previous year was not reckoned while computing the compounded tax for subsequent years.

- **CTO, Special Circle I, Kozhikode**

**Under Section 7 of the KGST Act, 1963, bar attached hotel of and below two star, situated in municipal area, may, pay turnover tax on the turnover of foreign liquor calculated at (a) one hundred and forty per cent of the purchase value of such liquor, or (b) one hundred and fifteen per cent of the highest turnover tax payable by him as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher. The Commissioner of Commercial Taxes, vide Circular No. 44/2006 had issued directions that if on a subsequent date the tax payable by a dealer who had opted for payment of tax under compounding scheme is revised by virtue of an appellate order or an assessment order, the**

**compounded tax payable shall be based on the revised tax liability fixed as per such orders.**

M/s Sea Queen Hotel, Kozhikode, was a bar attached two star hotel situated in municipal area, who opted for compounding scheme for payment of turnover tax. The turnover tax assessment for 2009-10 was completed (March 2014) and turnover tax was fixed as ₹ 30.43 lakh at 115 *per cent* of ₹ 26.46 lakh, the turnover tax assessed for previous year 2008-09. Turnover tax assessment for 2010-11, 2011-12 and 2012-13 were completed based on the turnover tax for previous years and fixed as ₹ 34.99 lakh, ₹ 40.24 lakh and ₹ 46.27 lakh respectively. Subsequently based on the suppression detected by the Intelligence Officer, the assessment for the year 2008-09 was revised (March 2014), fixing the turnover tax as ₹ 37.24 lakh. However, assessments for 2009-10 to 2012-13 were not revised by the assessing authority based on the revised assessment order for 2008-09. The omission on the part of the assessing officer resulted in short levy of tax, cess and interest of ₹ 66.90 lakh.

Government stated (July 2015) that the assessments had been revised creating additional demand of ₹ 26.21 lakh. The assessee had filed appeal before DC (Appeal). Further report had not been received (January 2016).

**[Audit Paragraph 2.14 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

37) When the Committee directed to give an explanation regarding the case related to M/s. Sea Queen Hotel, Kozhikode, 2009-10 to 2012-13, the Additional Commissioner, GST Department submitted that the case was partially sustainable, and the appeal in that regard was pending before the Joint Commissioner (Appeals), SGSTD, Kozhikode. The Committee directed to

submit a final report regarding the said case.

### **Conclusion/Recommendation**

**38) The Committee directs the Department to submit detailed report on assessment and collection of dues in connection with M/s Sea Queen Hotel, Kozhikode, 2009-10 to 2012-13 within two months.**

#### **2.15. Short levy of tax due to incorrect computation of compounded tax**

While computing the compounded tax, rate was applied on incorrect turnover tax reckoned for previous year.

**Section 7 of the KGST Act, 1963 stipulates that any bar attached hotel not being a star hotel of and above three star hotel, heritage hotel or club, situated in Municipal area, may at its option pay turnover tax on the turnover of foreign liquor calculated at (a) one hundred and forty *per cent* of the purchase value of such liquor, or (b) one hundred and fifteen *per cent* of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher for the year 2009-10 and at (a) one hundred and eighty *per cent* of the purchase value of such liquor, or (b) one hundred and twenty five *per cent* of the highest turnover tax payable by him as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher for the year 2010-11.**

- CTO, II Circle, Tripunithura**

M/s Polakulathu Tourist Home, Vytila, was an assessee engaged in the business of running a bar attached hotel. The turnover tax assessment of the assessee for 2009-10 was completed by the assessing authority (December 2012) taking the turnover as 140 *per cent* of the purchase value of liquor and turnover tax was fixed at ₹ 16.01 lakh. Audit found

that 115 *per cent* of the turnover tax payable for 2008-09 amounted to ₹ 48.79 lakh which was higher than the turnover tax fixed by the assessing authority. Incorrect computation of turnover tax resulted in short levy of tax, cess and interest of ₹ 37.74 lakh.

Government stated (June 2015) that assessment had been completed (June 2014) creating additional demand of ₹ 38.07 lakh and revenue recovery efforts had been initiated for recovery of the dues. Further report had not been received (January 2016).

- **CTO, Special Circle I, Kozhikode**

M/s Kalyan Residency, Koyilandy, was a bar attached hotel of three star category. The turnover tax assessment of the assessee for 2010-11 was completed (May 2014) by the assessing authority taking the turnover as 180 *per cent* of the purchase value of liquor during the year and the turnover tax was fixed as ₹ 29.99 lakh. However, Audit found that the turnover tax of the assessee for 2009-10 fixed by the assessing authority was ₹ 16.90 lakh. Since the assessee started business from October 2009 only, the turnover tax payable for a financial year would be ₹ 33.80 lakh. Hence, 125 *per cent* of the turnover tax payable for 2009-10 amounted to ₹ 42.26 lakh. Incorrect computation of compounded tax by the assessing officer resulted in short levy of tax, cess and interest of ₹ 17.47 lakh.

Government stated (July 2015) that assessment had been completed (March 2015) creating additional demand of ₹ 20.11 lakh. Further report had not been received (January 2016).

**[Audit Paragraph 2.15 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

*(Excerpts from the discussion of Committee with officials concerned)*

39) When the Committee enquired about the audit observation related to M/s. Polakulathu Tourist Home, 2009-10, II Circle, Tripunithura, the Additional Commissioner, GST Department submitted that the issue raised by the AG was about the closing stock of the firm. The assessment was done and the turn over tax was fixed in which the purchase value was computed by adding the previous year's closing stock, ie. the opening stock of the current year and the purchase made during the current year. The audit objection was about the turnover tax liable to pay in accordance with the highest turnover tax paid for the previous years. But the objection was not sustainable because after the death of the proprietor, a new partnership business was started by his three heirs and the new partnership business firm could not be treated as a business in continuation of the previous one, and hence the previous year's turnover could not be taken in to account. The Committee directed to furnish a final reply in that regard and the Additional Commissioner, GST Department agreed to do so.

40) While considering the audit observation related to M/s. Kalyan Residency 2010-11, Special Circle, Kozhikode, the Joint Secretary, Legislature Secretariat referred to the AG's remarks that the para might be treated as settled, and the Committee agreed with that.

#### **Conclusion/Recommendation**

41) **The Committee directs the Department to submit a detailed report on the action taken on the audit observation in connection with M/s. Polakulathu Tourist Home, 2009-10, II Circle, Tripunithura..**

#### **2.16 Short levy tax due to incorrect assessment**

Incorrect reckoning of turnover tax resulted in short levy of compounded tax.

**As per Section 5(2) of the KGST Act, 1963, bar attached hotels are liable to pay turnover tax at 10 per cent on turnover of foreign liquor sold by them. However, as per Section 7 of KGST Act, 1963 bar hotels of below three star can opt for payment of such tax at compounded**

**rate. For bar hotels, the rate effective from 1 July 2006 is higher of (a) the turnover tax on the turnover of foreign liquor calculated at 135 per cent of purchase value of liquor, for hotels situated in *panchayat* area and at 140 per cent of purchase value of liquor for bar hotels situated in municipal corporation area or (b) 115 per cent of highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid, for any of the previous consecutive three years. As per Rule 13(3) of Foreign Liquor Rules, 1953 (FL Rules, 1953) from 1 April 2007, only three star hotels and above are eligible for bar license but existing licensees not having above classification and functioning on 31 March 2007 shall be regularised.**

- **CTO, Ettumanoor**

The turnover tax assessment of M/s Palakkunnel Tourist Hotel, Ettumanoor, a bar hotel, which opted payment of tax at compounded rate, was finalised accepting the claim of the assessee that their business was transferred as a whole to the new partnership firm with effect from 1 October 2008 and hence a new business. The turnover tax for 2009-10 was assessed to ₹33.69 lakh being 135 per cent of purchase turnover of liquor. Consequently, the turnover tax for 2010-11 and 2011-12 were also fixed based on the turnover tax fixed for 2009-10. Audit found that the business was done in the name and style M/s Palakkunnel Tourist Home upto 30 September 2008 and the business was continued with effect from 1 October 2008 under the name and style M/s Palakkunnel Tourist Hotel. The assessee cannot be considered as a separate entity from the existing one on the fact that if they were new entities, Rule 13(3) of FL Rules, 1953 ought to have prevented it from grant of bar license as the hotel had no three-star status. Hence, the compounded tax to be fixed for the year 2009-10 was ₹38.88 lakh being 115 per cent of the tax paid during 2008-09 (highest turnover tax paid, of three preceding years). Incorrect fixation of compounded tax for the year 2009-10 resulted in consequent short fixation of tax for the years 2010-11 and 2011-12 also. Total short levy of tax, cess and interest amounted to ₹22.70 lakh.

Government stated (October 2015) that based on the audit observation, the assessment was reopened under Section 19 of the KGST Act, 1963. While deciding the appeal filed by the dealer, the Deputy Commissioner (Appeals) Kottayam quashed the assessment. Government had issued necessary direction to the DC, Kottayam to file second appeal in the case. Further report had not been received (January 2016).

**[Audit Paragraph 2.16 contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March, 2015 (Revenue Sector).]**

[Note furnished by the Government on the above audit paragraph is included as Appendix II]

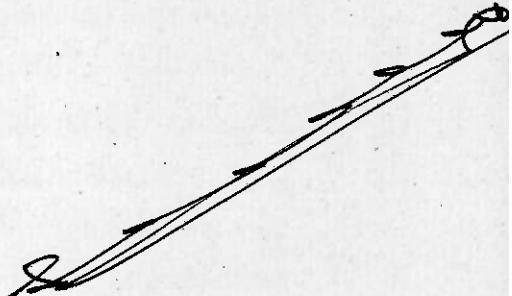
*(Excerpts from the discussion of Committee with officials concerned)*

42) While considering the audit observation related to M/s. Palakkunnel Tourist Hotel, 2009-10 to 2011-12, CTO, Ettumanoor, the Committee accepted the reply submitted by the Department.

**Conclusion/Recommendation**

**43) No comments**

Thiruvananthapuram,  
28th January 2026



**SUNNY JOSEPH,**  
*Chairperson,*  
*Committee on Public Accounts.*

## APPENDIX I

### SUMMARY OF MAIN CONCLUSIONS / RECOMMENDATIONS

Sl No.	Para No,	Department concerned	Conclusion / Recommendation
1	6	Taxes	The Committee directs the Department to furnish present status of the appeal filed by M/s. ABB Ltd., 2011-12, WC & LT, Ernakulam and the case filed by M/s. KEC International Ltd, 2012-13,WC & LT, Alappuzha.
2	7	Taxes	The Committee directs the Department to submit a report regarding the assessment made in connection with M/s. Essar Projects (India), 2011-12 & 2012-13, WC & LT, Ernakulam within two months.
3	8	Taxes	The Committee directs the Department to submit a detailed report on assessment and realisation of dues in connection with M/s. New Modern Technomech Pvt. Ltd 2010-11 to 2012-13, WC & LT, Alappuzha within two months.
4	16	Taxes	The Committee directs the Department to furnish present status of the case filed before the Hon'ble High Court in connection with M/s. Star Traders, 2011-12, Special Circle, Thiruvananthapuram.
5	17	Taxes	The Committee directs the Department to submit report on the present status of the revenue recovery proceedings in connection with M/s. Kizhakkedathu Enterprises, 2008-09 to 2012-13, AIT & STO, Ranni, within two months.

Sl No.	Para No.	Department concerned	Conclusion / Recommendation
6	34	Taxes	The Committee directs the Department to submit a detailed report on assessment and collection of dues in respect of M/s Sreeragh General Finance Ltd. 2012-13, II Circle and M/s Institute of Indian Therapies, CTO, Chalakkudy/2010-11, Ernakulam within two months.
7	38	Taxes	The Committee directs the Department to submit detailed report on assessment and collection of dues in connection with M/s Sea Queen Hotel, Kozhikode, 2009-10 to 2012-13 within two months.
8	41	Taxes	The Committee directs the Department to submit a detailed report on the action taken on the audit observation in connection with M/s. Polakulathu Tourist Home, 2009-10, II Circle, Tripunithura.

APPENDIX II,  
Notes <sup>AG</sup> furnished by the Government

III

**REMEDIAL MEASURES TAKEN REPORT**  
**ON**  
**C&AG 2015**  
**PARAS 2.7 to 2.16**

Para No.	Gist of the case	Present position
2.7.1 <b>(Bullet 1)</b>	<p>M/s. ABB Ltd., Kochi, a works contractor filed annual return for 2011-12 conceding total and taxable turnover of Rs. 25.31 crore and Rs. 6.04 crore respectively availing Rs. 19.27 crore as exemption under Rule 10. Audit found that cost of goods transferred to the works during the year was Rs. 17.15 crore. Thus the taxable turnover should not be less than Rs. 17.15 crore against which the assessee assessed to tax Rs. 6.04 crore only. Escape of turnover of Rs. 11.11 crore from assessment due to filing of incorrect return by the assessee resulted in short payment of tax, cess and interest of Rs. 1.70 crore.</p> <p>Government stated (July 2015) that assessment had been completed (May 2015) creating total additional demand for Rs. 1.52 crore. As per the application for rectification filed by the assessee, the assessment order had been rectified (May 2015). After giving credit to the TDS which was omitted to be taken earlier, the additional demand was reduced to Rs. 1.28 crore. Further report had not been received (January 2016).</p>	<p><b>M/s. ABB Ltd.2011-12 WC &amp; LT, Ernakulam</b></p> <p>On persual of the audit objection, with reference to the returns of the assessee and assessing records, it is seen that the audit objection is not maintainable for the following reason. Assessment for the year 2011-12 was completed vide order number 32072097464/2011-12 dt 02.05.2015 fixing a total turnover of Rs 30,44,05,336.76. In this assessment order exemption was given to E1 sale of Sale in Transit for an amount of Rs 8,98,53,177/- even though the dealer has claimed Sale in Transit for an amount of Rs 18,09,82,431.23 u/s 6(2) of the CST Act. Further exemption towards 20H for Rs.3,18,25,177.56, exemption towards labour for Rs.1,74,31,828.87 and CST sale of Rs.23,14,745/-was also granted. Finally an amount of Rs.16,29,80,408/- was fixed as balance taxable turnover for rectification filed by the assessee, the assessment order had been rectified (May 2015). After giving credit to the TDS which was omitted to be taken earlier, the additional demand was reduced to Rs. 1.28 crore. Further report had not been received (January 2016).</p> <p>As per audit it was pointed out that cost of goods transferred to works contract during the year was 17.15 crore and it exceeds the taxable turnover of Rs.6.04 crore conceded by the dealer. But the total purchase ie Rs 17,00,64,739/-conceded by the dealer in their annual return includes purchase related to sale in transit. The Sale in Transit claimed by the dealer is Rs 18,09,82,431/-and the Sale in Transit allowed as per the assessment order is only 8,98,53,177. When the purchase related to this</p>

turnover is deducted from the total purchase, the transfer value of balance purchase turnover will be less than the taxable turnover assessed vide order dtd 02.05.2015 and RRC issued in No.65/2015-16 dtd.22.06.2015. Dealer remitted 30% of the RR amount (13169430/-) Rs.39,50,829/- as per Chalan No.275 DTD.16.09.2015 for filing appeal against the Order. Appellate Order in KVATA No.1500/15 dtd.27.04.2017 issued as modified. Against the modified order party filed appeal by remitting Rs.1,88,252/- as per Chalan No. KL001638293201920M

dtd.14.05.2019. Appellate Authority disposed the Appeal as modified and on the basis of which modified the above order on 23.09.2021 and the dealer filed appeal before the Appellate Tribunal.

Para No.	Gist of the case	Present position
2.7.1 (bullet 2)	<p>M/s KEC International Limited, Mavelikkara, self assessed to tax a contract receipts of Rs. 2.87 crore during 2012-13 availing exemption of Rs. 2.94 crore from the total contract receipt of Rs. 5.81 crore. Audit found that cost of goods transferred to the work during the years was Rs. 7.99 crore. As such the taxable turnover should not be less than Rs. 7.99 crore. Escape of turnover from assessment resulted in short payment of tax and interest of Rs. 89.77 lakh.</p>	<p><b>M/s. KEC International Ltd 2012-13,WC &amp; LT, Alappuzha</b></p> <p>Based on the audit objection, the Commercial Tax Officer (WC) issued Notice U/s 25 on 23.01.2015 and the assessee requested one month time. The assessing authority rejected the request and completed the assessment on 28.05.2015 with balance tax due at Rs. 2,08,15,281/- and interest Rs. 49,95,668/- totaling to Rs. 2,58,10,950/-.</p> <p>Against the order dealer filed Appeal before DC(A), Kollam. As per order no. KVATA(Alpy) 328/15dt 13/07/2015, the dealer had remitted Rs.40,00,000/- and furnished Bank Guarantee for the balance amount. DC (A) disposed the appeal as dismissed.</p> <p>Against the order the dealer filed second Appeal before Tribunal Kottayam. And also approached the Hon'ble High court of Kerala and who stayed the Recovery proceedings till the finalisation of Appeal. The Tribunal dismissed the Appeal vide order No. TA (VAT ) No.233/2017 dt 29.05.2019. Against this order dealer approached Hon'ble High court and who stayed the coercive recovery steps as per OT.Rev .86/2019 dt 02/09/2019. The OT.Rev is still pending in Hon'ble High court of Kerala.</p>

Para No.	Gist of the case	Present position
2.7.1 <b>(bullet 3)</b>	<p>M/s. Essar Projects (India) Limited, Kochi a works contractor self assessed to tax a turnover of Rs. 9.03 crore and Rs. 7.70 crore during 2011-12 and 2012-13 respectively. <b>2011-12</b></p> <p>Audit found that the cost of goods transferred in the execution of work was Rs. 12.88 crore and Rs. 10.24 crore during these years. As such the taxable turnover should not be less than Rs. 12.88 crore and Rs. 10.24 crore. Escape of turnover from assessment resulted in short turnover of Rs. 18,00,65,684/- vide order payment of tax, cess and interest of dated 30.06.2015 creating additional demand of ₹ 65,92,782/- and ₹ 25,71,185/- towards interest.</p> <p>Government stated (July 2015) that assessment for the year 2011-12 had been completed (June 2015) creating additional demand of Rs. 91.64 lakh and action was being initiated to collect the demand. Though the details of action taken to collect the amount were called for from Government in October 2015, their reply had not been received (January 2016)</p>	<p><b>M/s. Essar Projects (India)</b> <b>2011-12 &amp; 2012-13</b> <b>WC &amp; LT, Ernakulam</b></p> <p>Based on the audit objection, the books of accounts of the dealer was called for and verified. Notice u/s.25(1) was issued on 20.04.2015 incorporating other defects also. On verification of the reply filed by the dealer and the audited statement, the assessment was completed as taxable turnover of Rs. 18,00,65,684/- vide order dated 30.06.2015 creating additional demand of ₹ 65,92,782/- and ₹ 25,71,185/- towards interest.</p> <p>The details of exemption claimed as per Rule 10 has been verified and found that the exemptions claimed are supported by documentary evidence. Site office rent, tax and cess amount were not granted for exemption. The contract receipt amount being higher in annual return and form 13 &amp; 13A (Rs. 16,37,76,698/-) has been taken from Government in October 2015, for completing the assessment. ie., the taxable turnover reported Rs. 9,02,53,574/- in annual return Form 10B was not accepted for assessment. Further verification on the audit objection with assessment completed revealed that the taxable turnover conceded by assessee was not below the cost of goods transferred in execution of works contract.</p> <p><b>Therefore, audit objection in this regard does not exist.</b></p> <p>With regard to the assessment completed, the dealer filed appeal and JC(Appeals) in order No. KVATA 1773/2015 dated</p>

06.01.2021 directed to modify the assessment order with following directions. "With regard to the claim of exemptions, the appellant submits that the claim pertains to Site office rent, the appellant would produce the details of remittance particulars and other evidence to support claim of exemptions before the assessing authority and the assessing authority would verify and allow credit to the extent, proved."

As the assessee has not appeared or produced necessary documents for implementing the appellate order, the original assessment order restored on 20.10.2022.

The Company undergone liquidation and whole liabilities against the dealers has been intimated to the liquidator as per letter dated 22.11.2022.

### **2012-13**

The assessing authority had issued notice to the dealer u/s 25 (1) dated 11.12.2015 and verified the accounts of the dealer. It was found that the taxable turnover determined was not below the cost of goods transferred. As per P & L A/c the cost of materials consumed is Rs. 4,37,52,063.94/- whereas the taxable turnover declared was Rs. 7,69,86,461/- when this was intimated a copy of the P & L A/c was called for.

On a detailed verification it was found that the assessee had taxed turnover Rs. 73,81,887/- & Rs. 1,96,64,282/- @ 4% & 12.5% whereas prevailing rate for 2012-13 was 5% & 13.5%. Interstate Purchase suppression was also found. These defect were detected and assessment was completed vide order dated 31.03.2016 raising an additional demand of Rs. 1,47,58,198/- whereas the tax liability

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found by Accountant General was only Rs. 41,37,815/-

With regard to audit objection, it is submitted that proviso to rule 10(2)(a) is applicable only when the taxable turnover of non-compounding work arrived after deducing the allowable expenses under Rule 10(2)(a) falls below the cost of goods transferred in the execution of the works contract. Hon'ble Supreme Court of India in various decisions like Gannon Denkerley & Co Vs State of Rajasthan (1992)1 KTR 178 (SC), Builders Association of India Vs State of Karnataka & other 1993 88 STC 248 SC etc has repeatedly held that only the material portion of the goods transferred in the execution of works contract is liable to tax. It is submitted that the whole purchase of the dealer cannot be assessed to tax in that year as presumed by the Accountant General in the audit objections. The material consumed is available in the P&L A/c filed by the dealer. Clarification by CCT No. C3/28212/11/CT dated 19.12.2011 in an application filed by KSEB for Pallivasal Extension Scheme in which the assessee herein is the contractor, states that only when the goods are installed, the sale will conclude attracting tax under KVATA Act. It is most humbly submitted that the above audit objection raised is not sustainable.

Para No.	Gist of the case	Present position																				
2.7.1 (bullet 4)	<p>M/s New Modern Technomech Pvt. Ltd., Thakazhy, a works contractor filed annual return for 2010-11 to 2012-13 conceding total and taxable turnover for the above years as given below:-</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="4" style="text-align: center;">(in crore)</th> </tr> <tr> <th></th> <th>2010-11</th> <th>2011-12</th> <th>2012-13</th> </tr> </thead> <tbody> <tr> <td>Total turnover</td> <td>7.34</td> <td>3.98</td> <td>2.80</td> </tr> <tr> <td>Taxable turnover</td> <td>3.34</td> <td>0.80</td> <td>0.55</td> </tr> <tr> <td>Cost of goods consumed</td> <td>3.55</td> <td>1.13</td> <td>1.90</td> </tr> </tbody> </table> <p>The assessee failed to include the cost of goods consumed as taxable turnover. This resulted in short levy of tax, cess and interest of Rs.53.04 lakh.</p>	(in crore)					2010-11	2011-12	2012-13	Total turnover	7.34	3.98	2.80	Taxable turnover	3.34	0.80	0.55	Cost of goods consumed	3.55	1.13	1.90	<p><b>M/s. New Modern Technomech Pvt. Ltd</b>  <b>2010-11 to 2012-13,</b>  <b>WC &amp; LT, Alappuzha</b></p> <p><b>2010-11</b></p> <p>Based on the audit objection, the assessment for the year 2010-11 has been completed on 28-03-2015 fixing total turnover of Rs.7,33,57,788/- and taxable turnover of Rs.4,55,43,081/- with balance tax due at Rs.25,46,183/- and interest Rs.12,22,168/- totalling to Rs.37,68,351/-. Against the demand dealer filed appeal before Deputy Commissioner (Appeal) who disposed the Appeal as dismissed vide KVATA (ALPY) 248/15 dt 28.03.2017. Dealer preferred second appeal before Tribunal Kottayam and also approached High court for speedy disposal of stay petition before Tribunal. As per Judgment in WP(C) No.36255/2017 dt 13.11.2017 Hon'ble High court stayed the RR till the disposal of Appeal.</p> <p>The Hon'ble Tribunal, Kottayam as per the Tribunal orders TA(VAT) No.95/2017 Dated 31.10.2023 set aside the assessment orders and directed the assessing authority to provide sufficient time to the taxpayer to raise the legal arguments and production of all documentary evidence. The Tribunal directed to re-do the assessment after hearing the party.</p> <p>Assessing authority issued hearing notice, and case is adjourned from 15.05.2024 with a direction that in 45 days assessee should submit documents for 2010-11 and 2011-12 and again in 30 days</p>
(in crore)																						
	2010-11	2011-12	2012-13																			
Total turnover	7.34	3.98	2.80																			
Taxable turnover	3.34	0.80	0.55																			
Cost of goods consumed	3.55	1.13	1.90																			

dealer should submit the documents for 2012-13.

**2011-12**

Assessment for the year 2011-12 was completed with an additional demand of Rs.22,46,862/- as per order No.32041516509/11-12 dt 22.03.2016. Against the demand dealer filed appeal before Deputy Commissioner (Appeal) who disposed the Appeal as dismissed vide KVATA(ALPY) 200/16 DT 28.03.2017. Dealer preferred second appeal before Tribunal KTM and also approached High court for speedy disposal of stay petition before Tribunal. As per Judgment in WP(C) No.36255/2017 dt 13.11.2017 Hon'ble high court stayed the RR. The case is still pending before Tribunal Kottayam as per TA No.96/2017. Final hearing of the second appeal is posted on 04.10.2023.

The Hon'ble Tribunal , Kottayam as per the Tribunal orders TA(VAT) 96/2017 Dated 31.10.2023 set aside the assessment orders and directed the assessing authority to provide sufficient time to the taxpayer to raise the legal arguments and production of all documentary evidence. The Tribunal directed to re-do the assessment after hearing the party.

Assessing authority issued hearing notice, and case is adjourned from 15.05.2024 with a direction that in 45 days assessee should submit documents for 2010-11 and 2011-12 and again in 30 days dealer should submit the documents for 2012-13.

**2012-13**

Assessment for the year 2012-13 was completed with an additional demand of

Rs.17,93,520/- as per order no.32041516509/12-13 dt 22.03.2016. Against the demand dealer filed appeal before Deputy Commissioner (Appeal) who disposed the Appeal as dismissed vide order no. KVATA(ALPY) 201/16 dt 28.03.2017. Dealer preferred second appeal before Tribunal KTM and also approached High court for speedy disposal of stay petition before Tribunal. As per Judgment in WP(C) No.36255/2017 dt 13.11.2017 Hon'ble High court stayed the Revenue recovery proceedings against the Dealer. The case is still pending before Tribunal Kottayam as per TA No. 97/2017. Final hearing of the second appeal is posted on 04.10.2023.

The Hon'ble Tribunal , Kottayam as per the Tribunal orders TA(VAT) 97/2017 Dated 31.10.2023 set aside the assessment orders and directed the assessing authority to provide sufficient time to the taxpayer to raise the legal arguments and production of all documentary evidence. The Tribunal directed to re-do the assessment after hearing the party.

Assessing authority issued hearing notice, and case is adjourned from 15.05.2024 with a direction that in 45 days assessee should submit documents for 2010-11 and 2011-12 and again in 30 days dealer should submit the documents for 2012-13.

Para No.	Gist of the case	Present position
2.7.1 <b>(Bullet 5)</b>	<p>As per Rule 10(2)(a) of the KVAT Rules, 2005, in relation to works contract in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract, shall be arrived at after deducting labour and other charges specified thereunder from the total amount received for the execution of the works contract. However, if the taxable turnover so arrived at falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit, if any, shall be the taxable turnover in respect of such works contract. As per Explanation therein cost of goods means the price of goods together with all expenses incurred by the contractor in bringing the goods to the work site. Audit found that the cost of goods transferred to the work during 2011-12 and 2012-13 were Rs. 3.03 crore and Rs. 4.27 crore respectively. As such, the taxable turnover during the years should not be less than 3.03 crore and Rs. 4.27 crore. Against this the taxable turnover conceded were Rs. 2.37 crore and Rs. 3.31 crore respectively. This led to short levy of tax of Rs. 24.34 lakh.</p>	<p><b>Sri. John, Panackal Peter, Alappuzha, 2011-12, 2012-13 CTO(WC), Alappuzha</b></p> <p>The assessment for the year 2011-12 was completed with an additional demand of Rs.13,66,687/- as per order no.32041589365/2011-12 dt 23.06.2015. Against the order dealer filed appeal before Deputy Commissioner (Appeal), Kollam. As per Appellate order No.KVATA (Alpy) 355/15 &amp;326/15 dt 17.08.2016, the assessment has been modified on 14.11.2017 with a demand of Rs.10,99,259/- Dealer paid the amounts in 7 instalments. The details of collection for the said year is detailed below.</p>

Sl. No.	Chalan No. & Date	Amount
1	KL008993590201 718M Dt. 27.12.2017	200000
2	KL010281029201 718M Dt. 30.01.2018	200000
3	KL012254737201 718M Dt. 28.03.2018	200000
4	KL010962668201 718M Dt. 22.02.2018	200000
5	KL000992322201 819 Dt. 30.04.2018	100000

Government stated (July 2015) that assessments had been completed creating additional demand of Rs. 13.67 lakh and Rs. 12.47 lakh for 2011-12 and 2012-13 respectively. The assessee had remitted

(July 2015) an amount of Rs. 3.80 lakh for the year 2012-13 and balance amount was under revenue recovery. Further reports had not been received (January 2016).

6	KL002049341201 819M Dt. 20.05.2018	100000
7	KL004671430201 8-19M Dt. 04.08.2018	200930

Now there is no outstanding arrears. The assessment for the year **2012-13** was completed on 28.05.2015 with an additional demand of Rs.12,66,948/-as per order no.32041589365/2012-13 dt 28/05/2015. Against the order dealer filed appeal before Deputy Commissioner (A), Kollam who disposed the appeal with a direction to modify the order. In the light of the Appellate order No. KVATA (ALPY) 355/15 & 326/15 dt 17.08.2016 the assessment was modified with a demand of Rs.7,19,482/- as per order no 32041589365/2012-13 on 14.11.2017. Dealer paid the amount as per Chalan No. KL008993863201718M dt 20.12.2017 for Rs.7,19,182/- Now there is no outstanding arrears.

Para No.	Gist of the case	Present position
<p><b>2.7.2</b></p> <p><b>(Bullet 1.</b></p> <p><b>Sl.No.1)</b></p>	<p>M/s. A.B. Traders, Amaravila a dealer in cement, self assessed to tax a sales turnover of Rs. 20.46 crore during 2011-12, the purchase price of which was Rs. 21.16 crore. Though the goods were sold at a price lower than the purchase price, discount of Rs. 2.08 crore received subsequently was not reckoned as turnover and assessed to tax. This resulted in short payment of tax, cess and interest of Rs. 30.71 lakh.</p>	<p><b>M/s. AB Traders</b>  <b>2011-12, Special Circle, Tvpm</b></p> <p>The assessing authority issued notice u/s 25 to the dealer, the taxable turnover proposed was Rs.209 Lakhs. The assessee had received Rs.2,07,90,627/- from the suppliers by way of incentives, in which Rs.40,43,349/- towards price difference, Rs.95,30,865/- towards annual incentive, Rs.21,73,064/- towards additional incentive and Rs.50,43,349/- towards special discount. As per the books of accounts, out of the incentive and discounts received the assessee had passed on Rs.1,15,10,520/- to her customers by way of incentives and discounts. It is also ascertained that the assessee had not deducted the incentives and discounts received from the total purchase which remained unchanged. After examination of books of accounts and reply, balance taxable turnover fixed by the assessing authority was Rs.90.86 Lakhs.</p> <p>The Assessment was completed u/s.25 of the KVAT Act 2003 dtd. 2.05.2014 creating a demand of Rs. 11,47,195/- and Rs. 2,86,799/- as interest. The assessee had filed appeal and interlocutory stay petition before the Deputy Commissioner (Appeals), Thiruvananthapuram. As per order No. KVATA.106/14, dtd. 24.10.2014, the Deputy Commissioner (Appeals), Thiruvananthapuram granted stay for</p>

collection of the disputed tax and interest on the condition that the appellant remits 30% of the disputed amount and on furnishing adequate security for the balance amount before the assessing authority within 3 weeks from the date of receipt of the order. In response to the above the dealer has remitted Rs. 4,30,198/-, 30% of the disputed tax and interest vide chalan No.343 dtd. 2.01.2015 and furnished adequate security for the balance amount.

The dealer opted Amnesty Scheme 2020 and remitted full amount on 15/12/2020.

Para No.	Gist of the case	Present position
<b>2.7.2 (Bullet 1. Sl.No.2)</b>	<p>Sri.M.,Abubacker, a dealer in cement, self assessed to tax a sales turnover of Rs.9.03 crore during 2011-12 where the purchase cost of goods was Rs.9.38 crore. Though the assessee sold goods at a price lower than the purchase price, discount of Rs.91.39 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in short levy of tax, cess and interest of R.13.50 lakh.</p>	<p><b><u>Sri. M. Abubaker</u></b>  <b><u>2011-12,</u></b>  <b><u>Special Circle, Tvpm</u></b></p> <p>The assessment in respect of Shri.Abubaker.M for the year 2011-12 was completed as per Order No.32010957145/2011-12 dated 02.05.2014 creating a demand of Rs.6,92,501/. While completing the original assessment, the defect pointed out in the audit objection is also considered. The dealer has opted amnesty scheme 2020 and remitted the amount as per Chalan No.KL014435023202021E dated 16.12.2020.</p>

Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.3)	<b>Explanation VII under Section 2(lii) of the KVAT Act, 2003</b> stipulates that where a dealer sells any goods purchased by him at a <u>2009-10</u> price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the price, the amount so received shall be deemed to be turnover in respect of such goods.	<u>M/s. Star Traders, 2009-10 to 2011-12, Special Circle, Tvpm</u> M/s. Star Traders, Navaikulam, Thiruvananthapuram TIN 32011176925 was an assessee borne on the rolls of erstwhile Commercial Tax Officer, the Attingal, the dealer engaged in the business of local sales of cement. The assessment in respect of the dealer for the year 2009-10 was completed by the assessing authority as per order No.32011176925 on 13-01-2016. As per Commercial Taxes Department, explanation VII Section 2(iii) of KVAT Act, 2003 states that when a dealer sells seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking into account the amount of discount received by them subsequent to sale at a price lower than purchase price. any goods purchased and subsequently receives any amount so received shall be the tax in respect of their sales but deemed to be a turnover in respect of such goods. In view of this statutory provision the amount received as discount during the year is taxable and the assessing authority estimated sales turnover by adding the discount received to the tune of Rs. 49,51,256/- thereby completed the assessment and creating demand for Rs. 6,18,907/- as tax and Rs. 4,27,046/- as interest upto 01/2016. Subsequently Revenue recovery proceedings as per RR. No. 155/15-16 dated 28-03-2016 was initiated.
		Aggrieved by this order the dealer preferred appeal before the Deputy Commissioner (Appeals),

Thiruvananthapuram as per order No. K/351/16 dated 28-11-2016. The appellate authority dismissed the appeal filed by the dealer and observed that assessment completed by the assessing authority is legally sustainable and no irregularities were found.

Further the dealer preferred appeal before the Hon'ble Sales Tax Appellate Tribunal. The Hon'ble STAT in order No. TA(VAT) No. 61/2017 dated 06-07-2022 allowed the appeal filed by the dealer and directed to modify the assessment with the following observations "*verify the certificates and credit notes in original produced or to be produced by the appellant to prove the claim regarding application of fifth proviso to S.11(3) on the amounts received as discount and if found genuine, accept the self assessed returns submitted by the dealer for the year. In case the claim or any part thereof remains unproved, the assessing authority can resort to denial of proportionate input tax credit instead of adding amount to taxable turnover for assessment*".

On receipt of the Tribunal order, assessing authority had issued notice under section 25(1) of the KVAT Act, 2003 dated 20-10-2022 to following proposal;

Total sales turnover conceded for the year 2009-10 :Rs. 7,76,76,405.00

Add: discount received for the year 2009-10 :Rs. 49,51,256.00

Total sales turnover estimated :  
Rs. 8,26,27,661.00

Less: Turnover conceded :

Rs. 7,76,76,405.00  
 Balance assessable turnover :  
 Rs. 49,51,256.00  
 The final assessment for the years 2009-10 had been completed vide order dated 14/06/2023 with NIL demand.

**2010-11**

The assessment in respect of the dealer for the year 2010-11 was completed by the assessing authority as per order No.32011176925 on 04-05-2016. As per explanation VII to Section 2(iii) of KVAT Act, 2003 states that when a dealer sells any goods purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be deemed to be a turnover in respect of such goods. In view of this statutory provision the amount received as discount during the year is taxable and the assessing authority estimated sales turnover by adding the discount received to the tune of Rs. 74,60,346/- thereby completed the assessment creating demand for Rs. 9,32,544/- as tax and Rs. 4,45,561/- as interest upto 04/2016. Subsequently Revenue recovery proceedings as per RR. No. 39/2016-17 dated 30/07/2016 was initiated.

Aggrieved by this order the dealer preferred appeal before the Deputy Commissioner (Appeals), Thiruvananthapuram as per order No. K/533/16 dated 28-11-2016. The appellate authority dismissed the appeal filed by the dealer and observed that assessment completed by the assessing authority is legally sustainable and no irregularities

were found.

Further the dealer preferred appeal before the Hon'ble Sales Tax Appellate Tribunal. The Hon'ble STAT in order No. TA(VAT) No. 62/2017 dated 06-07-2022 allowed the appeal filed by the dealer and directed to modify the assessment with the following observations "*verify the certificates and credit notes in original produced or to be produced by the appellant to prove the claim regarding application of fifth proviso to S.11(3) on the amounts received as discount and if found genuine, accept the self assessed returns submitted by the dealer for the year. In case the claim or any part thereof remains unapproved, the assessing authority can resort to denial of proportionate input tax credit instead of adding amount to taxable turnover for assessment*".

On receipt of the Tribunal order, assessing authority had issued notice under section 25(1) of the KVAT Act, 2003 dated 20-10-2022 to following proposal;

Total sales turnover conceded for the year 2010-11 :Rs. 8,55,67,399.00

Add discount received for the year 2010-11 :Rs. 74,60,346.00

Total sales turnover estimated :Rs. 9,30,27,745.00

Less Turnover estimated :Rs. 8,55,67,399.00

Balance assessable turnover :Rs. 74,60,346.00

The final assessment for the year 2010-2011 had been completed vide proceeding 32011176925/2010-11 dated 14/06/2023 with NIL demand.

2011-12

During the year 2011-12 the assessing authority completed the assessment under section 25 of the KVAT Act, 2003, as per order No.32011176925/10-11 dated 22/04/2014 by creating demand to the tune of Rs. 14,63,907/- . Aggrieved by this order the assessee had filed appeal before the 1<sup>st</sup> appellate authority and the appellate authority in Order No.KVATA No.80/2014 dated 01/07/2015 was directed to modify the assessment order. Subsequently the assessing authority modified the assessment under section 25(1) of the Act as per order No. 32011176925/11-12 dated 13/01/2016. Against this, the assessee filed WP(C) No.12705/16 before the Hon'ble High Court of Kerala and the Court set aside the impugned order and to consider the matter afresh in the light of the order of Deputy Commissioner (Appeals) dated 01/07/2015.

Meanwhile the Deputy Commissioner Thiruvananthapuram pointed out in order No.B1/2694/17 dated 27/09/2017 that while completing the original assessment the assessing authority had failed to consider the material facts in right perspective with findings that non assessment of discount received in the case is prejudicial to the interest of revenue. By virtue of powers conferred under section 56 of the Act, the Deputy Commissioner, Thiruvananthapuram cancelled the original assessment order dated 22/04/2014 under the Suo-Moto Revision. In the light of the above order

the assessing authority had completed the assessment under section 25A of the KVAT Act. Against the Suo-Moto Revision the assessee had filed Revision Petition before the Commissioner of State Tax. The Hon'ble Commissioner dismissed the Revision petition vide reference cited 5<sup>th</sup> and upheld & confirmed the Suo Moto Revision issued by the Deputy Commissioner, Thiruvananthapuram.

Aggrieved by the order of the Commissioner the assessee filed WP(C) No.398/2020 before the Hon'ble High Court of Kerala. The Hon'ble High Court disposed the WP(C) dated 09/01/2020 ordered that in the interest of justice further coercive steps in pursuance to the impugned suo moto revision order dated 27/09/2017 of the Deputy Commissioner, Thiruvananthapuram and Revision order dated 06/11/2019 of the Commissioner, the orders shall be kept in abeyance and will be in force for a period of 2 months. Subsequently the dealer approached before the Hon'ble STAT, Tvpm praying for interim stay against the realization of the disputed tax and interest for the year 2011-12. The main dispute in this appeal is taxability of the discount received through cement trading for the year 2011-12 and the dealer *is relying upon the decision of the Hon'ble High Court in Memana Agencies, Cherthala Vs. Commercial Tax Officer, Cherthala and others dated 24/07/2020 in WP(C) No. 5467/17 prayed for an unconditional stay.*

The Hon'ble STAT disposed the interim stay application with the observation that

*"in the above decision the Division Bench of Hon'ble High Court after discussing various decision on the subject referred the matter to a Full Bench. Since the dispute regarding taxability of discount received is pending before the Full Bench of the Hon'ble High Court, we are inclined to grant interim stay on condition that the petitioner shall execute simple bond for the demanded amount within a period of 30 days from the date of receipt of this order".*

The assessing authority reported that the STAT, Thiruvananthapuram has directed in Order No. TA (VAT) No. 157/2020 dated 31.05.2023 to modify the original assessment for the year 2011-12 after verifying the certificates in original. The assessment for the year 2011-12 has been modified vide proceedings dated 21.09.23 by the State Tax Officer, Attingal with NIL demand.

Also reported that the audit objection for the years 2009-10, 2010-11 & 2011-12 is not sustainable. Copy of modified order is enclosed.

Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.4)	<p><b>Explanation VII under Section 2(lii) of the KVAT Act, 2003</b></p> <p>stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking in to account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>4. M/s. Arya Agencies</b> <b>2010-11 2011-12</b> <b>Special Circle, Tvpm</b></p> <p><b>2010-11</b></p> <p>The audit objection in this case is that the dealer had received an amount of Rs.34,60,422/- as discount and it has not been assessed and hence short levy of taxable amount at 12.5%.</p> <p>The assessing authority reported that relying on VAT Appellate Tribunal Order in TA (VAT) No.661/2013, the tax payer was given opportunity for personal hearing and modified the assessment Order. The discount received was assessed to tax as per explanation u/s 2(1ii) of KVAT Act,2003, where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be turnover in respect of such goods. In this case, the amount of Rs.34,60,440/- received on incentives and discount is the part of turnover and liability assessed. The dealer opted amnesty scheme 2022 and remitted. Amnesty details – Application Reference No. AM3208220005401 dt:23/08/2022</p> <p>Tax amount determined as per the provisions of the amnesty scheme: Rs.1,14,874</p> <p>Permitted to settle the amount, if paid in lump sum within thirty days : Rs.68,925/-</p> <p>As per e-Challan KL015387797202223E dt:06/09/2022 Rs.68,925/- was remitted.</p> <p>(Copies of eChallan and assessment order</p>

are attached.)

**Assessment Year : 2011-12**

The audit objection in this case was that the sale value of cement was less than the purchase value resulting in gross loss. The assessing authority reported that, the assessee received an amount of Rs.48,12,833/- by way of discount, incentives and commission and it forms part of turnover and is liable to be assessed. Based on the audit objection, the escaped assessment was completed and created additional demand. As per Order No.TA (VAT) Nos. 106/2020 and 107/2020 dated: 14.06.2023 of KVAT Appellate Tribunal, the Tribunal directed the assessing authority to verify whether the assessee claimed excess IPT than that available in 'Build from others' sales turnover in KVATIS, and also directed to verify the credit notes issued by the seller related to incentives/discount. The dealer submitted credit notes issued by the supplier of goods before the Assessing Authority. The documents produced by the dealer was verified by the Assessing Authority. Credit notes along with certificates for the receipt of incentives-discounts are seen merit full as per the direction of the Hon'ble Tribunal, Addl Bench, Thiruvananthapuram. Hence the entire turnover pointed out by AG is proved as exempted.

Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.5)	<p>Explanation VII under Section 2(lii) of the KVAT Act, 2003 stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax per order No.32030966575/2008-09 to the tune of 140.63 lakh along with interest by not taking in to account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>M/s. Kizhakkedathu Enterprises, 2008-09 to 2012-13, AIT &amp; STO, Ranni</b></p> <p><b>1) 2008-09</b></p> <p>Short levy reported in Audit objection was Rs.3,37,684/- (tax Rs.2,06,383/-, Cess Rs.2,064/-, interest Rs.1,29,237/-). In response to the audit objection raised towards reimbursement of the balance of the price, the assessment was completed for the year 2008-09 vide order No.32030966575/2008-09 dtd: 30.05.2014 demanding tax Rs.2,06,383/-, Cess Rs.2,064/-, interest Rs.1,29,237/- (Total 3,37,684/-) on Discount Received amounting to Rs.16,51,060/- as per trading account filed for the said year. The demand created covers all the short levy reported in audit objection. Original order No.32030966575/2008-09 dtd:30.05.2014 was modified as per the Appellate order No. KVATA(PTA) 213/14 dtd:28.11.2017 of the Assistant Commissioner (Appeals), Pathanamthitta as per order No.32030966575/2008-09 dtd:25.03.2019 creating a demand of Rs.2,70,937/- (tax Rs.1,16,248/- and interest Rs.1,54,689/-). The dealer remitted Rs.80,000/- (Tax remitted Rs.20,000/- vide No.KL007985526201920 dtd:14.10.2019, Rs.30,000/- vide chalan No.KL012362210201920 dtd:25.12.2019, Rs.30000/- vide chalan No.KL014749674201920 dtd:14.02.2020). The demand was under IAC RR. After restructuring the amount is advised for Revenue Recovery to the arrear recovery Officer. Further collection details will be intimated as and when it is collected.</p>

## 2) 2009-10

Short levy reported in Audit objection was Rs.4,34,897/- ( tax Rs.3,50,075/-, Cess Rs.3,500/-, interest Rs.81,322/-). In response to the audit objection raised assessment was completed for the year 2009-10 vide order No.32030966575/2009-10 dtd:07.12.2012 demanding tax Rs.3,50,075/-, Cess Rs.3,500/-, interest Rs.1,13,114/- (Total 4,66,719) on Discount Received amounting to Rs.28,00,603/- as per trading account filed for the year. The demand created covers all the short levy reported in audit objection. To get interim stay from Deputy Commissioner (Appeal)-II, Kollam the dealer had remitted Tax Rs.1,17,858/-, Cess Rs.8,605/- interest Rs.54,215/- vide challan No.S-173 dated 16/01/2014. 2)32030966575/2009-10. As per the direction of the Tribunal (Order No.TA(VAT)NO.146/2016, 147/2016, 45/2017 & 46/2017 dtd:30.08.2022) fresh assessment order issued vide order No.32030966575/2009-10 dtd:19.12.2022 demanding tax Rs.55,862/- and interest Rs.85,468/- . The amount is intimated to the arrear recovery officer. Further collection details will be intimated as and when it is collected.

## 2010-11

Short levy reported in Audit objection was Rs.6,39,933/- ( tax Rs.6,33,589/-, Cess Rs.6,344/-). In response to the audit objection raised assessment was completed for the year 2010-11 vide order No.32030966575/2010-11 dtd:10.06.2013 demanding tax Rs.6,11,098/-, Cess Rs.6,111/-, interest Rs.1,66,646/- (Total 7,83,855) , later the original order was rectified as per order

No.32030966575/2010-11 dtd: 22.06.2016 additionally demanding tax Rs.22,725/-, interest Rs.14,090/- (Total 36,815). Created a total demand of Rs.8,20,670/- (tax Rs.6,33,823/-, Cess Rs.6,111/-, interest Rs.1,80,736/-) on Discount and price difference Received amounting to Rs.50,68,787/- as per trading account filed for the year. The demand created covers all the short levy reported in audit objection. The dealer has remitted Tax Rs.2,05,736/-, interest Rs.64,135/- vide challan No.S-55 dated: 30.11.2013, tax Rs.6,818/-,interest Rs.4,227/- vide challan No.97 dated: 10.08.2016, tax Rs.15,907/- vide challan No.3234714201819 dated: 29.06.2018. As per the direction of the Tribunal (Order No.TA(VAT)NO.146/2016, 147/2016, 45/2017 & 46/2017 dtd:30.08.2022) fresh assessment order issued vide order no.32030966575/2010-11 dtd:28.12.2022 demanding tax Rs.32,976/- and interest Rs.86,841/- The modified demand is intimated to the arrear recovery officer. Modified demand as per order no.32030966575/2010-11 dtd:28.12.2022 is only intimated to the arrear recovery.

### 2011-12

Short levy reported in Audit objection was Rs.11,39,880/- ( tax Rs.9,40,553/-, Cess Rs.9,405/-, interest Rs.1,89,922/-). In response to the audit objection raised assessment was completed for the year 2011-12 vide order No.32030966575/2011-12 dtd:25.03.2014 demanding tax Rs.9,40,553/-, Cess Rs.9,406/-, interest Rs.2,27,990/- (Total 11,77,949) on Discount Received amounting to Rs.75,24,422/- as per trading account filed for the year. The demand created covers all

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the short levy reported in audit objection. The dealer has remitted tax Rs.3,32,486/-, interest Rs.79,797/- vide chalan No.232/17.07.2014. As per the direction of the Tribunal (Order vide No.TA(VAT)NO.146/2016, 147/2016, 45/2017 & 46/2017 dtd:30.08.2022) fresh assessment order issued vide order no.32030966575/2011-12 dtd:07.01.2023 demanding tax Rs.1,24,860/- and interest Rs.1,71,043/-. The amount is advised for Revenue Recovery to the arrear recovery Officer. Aggrieved by the order the dealer filed writ petition (WPC No.16371/2023) before the Hon'ble High Court of Kerala and the writ petition still pending for further order.

### 2012-13

Short levy reported in Audit objection was Rs.6,61,279/-( tax Rs.5,00,969/-, interest Rs.1,60,310/-). In response to the audit objection raised assessment was completed for the year 2012-13 vide order No.32030966575/2012-13 dtd:26.03.2015 demanding Rs.6,11,182/- (tax Rs.5,00969/-, interest Rs.1,10,213/-). [Actual interest due was only 22% instead of 32% pointed out in the audit objection as on 28.02.2015] on Discount and incentive received amounting to Rs.37,08,963/- as per trading account filed for the year. Interest reported in audit objection is excess. The demand created covers all the short levy reported in audit objection except in the case of interest as there was certain error in calculating interest in the audit objection. Aggrieved by the order, the dealer preferred appeal before the Assistant Commissioner (Appeals), SGST department, Pathanamthitta. The appeal was dismissed vide order KVATA(PTA) 115/15

dtd:27.06.2019. The dealer filed second appeal before the hon'ble Tribunal. The hon'ble Tribunal granted interim stay vide order No. TA(VAT) No.35/2020 dtd:14.12.2020. To full fill stay condition, the dealer remitted tax Rs.1,50,300/-, interest Rs.33,100/- vide chalan No.S-66/29/05/2015 and executed a security bond for the balance demand. As per Tribunal order No.35/220 dtd:29.12.2023 of the Hon'ble STAT,Addl. Bench, Thiruvananthapuram the assessment order has been modified by this office. Verified the documents and observed that the assessee filed declaration to prove the discount received during the year 2012-13 of which an amount of Rs.1,92,032/- is seen unavailable for IPT claim and hence disallowed to the extend of Rs.27,845/- in this behalf. As per modified order No.320309566757/2012-13 dtd:11.03.2024 there is no dues outstanding against the dealer related to the assessment for the year 2012-13.

Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.6 )	<p><b>Explanation VII under Section 2(lii) of the KVAT Act, 2003 stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</b></p> <p>Test check of the records of the KVAT Act 2003 on the ground that the Commercial Taxes Department, sale price conceded is lesser than that Government of Kerala revealed that of the purchase price. Aggrieved by seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking in to account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>M/s. Krishna Hardwares 2009-10 to 2011-12, Vythiri</b></p> <p>The original assessment for the year 2009-10, 2010-11 &amp; 11-12 in respect of M/s. Krishna Hardwares, Kalpetta was completed on 05-02-2016 u/s. 25(1) of the KVAT Act 2003. The assessing authority had added discount received by the dealer to the total and taxable turnover by applying explanation VII to section 2 (Iii) of the KVAT Act 2003. The Deputy Commissioner (Appeals), Kozhikode, perused the records and the contentions raised by the dealer and directed to modify the assessment as per order No. VATA – 490/16, 1220/15 &amp; 1221/15 dt. 27-06-2016 with directions to the assessing authority to modify the assessment order in accordance with the directions contained in the Hon'ble Tribunal order No. TA (VAT) 718/2013 by adopting the purchase cost of the goods meant for sale. From the above, there is no scope for happening short levy of tax in this case and this case is not sustainable. Hence the audit objection may kindly be dropped.</p>

Para No.	Gist of the case	Present position
<b>2.7.2</b> <b>(Bullet 1.</b> <b>Sl.No.7)</b>	<p>Explanation VII under Section 2(lii) of the KVAT Act, 2003 stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking into account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>M/s.Akhil Ansu Agencies</b>  <b>2011-12,CTO,Pala</b></p> <p>The assessment in respect of M/s.Akhil Ansu Agencies,Kidangore for the year 2011-12 was completed under section 21 of the KVAT Act, 2003 as per order no. 32050948858/11-12 dated. 25.08.2015, creating additional demand of Rs. 5,36,996/- towards tax and Rs. 2,20,168/- towards interest and Cess Rs.5370/- (Total Rs. 762534/-). The assessee opted for Amnesty Scheme 2020 and settled the arrear as per vide Chalan No. KL015270936202021E dated. 29/12/2020.</p>

Para No.	Gist of the case	Present position
2.7.2 <b>(Bullet 2)</b>	<p>M/s Ramesh Iron and Steel Company India Private Limited was a dealer in iron &amp; steel and its products. During 2012-13, the dealer self assessed tax on a sales turnover of 109.72 crore while its purchase cost was 111.22 crore. Though the assessee sold goods at a price lower than the purchase price discount of 240.19 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in the short payment of tax and interest of 10.73 lakh.</p> <p>Government stated (July 2015) that assessment had been completed (May 2015) creating additional demand of 14.05 lakh. The assessee paid 4.22 lakh and the balance amount was under collection. Though the details of action taken to collect the amount had been called for from Government in October 2015, their reply was still awaited (January 2016).</p>	<p><b><u>M/s. Ramesh Iron and Steel Company India Pvt. Ltd.</u></b>  <b><u>2012-13, Special Circle,</u></b>  <b><u>Palakkad</u></b></p> <p>In the light of audit objection assessment was completed u/s. 25 on 12.05.2015 creating an additional demand of Rs. 14,05,007/- and collected an amount of Rs. 4,21,542/- vide challan No. 846 dated 03.06.2015. Recovery steps had been taken against the assessee to collect the balance amount with interest. Meanwhile the assessee preferred appeal to Commissioner(Appeals), before Kottayam. The Deputy appellate authority granted conditional stay and the assessee complied the direction by remitting Rs. 2,80,481/- vide challan No. 560 dated 30.07.2015 and furnishing security bond for balance amount.</p> <p>As per appellate order KVAT No. 1258/2015 dated 07.06.2016 the Deputy Commissioner(Appeals), Ernakulam, remanded the assessment for fresh disposal with direction to verify the documents regarding transport goods for job works and returns. Accordingly the fresh assessment was completed vide order dated 04.10.2016 by fixing a total turnover of Rs. 1,10,97,60,933/- . While completing the fresh assessment order excess amount at credit of the dealer was not adjusted by oversight. Hence it is rectified u/s. 66(1) of the KVAT Act vide order dated 26.04.2018. The balance amount to be payable by the assessee was Rs. 8,23,235/- and this amount has been adjusted from the excess amount paid by the assessee during the year 2013-14. Hence no dues are pending for collection in this case.</p>

Para No.	Gist of the case	Present position
2.7.3	<p>Under section 42(2) of KVAT Act, 2003 where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file along with the audit certificate, revised annual return rectifying the mistake or omission and if the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon and twice the interest as penal interest. Under section 91 of the Act, when payment towards tax or any other amount due is made, it shall be appropriated first towards interest accrued, the balance available shall be appropriated towards principal outstanding.</p> <p>Sree Vinayaka Motors, Kottarakkara, a dealer in motor vehicles submitted (May 2012) annual return for 2011-12, after remitting tax of Rs. 6.20 crore. Subsequently, the assessee revised the annual return with total tax liability of Rs. 7.20 crore. Audit found that though the assessee had paid differential tax and cess payable as per the revised annual return, they had not remitted the interest and penal interest due thereon. Moreover, payment made by the assessee amounting to rupees one crore was not appropriated first towards interest. Non levy of interest and non appropriation of payment first towards interest resulted in short payment of tax, interest and penal interest of Rs. 33.74 lakh.</p>	<p><b><u>M/s. Sree Vinayaka Motors 2011-12, Special Circle, Kottarakkara</u></b></p> <p>Based on the audit objection, the assessment in respect of the above dealer for the year 11-12 was completed vide order dated 23.12.2014 creating a demand of Rs. 13,74,229/- . Since the penal interest portion has been omitted from the calculation portion, the assessing authority demanded penal interest Rs. 21,19,420/- vide order dated 17.11.2015. The amount dues are Rs. 10,57,099/- as tax, Rs. 6,97,686/- as interest and Rs. 21,19,420/- as penal interest thereby a total of Rs. 38,74,205/- . The dealer opted to pay the arrears under Amnesty Scheme 2020, ie., by paying Rs. 4,22,840/- being 40% of the tax due in lump sum waiving interest and penal interest. The dealer had remitted entire dues Rs. 1,41,33,593/- from 2011-12 to 2016-17 in a single challan No. KL004732875202021E dated 14.07.2020 which is inclusive of the above amount of Rs. 4,22,840/-.</p>

Para No.	Gist of the case	Present position
2.7.4	<p>M/s Sivasakthi Engineering and Fabrications, Walayar, was a manufacturer of cement products. The sales turnover disclosed by the assessee as per the annual returns and transportation charges received by the assessee as per P&amp;L account during the years 2008-09, 2009-10, 2010-11 and 2012-13</p> <p>Audit found that the assessee had entered into agreement with KSEB for supply of electric poles to various electrical circles during the above period. In the agreement with KSEB, it was stipulated that contract was for manufacture and delivery of poles within or outside the concerned electrical circles. As such, the transportation charges received would form part of the turnover. However, the assessee did not assess to tax the above turnover. This resulted in short payment of tax and interest of 17.51 lakh.</p>	<p><b><u>M/s. Sivasakthi Engineering and Fabrications,</u></b>  <b><u>2008-09 to 2012-13,</u></b>  <b><u>Special Circle, Palakkad</u></b></p> <p>Assessment completed for the year 2008-09 to 2012-13. For the Year 2008-09, the assessment based on the audit objection completed on 05/01/2016 and created a demand of Rs.3,76,178/- Against this order dealer filed petition before Hon'ble High court of Kerala and the Hon'ble court vide judgement in WP(C) 3116/2016 dated 11/03/2016 quashed the assessment order.</p> <ul style="list-style-type: none"> <li>• 2009-10 and 2010-11 dealer paid entire tax due of Rs.5,92,556/-vide chalan no 727 dt.15/09/2015.</li> <li>• 2011-12 dealer paid entire tax due Rs.2,65,882/- vide Chalan no 78 dt 19/05/2016 and balance arrear settled vide amnesty scheme 2021.</li> <li>• 2012-13 the entire tax due paid by the dealer. Rs.2,81,514/-paid vide chalan no 1277 dt. 04/04/2015, Rs.6,56,866/- paid vide chalan 532 dt 09/11/2015 and Rs.59,120/- paid vide chalan no 398 dt.28/11/2015.</li> </ul>

Para No.	Gist of the case	Present position
2.8 <b>(Bullet 1)</b>	<p>M/s. Joy Alukkas India Pvt. Ltd., Ernakulam a multi-national company dealing with gold jewellery imported more than 50 per cent of their stock from outside the State or country during 2008-09 and 2009-10. Though their sales turnover for 2008-09 and 2009-10 amounting to Rs. 546.68 crore and 568.02 crore respectively, exceeds rupees five crore per annum and more than 75 per cent of their sales are retail business, they had not paid surcharge at the rate of ten per cent on the output tax payable. This resulted in short payment of surcharge and interest of Rs. 4.30 crore.</p>	<p><b><u>M/s. Joy Alukkas India Pvt. Ltd., 2008-09 2009-10, Special Circle I, Ernakulam</u></b></p> <p>Based on the Audit objection the assessment has been completed in both years 2008-09 &amp; 2009-10 as per the order dtd. 07-09-2016 creating additional demand of Rs. 4,19,88,342/- and Rs. 3,53,73,577/- respectively, including interest were recommended for Revenue Recovery. The Hon'ble High Court of Kerala stayed the recovery proceedings as per order in WP (C) No. 504/17 dtd. 03.04.2017 and the stay was extended until further orders vide order dtd. 02.08.2017.</p>

Para No.	Gist of the case	Present position
2.8 <b>(Bullet 2)</b> (1)	M/s. Pothys Garments, Thiruvananthapuram, an assessee in garments had more than 75 per cent of sales through retail business and more than 50 per cent of their stocks were imported from outside the State/country during 2012-13 and 2013-14. Though their total turnover exceeded rupees five crore per annum, the output tax of Rs.4.80 crore and Rs.4.98 crore respectively were not increased by a surcharge at 10 per cent as per the provisions of KST Act,1957. This resulted in short payment of surcharge and interest of Rs.1.18 crore.	<p><b>M/s. Pothys Garments, 2012-13 2013-14, Special Circle, Tvpm</b></p> <p>As per section 3(1A) of the Kerala Surcharge Act,1957,only National or Multi-national companies functioning in State as retail chains are liable for levy of surcharge. This explanation clearly shows the fact that only retail outlets of Big Retail Chains managed by a Company are leviable to surcharge under Act and not partnership firms managed independently. Pothys Garments is a partnership firm constituted in the year 2009 and commenced business activity in Thiruvananthapuram in the year 2011 and without qualify as a National or Multinational Company leviable to surcharge under section 3(1A) of Surcharge Act. Since the dealer is a separate legal entity constituted as a partnership firm and not working as retail chain of a national company, the audit objection may be dropped.</p>

Para No.	Gist of the case	Present position
2.8 (Bullet 2)(2)	<p>M/s. Pothys Textiles, Thiruvananthapuram, an assessee in textile business had more than 75 per cent of sales through retail business and more than 50 per cent of their stocks were imported from outside the State/country during 2012-13 and 2013-14. Though their total turnover exceeded rupees five crore per annum, the output respectively were not increased by a surcharge at 10 per cent as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of Rs.5.86 lakh.</p>	<p><b><u>M/s. Pothys Textiles, 2012-13 2013-14, Special Circle, Tvpn</u></b></p> <p>As per Sec 3(1A) of the Kerala Surcharge Act 1967, only national or multinational companies functioning in the state are liable to surcharge. This clearly shows the fact that only retail outlets of big retail chains managed by a company are liable to surcharge under the Act and not partnership firms managed independently. Pothys Textiles is a partnership firm constituted in the year 2009 and commenced business activity in, Tvpn in the year 2011 and without qualify as a national or multinational company liable to surcharge under Sec 3(1A) of surcharge Act. Since the dealer is a separate legal entity constituted as a partnership firm and not working as a retail chain of a national company, the audit objection may be dropped.</p>

Para No.	Gist of the case	Present position
2.8 <b>(Bullet 3)</b> (1)	<p>M/s. Lulu International Shopping Mall Private Ltd. Was a retail venture by the Lulu Group. Audit found that during 2012-13, more than 75 per cent of sales of the M/s.Lulu International shopping Mall assessee were through retail Private Ltd was retail venture by the Lulu business and more than 50 per cent Group. Audit found that during 2012-13, of their stocks were imported from more than 75% of sales of the assessee was outside the State/country. Though through retail business and more than 50% their total turnover exceeded of these sales were imported from outside rupees 5 crore per annum, the the state/country. Though their total output tax of Rs. 195.63 lakh was Turnover exceeds Rs.5 Crores per annum, not increased by a surcharge at 10 the OPT Rs. 195.63 Lakhs was not per cent as per the provisions of increased by a surcharge at 10% as per the KST Act, 1957. This resulted in provisions of KST Act 1957. This resulted short payment of surcharge and in short Payment of 23.13 lakhs. interest of Rs. 23.13 lakh.</p>	<p><b><u>M/s. Lulu International Shopping Mall Pvt. Ltd,2012-13,Special Circle II, Ernakulam</u></b></p> <p>The issue involved in this case is non-payment of surcharge under 3(1A) of Kerala Surcharge on Taxes Act 1957.</p> <p>The Act is one providing for levy of surcharges on certain taxes. Sub-section (1A) of Section 3 of the Act provides that the tax payable under sub-sections (1) and (2) of Section 6 of the Kerala Value Added Tax Act shall, in the case of national or multinational companies functioning in the State as retail chains or direct marketing chains, who import not less than 50 percent of their stock from outside the State or country, and not less than 75 percent of whose sales are retail business, and whose turnover exceeds Rs.5 crores per annum, be increased by a surcharge at the rate of 10 percent. Explanation I to the said provision clarifies that retail chains and direct marketing chains mentioned therein mean retail sales outlets or part of retail sales</p>

outlets of companies which share a registered business name or commercial name by way of franchise agreements or otherwise with standardized sales, purchase and promotional activities. Explanation II to the said provision clarifies that retail business mentioned therein shall mean, sales to persons other than registered dealers.

The Counsel held that :

*The scope and amplitude of Articles 301 and 304 of the Constitution have been dealt with in finer details by a Nine Judge Bench of the Apex Court recently in Jindal Stainless Steel Ltd. and another v. State of Haryana and others [2016 (11) Scale 1]. The Apex Court referred to and considered in the said case almost every judgment dealing with the said Articles rendered by the court till then and disapproved the ratio of some of the judgments. Paragraph 72 of the majority judgment in the Rajasthan [AIR 1997 SC 2609] , the Apex Court held that prescription of different rates of tax for interstate and intrastate sales of cement on the basis that the same would lead to increase in sales and consequent increase in the revenue earnings of the State, cannot be accepted as sufficient justification for making such a differentiation. Even otherwise, it is trite that a classification can only be based on an intelligible differentia that bears a rational nexus with the object sought to be achieved by the legislation. Such classification shall be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. It must be based on some qualities or characteristics which are to be found in all the persons put together and not in others*

who are left out and those qualities or characteristics must have a reasonable relation to the object of the legislation. Article 14 forbids class discrimination in the matter of imposing liabilities upon persons arbitrarily selected out of a large number of persons similarly placed. In the instant case, as noted, the object sought to be achieved is augmentation of revenue. If the object of the legislation is augmentation of revenue, according to me, a classification of the dealers based on the criterion viz., whether they import goods into the State is *per se* unjustifiable and unintelligible. I have, therefore, no hesitation to hold that the impugned levy is discriminatory and violative of Article 301 read with clause (a) of Article 304 as also Article 14 of the Constitution.

The State filed appeal against the said judgment. In Writ Appeal No.2245 of 2018 the Hon'ble High Court heard and disposed the Writ Appeal along with W.A.No.1923/2018 and connected case held as follows:

*The whole doctrine of classification is based upon the distinction and on a well known fact that the circumstances which govern one set of the persons and objects may not necessarily be the same governing the other set of persons. The expression discrimination has not been defined in the Constitution though the same has fallen for interpretation by the Supreme Court in Kathi Rani Rawat vs. State of Saurashtra AIR 1952 SC 123 where the 7-Judge Bench held that all the legislative differentiation is not necessarily discriminatory. The 9 (nine) Judges Bench of Supreme Court has clearly*

*held that if the levy is for a limited period, it cannot be said to be discriminatory, if otherwise would be act of hostile discrimination as has been decided by the learned single Judge. We do not find any illegality or perversity in the order of the learned single Judge to form a different opinion than the one held.*

The assessment as per the audit objections had been completed vide order dated 06.12.2014 discloses total tax due Rs. 1,95,98,054/- demanding surcharge @10% of Rs. 19,59,805/- and interest Rs.3,91,961/- Remitted Rs.19,59,805/- vide Chl no.559/05.01.2015. The dealer preferred appeal before DC(A) Ernakulam but dismissed vide KVATA 213/2015 dated 29.02.2016. The dealer filed appeal before Honable Tribunal and vide TA VAT No,154/2016 dated 28/09/2017 the case is partly allowed and order issued to remanded to fresh assessment with remarks as follows.:-

In order to apply provisions of Section 3(1)A of the KST Act it must be proved that the appellant is a national or multinational company functioning in the State as retail chains or direct marketing chains who import not less than 50% of their stock from outside state or country and not less than 75 % of whose sales are retail business. The appellant has never admitted that it is a national or multi national company having retail outlets in the state.

Considering the entire facts and circumstances we find that the matter can be remanded to the assessing authority to verify as to whether there are any materials to suggest that the appellant is a company

within the purview of Section 3(1)A of the KST ACT and to decide the matter after giving an opportunity to the appellant to place its defects.

Moreover the dealer had paid the entire surcharge with interest. Hence the audit objection in this regard may dropped.

Para No.	Gist of the case	Present position
2.8 (Bullet 3) (2)	<p>M/s. Fab India Overseas (P) Ltd., Kochi, a shopping mall was liable to pay surcharge under Section 3(1A) since their entire purchase were from outside the State and entire sales were to customers within the State. Audit found that during 2012-13 surcharge of Rs. 14.35 lakh was due from the assessee on the output tax of Rs. 143.52 lakh disclosed by them. But the assessee paid Rs. 2.29 lakh only towards surcharge. Short remittance of surcharge and interest worked to Rs. 14.23 lakh.</p> <p>Government stated (July 2015) that assessment had been completed (February 2015) creating additional demand of Rs. 17.65 lakh. The assessee remitted (March 2015) an amount of Rs. 7.50 lakh as per the conditional stay granted by Hon'ble High Court of Kerala in writ petition filed by the assessee. Further report had not been received (January 2016).</p>	<p><u>M/s. Fab India Overseas (P) Ltd., 2012-13, Special Circle II, Ernakulam</u></p> <p><b>The issue involved in this case is non-payment of surcharge under 3(1A) of Kerala Surcharge on Taxes Act 1957.</b></p> <p><i>"The Act is one providing for levy of surcharges on certain taxes. Sub-section (1A) of Section 3 of the Act provides that the tax payable under sub-sections (1) and (2) of Section 6 of the Kerala Value Added Tax Act shall, in the case of national or multinational companies functioning in the State as retail chains or direct marketing chains, who import not less than 50 percent of their stock from outside the State or country, and not less than 75 percent of whose sales are retail business, and whose turnover exceeds Rs.5 crores per annum, be increased by a surcharge at the rate of 10 percent. Explanation I to the said provision clarifies that retail chains and direct marketing chains mentioned therein mean retail sales outlets or part of retail sales outlets of companies which share a registered business name or commercial name by way of franchise agreements or otherwise with standardized sales, purchase and promotional activities. Explanation II to the said provision clarifies that retail business mentioned therein shall mean, sales to persons other than registered dealers."</i></p> <p>Fab India Overseas Limited Vs. The Assistant Commissioner (Assessment) in</p>

W.P.(C) No.22192/2012 the Hon'ble High Court allowing the Writ Petition declared that **Sub (1A) of Section 3 of the Surcharge Act 1957 is discriminating and violating of Article 301 and 14 of the Constitution.** The Counsel held that :

*The scope and amplitude of Articles 301 and 304 of the Constitution have been dealt with in finer details by a Nine Judge Bench of the Apex Court recently in *Jindal Stainless Steel Ltd. and another v. State of Haryana and others* [2016 (11) Scale 1]. The Apex Court referred to and considered in the said case almost every judgment dealing with the said Articles rendered by the court till then and disapproved the ratio of some of the judgments. Paragraph 72 of the majority judgment in the Rajasthan [AIR 1997 SC 2609] , the Apex Court held that prescription of different rates of tax for interstate and intrastate sales of cement on the basis that the same would lead to increase in sales and consequent increase in the revenue earnings of the State, cannot be accepted as sufficient justification for making such a differentiation. Even otherwise, it is trite that a classification can only be based on an intelligible differentia that bears a rational nexus with the object sought to be achieved by the legislation. Such classification shall be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. It must be based on some qualities or characteristics which are to be found in all the persons put together and not in others who are left out and those qualities or characteristics must have a reasonable relation to the object of the legislation. Article 14 forbids class discrimination in the matter of imposing*

liabilities upon persons arbitrarily selected out of a large number of persons similarly placed. In the instant case, as noted, the object sought to be achieved is augmentation of revenue. If the object of the legislation is augmentation of revenue, according to me, a classification of the dealers based on the criterion viz., whether they import goods into the State is per se unjustifiable and unintelligible. I have, therefore, no hesitation to hold that the impugned levy is discriminatory and violative of Article 301 read with clause (a) of Article 304 as also Article 14 of the Constitution.

The State filed appeal against the said judgment. In Writ Appeal No.2245 of 2018 the Hon'ble High Court heard and disposed the Writ Appeal along with W.A.No.1923/2018 and connected case held as follows:

The whole doctrine of classification is based upon the distinction and on a well known fact that the circumstances which govern one set of the persons and objects may not necessarily be the same governing the other set of persons. The expression discrimination has not been defined in the Constitution though the same has fallen for interpretation by the Supreme Court in Kathi Raning Rawat vs. State of Saurashtra AIR 1952 SC 123 where the 7-Judge Bench held that all the legislative differentiation is not necessarily discriminatory. The 9 (nine) Judges Bench of Supreme Court has clearly held that if the levy is for a limited period, it cannot be said to be discriminatory, if otherwise would be act of hostile discrimination as has been decided by the learned single Judge. We do not find any

*illegality or perversity in the order of the learned single Judge to form a different opinion than the one held.*

The assessment for the year 2012-13 was completed as per order no.32071831874/2012-13 dated 07.02.2015 and the same was challenged by the assessee in the High Court Of Kerala. Subsequently order was given by the High Court of Kerala in favour of the assessee as judgment is WP(C) 14880 of 2015 dated 06.06.2018 of single bench of Apex Court. Against this order, appeal was filed by the department and the same was dismissed as per judgment in W.A No.1923 of 2018 dated 19.02.2020 of the Division bench of Hon'ble High Court of Kerala following this assessment for the year 2012-13 has modified and the amount of surcharge Rs.7,50,000/- remitted by the dealer has been refunded through DDO code -11027740016. Hence there is no short levy and escapement of assessment in this case. The copy of the assessment order and refund order is submitted herewith for your perusal. The audit objection may kindly be dropped.

Para No.	Gist of the case	Present position
2.8 <b>(Bullet 4)</b>	<p>M/s. Monavie India Enterprises Private Limited, Palarivattom, was a multinational company involved in direct marketing of health drinks. As per annual returns for 2011-12 and 2012-13 filed by the assessee, the entire products for sale were stock transferred from outside the state and sales turnover for the years were Rs. 6.70 crore and Rs. 5.40 crore respectively. Though their entire sales were through direct marketing / retail chain the output tax of Rs. 83.70 lakh and Rs. 69.39 lakh were not increased by a surcharge at 10 per cent as per the provisions of the KST Act, 1957. This resulted in short payment of surcharge and interest of Rs. 18.31 lakh.</p>	<p><b>M/s. Moavie India Enterprises Pvt. Ltd.</b>  <b>2011-12, 2012-13</b>  <b>II Circle, Kalamassery</b></p> <p><b>2011-12:</b> Assessment completed and first appeal filed by the assessee was allowed. Against the first appellate order, state filed TA VAT No. 16/2015 and the case was remitted. But the matter has been examined on the bases of the findings of the Hon'ble High Court of Kerala in the Judgment in WA No. 1923/2018 dated 19.02.2020 of Division Bench, that imposing surcharge is discriminatory. The Hon'ble High Court of Kerala, heard and disposed as "<i>The whole doctrine of classification is based upon the distinction and on a well known fact that the circumstances which governs one set of the persons and objects may not necessarily be the same governing the other set of person.</i> <i>The expression discrimination has not been defined in the Constitution though the same has fallen for interpretation by the Supreme Court in Kathi Raning Rawat Vs. State of Saurashtra AIR 1952 SC 123 where the seven judge bench held that all the legislative differentiation is not necessarily discriminatory. The 9 (Nine) Judges Bench of Supreme Court has clearly held that is the levy is for a limited period, it cannot be said to be discriminatory, if otherwise would be</i></p>

*act of hostile discrimination as has been decided by the learned Single Judge. We do not find any illegality or perversity in the order of the learned single judge to form a different opinion than the one held." In the light of judgment surcharge is not assessable. Hence the audit objection may be dropped.*

**2012-13:** The liability to pay surcharge u/s 3(1) of Surcharge Act, 1957 arises only if all the conditions specified in the charging section are fulfilled simultaneously, and those are: that the assessee

1. is a national or multinational company.
2. Functioning in the state as retail chain or direct marketing chains.
3. Imports not less than 50 per cent of stock from outside the state of the country.
4. Not less than 75 per cent sales are retail business
5. And whose total turnover exceeds 5 crore rupees per annum.
6. 'Retail Business' means sales to persons other registered dealers.

But as per the Annual Return statement, 75% sales effected to registered dealer (whole sale dealers). Hence the condition that not less than 75% sales are retail sales, are not fulfilled in this case in order to levy surcharge. Hence the audit objection may be dropped.



Para No.	Gist of the case	Present position																								
2.9 <b>(Bullet 2)</b>	<p>The audit objection in this case is that M/s Sreehari Metals, Office of the Commercial Tax Officer, First Circle, Thrissur was found that the turnover of misclassification as dealer in rubber products and Rs.1,91,23,656/-.</p> <p>During 2011 – misclassification worked out for a turnover of 12, the assessee self assessed Rs.1,34,03,020/- and the original assessment was to tax the turnover of completed with a view of the misclassification of lubricants for Rs. 166.01 item lubricants as friendly recycled goods / base lakh assessable at the rate of oil on a turn over of Rs. 1,34,03,020/- vide order 12.5 per cent at a lower rate no. 32080591686/2011-12 dtd 26.12.2013.</p> <p>of four per cent. Application of incorrect rate of tax resulted in short payment of tax, cess and interest of Rs. 16.82 lakh.</p>	<p><b>M/s. Sreehari Metals,2011-12, first Circle, Thrissur</b></p> <p>During the local audit the Accountant general found that the turnover of misclassification as dealer in rubber products and Rs.1,91,23,656/-.</p> <p>But on the basis of filing appeal against the original order the Appellate Authority set aside the order, KVATA 15/2014 dtd 30.01.2014 of AC (Appeal) Thrissur, with a direction to verify the connected invoices and recompute the tax of base oil @ 4% in the light of clarification order issued by the Commissioner of Commercial Taxes vide order no. C3/33126/10/CT dtd 20.09.2011. In accordance with the Appellate order all sales bills and purchase bills of the dealer were verified and came at a view that there are no net effect on difference between the sales turnover as per return and invoices @ 4% and 12%.</p> <p>The result of verification of sale bills and purchase bills are as follows</p> <table border="1"> <thead> <tr> <th>Consolidated dated</th> <th>As Return</th> <th>per Value</th> <th>Actual- per Bills</th> <th>As Value</th> <th>Difference Tax</th> </tr> <tr> <th>Sal es</th> <th>Rate</th> <th></th> <th></th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>Local sale</td> <td>4 8013 .1</td> <td>3757 312 0.52</td> <td>150 4197. 59</td> <td>4681 643.6 1</td> <td>2657 84.49 -</td> </tr> <tr> <td>Interest state</td> <td>4 3631 .5</td> <td>3057 474. 63</td> <td>611 7290. 58</td> <td>3039 46.43 17634 0.92</td> <td>6079 - 3528 .2</td> </tr> </tbody> </table>	Consolidated dated	As Return	per Value	Actual- per Bills	As Value	Difference Tax	Sal es	Rate					Local sale	4 8013 .1	3757 312 0.52	150 4197. 59	4681 643.6 1	2657 84.49 -	Interest state	4 3631 .5	3057 474. 63	611 7290. 58	3039 46.43 17634 0.92	6079 - 3528 .2
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sale s								
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al	.5	9307	866	3123.	140.6	92361	1154	
sale		.81	3.71	32	3	84.49	523.	
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Inte	12	1468	293	1644	3289	17644	3528	
rsta	.5	210.	64.2	651.4	3.03	1.0	.82	
te		47	1	7				
sale								
s								
Tot		1008	605	1008	6052	100.0	0.62	
al		8916	262	8926	623.7		8	
		2.8	3.07	2.96				

The reasons for the difference amounting to Rs. 92,36,184.49 is base oil was treated as 12.5% items upto September 2011 and local sale of 4% includes local sale of base oil for Rs.92,36,184.49 on which 12.5% tax collected. In the return this figure included in 12.5% item. The reson for difference amounting to Rs.1,764,41 is the Interstate sale of 12.5% item amounting to Rs.1,76,441 is shown wrongly in 4% item. Hence it is seen that there is no differential turnover by way of misclassification to be assessed.

In the above circumstances it is requested that audit objection may kindly be dropped.

Para No.	Gist of the case	Present position
2.9 (Bullet 3)	<p>M/s. Malabar Laminates, Kochi a dealer in bamboo and plywood products conceded in their annual return for 2012-13 sales turnover of Rs. 2.38 crore and Rs. 50.08 lakh respectively. The inter-state purchase turnover of these products conceded in the return were Rs. 1.71 crore and Rs. 84.92 lakh respectively. However, as per the certified annual accounts of the company the purchase turnover accounted was Rs. 2.17 crore and Rs. 38.97 lakh respectively for the same sales turnover returned. Audit found from the check post module of KVATIS that the inter-State purchase turnover of plywood of this company was more than Rs. 85 lakh. Thus, the assessee misclassified the purchase turnover and corresponding sales turnover of plywood as that of bamboo products to evade tax. This resulted in short payment of tax and interest of Rs. 8.02 lakh.</p> <p>Government stated (September 2015) that assessment had been completed (June 2015) creating additional demand of Rs. 8.76 lakh. The assessee had remitted Rs. 2.63 lakh and furnished security for the balance amount as per the stay condition of Assistant Commissioner (Appeal) Ernakulam. No action was taken to get the stay; Further report had not been received (January 2016).</p>	<p><b>M/s. Malabar Laminates 2012-13,II Circle, Ernakulam</b></p> <p>The audit objection in this case is Short levy of tax due to misclassification showing the sale of plywood to that of sale of bamboo mat ply board to evade tax. As per the audit objection, notice u/s 25(1) was issued and the assessment for the year 2012-13 was completed on 25.06.2015 creating additional demand of Rs.8.76 lakhs. Against this order, the dealer preferred appeal before Deputy Commissioner(Appeal), Ernakulam. As per the direction of Deputy Commissioner (A) in KVATA 1449/2015 dt.10.8.2015, the original assessment order was modified vide order No.32070283334/2012-13 dtd.30.11.2015. On verification of the books of accounts, the Assessing Authority found as follows:- "On verification of the interstate purchase invoices and 8F declarations, it is noticed that the description of goods mentioned in both in the invoices and 8F Declarations are Bamboo mat plyboard. As per the modified order it is noticed that the authorized representatives of Chamber of Commerce at Commercial Tax check post mistakenly uploaded the description of goods as plywood instead of bamboo mat ply board". In view of the above the original assessment has been modified giving effect to the appellate order finding that there is no mis classification. As per the modified</p>

order the dealer has paid excess tax Rs.2,06,895/- and interest Rs.55,862/- paid at the time of appeal and the said amount has been refunded. On verification of the bills produced by the dealer, the description of goods is bamboo mat ply board. In the circumstances the audit objection is not sustainable and may kindly be dropped.

Para No.	Gist of the case	Present position
2.9 (Bullet 4)	<p>M/s. Sree Vijayalekshmi Traders, Thodupuzha was a dealer in Grocery and Pulses. Audit cross verified the annual return of the assessee for 2012-13 with the check post transaction in KVATIS Module and found that the inter state stock transfer into the state and inter state purchase turnover of items taxable at 5% conceded year 2012-13. The assessee has effected in the annual return was less than interstate purchase/interstate stock transfer that in the KVATIS check post (IN) of 5% taxable items for Rs. 289.08 transaction while the turnover of lakhs and wrongly classified the turnover goods taxable at 1% conceded under 1% taxable items. This resulted in a was more than that in the short levy of Rs. 7.34 lakhs including KVATIS check post transaction.</p>	<p><b><u>M/s. Sree Vijayalekshmi Traders,2012-13,Special Circle, Thodupuzha</u></b></p> <p>M/s. Sree Vijayalekshmi Traders, Thodupuzha is an assessee bearing TIN. 32060455852 on the roll of Assistant Commissioner, Special Circle, Thodupuzha. The assessee was a dealer in Grocery, Cereals and such kind of article during the year 2012-13. The assessee has effected in the annual return was less than interstate purchase/interstate stock transfer that in the KVATIS check post (IN) of 5% taxable items for Rs. 289.08 transaction while the turnover of lakhs and wrongly classified the turnover goods taxable at 1% conceded under 1% taxable items. This resulted in a was more than that in the short levy of Rs. 7.34 lakhs including KVATIS check post transaction.</p>

It is evident that the assessee has wrongly classified 5% taxable goods as 1% taxable goods. Aparant misclassification of goods resulted in the short payment of tax and interest of Rs. 7.59 lakh

Based on the Audit Objection, assessment for the year 2012- 13 in respect of M/s. Vijayalakshmi traders, Thodupuzha was completed on 21.02.2015 as per order No.32060455852/2012-13 with an additional demand of ₹ 9,17,215/- ( Tax, ₹ 6,32,587/- interest ₹ 2,84,664/-). Aggrieved by this order the dealer filed appeal before the DC (Appeals) II, Kottayam and the Appellate authority granted stay on the condition that the assessee shall remit 30% of the total demand. Accordingly the assessee had remitted an amount of ₹ 2,75,175/- being 30% of the total demand as follows.

₹ 1,25,000/- chalan No. 119 dated 06.10.2015 of the sub treasury thodupuzha

₹ 75,000/- chalan No. 39 dated 07.11.2015 of the sub treasury thodupuzha

₹ 75,175/- chalan No. 81 dated 15.12.2015 of the sub treasury thodupuzha. Subsequently, DC(Appeals) II, Kottayam

modified the original assessment as per order No. KVATA No. 270/2015(2012-13) dtd. 18.08.2016 with the direction to the assessing authority to modify the assessment after verifying the books of accounts produced by the appellant. The assessing authority verified the books of accounts and found that the misclassification noticed was due to the wrong entry of data in Form 8 F declarations in KVATIS. The e-declaration format in KVATIS did not provide facility for categorizing different items like 0%, 1% and 5% and all are entered in e-declaration as Grocery. Supporting purchase bills show the items at different tax rates with 0%, 1%, & 5% goods. On verification it is revealed that one purchase invoice itself contained commodities at different tax rates and the different items like 0%, 1% and 5% items purchased are accounted separately and the corresponding sales are accounted separately in the books of accounts. Hence the assessment was modified as per proceedings of the Assistant Commissioner, Special Circle, Thodupuzha dated 13-12-2016 and the dealer was eligible to get a refund of ₹ 2,75,175/- which was paid at the time of filing appeal for obtaining stay. Accordingly as per Order No. No. 32060455852/12-13 dated. 21.01.2017 of the Assistant Commissioner, Special Circle, Thodupuzha the excess amount paid by the dealer was refunded.

Para No.	Gist of the case	Present position
2.10	<p>Under Section 6(2)(b) of the KVAT Act, 2003 every dealer who purchase taxable goods from unregistered dealers and despatches the goods to any place outside the State otherwise than by way of sale in the course of inter-State trade or export, shall pay tax on the purchase turnover of the goods at the rate specified under Section 6(1), provided that the maximum rate leviable under this clause shall not exceed four per cent.</p> <p>M/s. Kalyan Jewellers, Kollam, a dealer in gold jewellery stock transferred gold jewellery amounting to Rs. 51.18 crore and Rs. 94.06 crore outside the State, which constituted 29.59 per cent and 42 per cent of their total disposal during the year 2011-12 and 2012-13. They made local purchase of gold jewellery from unregistered dealers for Rs. 43.98 crore and Rs. 60.14 crore in the year 2011-12 and 2012-13 respectively. Though the assessee was liable to pay purchase tax proportionate to the purchase made from unregistered dealers, they had not paid any purchase tax. This resulted in non-payment of tax, cess and interest amounting to Rs. 2.31 crore.</p> <p>Government stated (July 2015) that the assessee had opted for Gold Compounding Scheme under Section 8 of KVAT Act, 2003 and the Section turnover being taxed under Section 6(1) over and above the quantum of tax fixed</p>	<p><b>M/s. Kalyan Jewellers</b> <b>2011-12 2012-13, Special Circle, Kollam</b></p> <p>The Accountant General in their periodical audit pointed out a defect of the dealer's accounts for the year 2011-12 &amp; 2012-13. The objection related to pay tax U/s 6 (2) (b) of KVAT Act in proportion to interstate stock transfer of gold covered by local purchase from unregistered dealers. The dealer has remitted tax at compounded rate prescribed under Section 8 (f) of the Act. No tax under section 6(2) on the purchase turnover paid.</p> <p>Based on the Audit Enquiry, the assessing authority completed the assessment for the year 2011-12 on 08.01.2016 creating additional demand of Rs. 53,29,848/- as tax and Rs. 23,98,432/- as interest and 2012-13 on 13.01.2015 creating additional demand of Rs.1,26,28,442/- as tax and Rs. 40,41,101/- as interest respectively. Aggrieved by this order, the assessee filed appeal before the Deputy Commissioner (Appeals), Kollam. But the Deputy Commissioner (Appeals) dismissed the appeal as per order No. KVAT No.62/16 and 134/16 dated. 02.02.2016. Again the dealer filed appeal before the Hon'ble Appellate Tribunal, Thiruvananthapuram.</p> <p>During the pendency of this appeal,</p>

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under Section 8(f). Hence, purchase tax Kerala Finance Act 2017 was enacted assessable on portion proportionate to w.e.f 01.04.2017 by which Section 6 (2) stock transfer out and the disallowance of KVAT was amended by inserting a of special rebate for the same vide new proviso to Section 6 (2) (a). This provision to Section 12 of KVAT Act, section clarifies that “a dealer paying 2003 is ultra vires to the provision of compounded tax shall not be liable to Section 8 of the KVAT Act, 2003. The pay tax for the goods with effect from reply was not acceptable since the 01.04.2013”. In view of this compounded dealers had not been amendment, the Hon’ble High Court specifically exempted from payment of quashing the Impugned notices purchase tax. Further report had not proposed on assessment to purchase tax been received (January 2016)

Kerala Finance Act 2017 was enacted w.e.f 01.04.2017 by which Section 6 (2) stock transfer out and the disallowance of KVAT was amended by inserting a of special rebate for the same vide new proviso to Section 6 (2) (a). This provision to Section 12 of KVAT Act, section clarifies that “a dealer paying 2003 is ultra vires to the provision of compounded tax shall not be liable to Section 8 of the KVAT Act, 2003. The pay tax for the goods with effect from reply was not acceptable since the 01.04.2013”. In view of this compounded dealers had not been amendment, the Hon’ble High Court specifically exempted from payment of quashing the Impugned notices purchase tax. Further report had not proposed on assessment to purchase tax been received (January 2016)

as revealed from judgement dtd 02.08.2017 in WP (C) No.35181/16 Lekshmi Jewellers Vs The State of Kerala.

The Hon’ble High Court observed that the amendment has been clarified that the dealer paying tax under Section 8 (f) is not liable to be assessed for payment of tax U/s 6 (2) (a). It is settled law that an amendment in nature shall have retrospective effect extending the benefit to the assessments already made by the assessing authority.

Moreover, second appeal filed by the assessee before the Hon’ble Appellate Tribunal, Thiruvananthapuram was allowed and the earlier orders issued by the Appellate Authority and Assessing Authority were set aside for the period 2009-10 to 2012-13, as per order dated 23-07-2021. So the demand also became ‘NIL’.

In these circumstances, the audit objection pointed out is not sustainable and may kindly be dropped.

Para No.	Gist of the case	Present position
2.11(1)	<p>M/s. HCL Infosystems Ltd., Kochi was a dealer in computer and accessories. During 2011-12, they claimed exemption of Rs. 4.95 crore from the total receipt of Rs. 5.95 crore towards AMC against the actual eligible exemption of Rs. 2.97 crore. During 2012-13, they claimed exemption of Rs. 4.65 crore from the total receipt of Rs. 6.40 crore towards AMC, against the actual eligible exemption of Rs. 3.20 crore. Availing of excess exemption resulted in short assessment, the assessing authority directed to payment of tax and interest of Rs. 29.42 lakh and Rs. 8.53 lakh during 2011-12 and 2012-13.</p> <p>Government stated (July 2015) that the assessment for the year 2012-13 had been completed (June 2015) creating additional demand of Rs. 9.68 lakh and the amount is under collection. Further report for the remaining period had not been received (January 2016).</p>	<p><b>M/s. HCL Infosystems Ltd</b>  <b>2011-12 2012-13, Special Circle II,</b>  <b>Ernakulam</b></p> <p><b>2011-12</b></p> <p>The assessment for the year 2011-12 based on the Audit objection has been completed on 18-03-2019. The exemption claimed for Rs.62,38,609/- without documentary evidences has been assessed at 12.5% and interest. As per KVATA 1403/2019 filed by the assessee, the appellate authority directed to verify the claim of labour contract of Rs.124,84,100/- and if the claim is proved, directed to allow the exemption on the 50% assessed of Rs.62,38,609/-.</p> <p>As per the direction in KVATA 1403/2019, the assessing authority modified the assessment for 2011-12, on 17-08-2021. The assessing authority verified the documents and found that the entire turnover received were labour charges for which service tax had been remitted. So the amount received is not assessable to tax. Regarding the taxable turnover of AMC, the dealer produced the details of goods transferred in the execution of AMC before the appellate authority. In the return they had remitted tax due on the value of goods amounting to Rs.99,79,368.12 and remitted tax on it. As per Rule 9(2)(C) of the rules where the</p>

value of goods transferred in AMC is ascertainable from the accounts of the dealer, the turnover taxable shall be calculated by adding GP to the purchase value. As per the direction of appellate authority, the assessing authority verified the details of goods transferred in the execution of AMC during the year 2011-12, and fixed taxable turnover by adding 7% GP as per rule 9(2)(C on modification of the assessment. And as per the modification, the assessee is in excess of Rs.1,38,704/- Since the modification is based on the rule 9(2)(C) of the KVAT Act & rule, the Audit Objection is not sustainable and hence may be withdrawn. Copy of original order dtd.18.03.2019, appellate order KVATA 1403/2019 Dtd.30.07.2020 and modified order Dtd.17.08.2021.

#### 2012-13

Assessment for the year 2012-13 has been completed vide Order No. 32070312742/2012-13 creating additional demand as follows.

Tax due : Rs. 7,22,624  
 Interest : Rs. 1,95,109  
 Total : Rs. 9,17,733

The assessee preferred appeal before DC(A),Ernakulam and remitted Rs.2,75,320/- (30% of demand) for getting stay for the realization of the balance demand.. DC(A) disposed the appeal in favour of the assessee vide order no.KVATA-1596/2015 dtd.31.10.2018. The Appellate authority verified the details and observed that as per Rule

9(2)© if material consumption is clearly ascertainable from the book of accounts that has to be allowed. Appellant produced material consumption details for AMC with contract number machine number of the material consumed, invoice number and material description for April 2012 to March 2013. And the appellate authority directed to verify the books of accounts of the dealer as per material consumption report produced by the dealer. If the material used in AMC is ascertainable from the books of accounts deduction can be given as per books figure as per Rule 9(2)(C). The assessment has been modified as per the direction of the Appellate authority on 22.10.2021. Regarding the turnover of AMC returned, they have filed details of purchase of materials used which were already suffered tax as per the books of accounts, at the time of modification. The balance receipts are labour charges since the detail of material value and the labour charges received are seen accounted as per Rule 9(2)(C). So the exemption claim on Turnover of AMC is proved and allowed and resulted in excess payment. Hence the Audit objection is not sustainable according to the Rule 9(2)(C) of the KVAT Act and Rules. Copy of Assessment order, Appellate order and modified order for 2012-13.

Para No.	Gist of the case	Case No. 468
2.11(1)b	M/s. Crompton Greaves Limited, Kochi was a dealer in electrical goods, pump sets and parts etc. During 2012-13 they self assessed to tax at 5% turnover of Annual Maintenance contract amounting to Rs. 57.66 lakh after availing deduction under Rule 10(2)(b) for Rs. 60.54 lakh from the year 2012-13 was completed on total turnover of Rs. 118.19 lakh. Since 18.06.2015 creating an additional turnover was arrived at under Rule 10(2)(b), the deduction admissible is Rs. 59.10 lakh (50%)only and the balance 380371.00. Unfortunately this turnover should have been assessed at 13.5%. Failure to do this resulted in short payment of tax interest of Rs. 6.06 lakh.	Present position

M/s Crompton Greaves Ltd.

32070379915/2012-13, Special Circle  
II, Ernakulam

It is submitted that based on the audit objection assessment for the year 2012-13 was completed on 26.02.2021. As per this order there is still remaining Rs 41,31,772.00 as excess tax paid. In the circumstances the excess tax under KVAT Act 2003 for the year 2010-11 is transferred and adjusted towards the tax dues as per the additional demand created against the audit objection for 2012-13 vide modified order no 32070379915/2012-13 dated 01.06.2024. Refund adjustment order in Form 21A is issued for the year 2010-11. Copies of the assessment orders attached herewith. Hence the audit objection may kindly be dropped.

Para No.	Gist of the case	Present position
2.12.1	<p>M/s. Sreeragh General Finance Limited, Kochi, a dealer in motor vehicle and computer products, availed input tax credit of Rs. 1.09 crore during 2012-13, on the purchase of goods for Rs. 8.13 crore. Audit found from the assessment has been completed vide KVATIS that this included input tax order No. 32071657612/2012-13 dated 15.04.2016 creating additional demand of goods for Rs. 1.20 crore from two dealers; but not supported by proper invoices issued to the assessee. The invoices filed by the assessee were issued by these two dealers in Form 8B applicable to end customers. Availing input tax credit without proper invoice was not in order. The incorrect availment of input tax credit had resulted in short payment of tax and interest of Rs. 19.21 lakh.</p> <p>Government stated (October 2015) that necessary instructions had been given (August 2015) to the DC, Ernakulam to re-examine the case. Further report had not been received (January 2016).</p>	<p><b>M/s. Sreeragh General Finance Ltd.</b>  <b>2012-13</b>  <b>II Circle, Ernakulam</b></p> <p>Considering the audit objection, Rs. 16.15 lakh on the purchase of goods for Rs. 1.20 crore from two dealers; but not supported by proper invoices issued to the assessee. The invoices filed by the assessee were issued by these two dealers in Form 8B applicable to end customers. Availing input tax credit without proper invoice was not in order. The incorrect availment of input tax credit had resulted in short payment of tax and interest of Rs. 19.21 lakh.</p> <p>Rs.22,12,110.00 (Tax - Rs.16,14,679.00 + Interest - Rs.5,97,431.00). Aggrieved by the order, the assessee filed appeal before, Hon'ble High Court of Kerala vide WPC No.19231/2016 dated 30.06.2016. In input tax credit without proper invoice appeal, the Hon'ble High Court of Kerala directed the appellate authority to consider the appeal. Accordingly, the payment of tax and interest of Rs. DC(A) vide appeal No. KVATA 1767/2016 (12-13) considered the appeal and dismissed the appeal being devoid of merits. RRC submitted to the Tahsildar (RR), Kanayannur Taluk vide RRC No.2017/2104/07 dated 25.05.2017 and Taluk No. E6-400/ST/01-02 pending before Tahsildar (RR) Kanayannur Taluk. Thereafter, the assessee again filed appeal before the Hon'ble High Court of Kerala in WPC No. 30215/2019 challenging assessment and appellate order for the year 2012-13 and the case was disposed directing the DC(A), Ernakulam to reconsider the appeal.</p> <p>The dealer had again filed an appeal before the appellate authority and the appellate authority had modified the assessment order No.KVATA</p>

1767/2016 dated 27.03.2024 directing the assessing authority to modify the assessment order by allowing the input tax credit. In connection with the appellate order the assessing authority issued a notice for producing books of accounts for the year 2012-13. Further details will be intimated after completing the assessment.

Para No.	Gist of the case	Present position
2.12.2(1)	<p>M/s. Mascon Tillers and Tractors, Palakkad, was a dealer in tillers, tractors etc. During 2010-11, 2011-12 and 2012-13, the assessee purchased tillers and tractors for Rs. 6.48 crore, Rs. 4.15 crore and Rs. 9.42 crore respectively and had already been cured by a demand availed input tax credit of Rs. 27.68 lakh, Rs. 33.23 lakh and Rs. 47.08 lakh respectively. Audit found that out of the total disposal of goods for Rs. 9.09 crore, Rs. 10.06 crore and Rs. 12.61 crore, 9.41 <i>per cent</i>, 6.23 <i>per cent</i> and 31.06.2013. Accordingly the dealer 9.39 <i>per cent</i> respectively were stock remitted an amount of Rs. 3,13,421/- transferred outside the State during the vide challan no. 397/03.08.2013, above period. As such four/five <i>per cent</i> input tax credit proportionate to No.531/07.07.2014, Rs.5,26,070/- vide interstate stock transfer to outside the State had to be reversed which was not 467/21.01.2015, 639/05.03.2015, done. Availing of excess input tax credit 821/15.12.2014 for the years 2010-11, resulted in short payment of tax and 2011-12, 2012-13 respectively. interest of Rs. 10.57 lakh.</p>	<p><b>M/s. Mascon Tillers and Tractors, Palakkad.</b>  <b>32090634101/ 2010-11 to 2012-13</b></p> <p>The defect referred in the audit report arose subsequent to an audit visit under section 23 of the KVAT Act 03 for the period 2010-11, 2011-12 and 2012-13. The demand of reversal was admitted by the dealer during the audit visit on 31.06.2013. Accordingly the dealer remitted an amount of Rs. 3,13,421/- vide challan no. 397/03.08.2013, 592/25.09.2014, 467/21.01.2015, 639/05.03.2015, 821/15.12.2014 for the years 2010-11, 2011-12, 2012-13 respectively. interest of Rs. 10.57 lakh.</p>

Para No.	Gist of the case	Present position	Case No. 471
2.12.2(2)	<p>The audit objection in this case is relating to M/s Classic Foot Care (India) Private Limited, Office of the Commercial Tax Officer, Tirurangadi, Malappuram a manufacturer of footwear. During 2012 – 13, they availed input tax credit of Rs. 41.02 lakh on local purchases amounting to Rs. 5.78 – 13 is on the basis of failure on the part of crore. They reversed input tax of the assessee in reversing the IPT claimed on Rs. 7.43 lakh against stock local purchase corresponding to turnover of transferred to outside the State, stock transfer out. amounting to Rs. 3.29 crore. Audit found that five per cent input tax credit to be reversed proportionate to interstate stock transfer would come to Rs. 13.42 lakh. Availing of excess input tax credit resulted in reversed at Rs. 5,88,674/- and interest Rs. 1, short payment of tax and interest of Rs. 7.07 lakh.</p>	<p><u>M/s. Classsic Foot Care (India) Ltd.2012-13</u>  <u>Commercial Tax Officer, Tirurangadi</u></p> <p>The audit objection in respect of M/s Classic Foot Care (India) Private Limited, Office of the Commercial Tax Officer, Tirurangadi, Malappuram for the year 2012 – 13 is on the basis of failure on the part of the assessee in reversing the IPT claimed on Rs. 7.43 lakh against stock local purchase corresponding to turnover of transferred to outside the State, stock transfer out. On receipt of the audit notes, the Commercial Tax Officer, Tirurangadi has completed the assessment for the year as per order No. 32100634855/2012-13 dated. 18.01.2015 fixing a balance input tax to be reversed at Rs. 5,88,674/- and interest Rs. 1, short payment of tax and interest of Rs. 7,12,296/-.</p>	

On the basis of the demand notice, the dealer has already paid the following amounts.

1. Rs. 1,50,000/- on 05.02.2015 (Chalan No. 209 dated. 06.03.2015)
2. Rs. 1,50,000/- on 30.03.2015 (Chalan No. 664 dated. 24.04.2015)
3. Rs. 1,00,000/- on 29.04.2015 (Chalan No. 032 dated. 07.05.2015)
4. Rs. 50,000/- on 30.05.2015 (Chalan No. 184077 dated. 30.05.2015)
5. Rs. 2,96,026/- (Chalan No. 225 dated. 09.07.2015)

Total Rs. 7,46,026/-

## Case No. 472

Para No.	Gist of the case	Present position
2.12.3	<p>Under Section 12(2) of KVAT Act, 2003 dealer paying compounded tax under section 8 shall not be eligible for rebate under section 12(1).</p> <p>M/s. Institute of Indian Therapies, Annamanada was a dealer in medicine paying tax under section 8(e) of the Act. Audit found that during 2010-11, the assessee availed special rebate of Rs. 5.19 lakh corresponding to the purchase turnover of Rs. 119.06 lakh. Incorrect availing of special rebate resulted in short payment of tax, cess and interest of Rs. 6.44 lakh.</p>	<p><b>M/s. Institute of Indian Therapies, CTO, Chalakkudy /2010-11</b></p> <p>The assessing authority completed the assessment of the dealer for the year 2010-11 vide order dated 05.10.2013 by disallowing the claim of special rebate by the assessee on purchase u/s. 6(2). Compounded dealers u/s. 8 are not entitled to claim the special rebate. Since it has been proved that 93.80% of the total local sales turnover are from the sale of cosmetic and other ayurvedic preparations and these items are not treated as medicine and the special rebate claimed by the assessee to the extent of 93.8% on Rs. 5,18,558/- has to be disallowed ie., Rs. 4,86,407/- (93.8% of 5,18,558/-). Balance special rebate of Rs. 32,151/- has been allowed, since the dealer has not compounded certain items such as Arishtam, Asavam, Choornam and Kuzhambu. Subsequently, the dealer has preferred an appeal before the Appellate Authority. The Assistant Commissioner (Appeals), Thrissur vide order Nos. KVATA 420/13, 421/13 and 422/13 dated 04.09.2014 modified the assessment order with the direction to verify and pass appropriate order in the light of genuineness of documents in respect</p>

of sales return and special rebate. Accordingly, the dealer has been given an opportunity on 12.12.2014 for producing the documents as directed by the appellate authority but the dealer did not produce any evidence in connection with the claim of special rebate. The original assessment thus modified vide order dated 16.01.2015 as per the direction of the appellate authority by disallowing the special rebate. While revising the assessment order certain calculation mistake have been crept. Hence a rectification order dated 21.03.2015 was issued to the dealer. Subsequently the dealer filed appeal before the appellate authority. It is argued that the dealer is eligible for special rebate u/s. 12(2). The Assistant Commissioner(Appeals) has modified the assessment vide order KVATA 426/16 (VAT) and 402/16(CST) dated 22.06.2017 considering the contention of the dealer regarding special rebate as per the provisions of Kerala Finance Act 2012 which is as under. "Provided that notwithstanding anything contained in this Act a manufacturer of medicines who have opted for payment of compounded tax under clause (c) section 8 shall be eligible for special rebate of tax paid under subsection (2) of section 6 of this Act on purchase of raw materials w.e.f. 01.04.2005."

Hence the assessment order modified vide order dated 04.04.2018 with an excess of Rs. 6,69,886/-.

Para No.	Gist of the case	Present position
2.13	<p>M/s. Five Star Metals (p) Ltd, Pallavur, a metal crushing unit purchased (December 10) an electric generator set for Rs. 31.21 lakh. The assessee in response to a notice issued by the Intelligence Officer declared (January 2011) that the generator set with accessories purchased by them was for own use and had no direct connection to their business. Though the generator was purchased for purposes other than that connected with the manufacturing or processing of goods, the assessee issued Form-C declaration for the above the assessee as per order No. KVATA purchase (March 2011) which would attract penalty u/s 10(d) of the CST Act, 1956. Amount of penalty that could be imposed comes to Rs. 5.85 lakh.</p>	<p><b><u>M/s Five Star Metals (p) Ltd.</u></b>  <b><u>CTO, Chittur, 32090990782/2010-11</u></b></p> <p>Based on the Audit objection notice was issued to the assessee on 06.09.2011 u/s 10(d) of the CST Act proposing a penalty of Rs. 5,85,280/- (one and half time of the tax evaded) and same was confirmed as per order No. 32090990782/2010-11 dated 04.11.2013.</p> <p>The Asst. Commissioner (Appeals), Palakkad allowed the appeal filed by the assessee as per order No. KVATA 4/2014 dtd. 24.02.2014 in which the Asst. Commissioner (Appeals), held that there was no mensrea for misuse of 'C' Forms to evade tax and hence the penalty imposed was not sustainable relying on the cases between Jai Glasskow vs Commercial Tax Officer [(2007) 8 VST 770 (rAJ)], Sanjiv Fabrics vs Commissioner of Sales Tax, U.P [(2004) 137 STC 563 (AIT)] and State of Tamil Nadu vs Parry Agro Industries Ltd and another [(2010) 27 VST (131)].</p> <p>Against the order of the Asst. Commissioner (Appeals) State filed second appeal before the Appellate Tribunal. The appeal was dismissed vide Order No. TA (VAT) No. 100/2014 dtd. 07.03.2015.</p> <p>The findings of the Tribunal is as follows;</p> <p>“ The respondent is running a metal Crusher unit for crushing Granite to</p>

make metal. It is evident that the machinery runs upon electrical power. Therefore, a high capacity electric generator, as contented by the respondent, will be necessary in the crushing unit to ensure uninterrupted power supply for continuous manufacturing process. An rightly pointed out by the learned representative when tax concession is available only for interstate sales of goods mentioned in the Registration Certificate of the purchasing dealer or those goods necessary for him to process or manufacture goods for resale, there is no possibility of the respondent dealer effecting a purchase stating that the commodity purchased is not connected with its business or manufacturing process. Therefore, contentions taken that there was typographical error in the letter of the respondent and further that intended communication was of the machinery being connected with the business and an inevitable part of it are very much convincing. Besides the nature of the commodity purchased rules out any possibility of the same being used for any other use than commercial included industrial or manufacturing process. Contentions int the appeal memorandum that only those goods mentioned in the Registration Certificate of the purchasing dealers are liable to taxed at concessional rates are also not well taken. Apart from these goods, concessional rates are available to those goods also which are necessary for the process of

manufacture of goods for sale by the purchasing dealer. In the instant case purchase is of a high-capacity electric generator set which is necessary for providing uninterrupted power supply to the metal crushing unit run by the respondent. This machinery is connected with the manufacturing business of the respondent purchaser and hence its sale by the interstate seller will be taxable only at concessional rates u/s 8 (3) (b) of the Act. None of the decision cited on the side of the revenue are applicable to the facts and circumstances of the present case in as much as that we find no mens rea in the actions of the respondent. To constitute an offence under any of the sub clauses (a) to (f) of section 10, a reading of the provisions reveal that, there should be a conscious of deliberate attempt or act by the offending dealer, which makes the elements of 'mens rea' indispensable. We do not think that there was an attempt to evade tax by misuse of C-Form".

Hence the para is not sustainable. So the Para may kindly be waived.

Para No.	Gist of the case	Present position	
2.14	<p>M/s Sea Queen Hote, Kozhikode was a bar attached two star hotel situated in municipal area, who opted for compounding scheme for payment of turnover tax. The turnover tax pointed out that it was omitted to revise assessment for 2009-10 was the assessments from 2009-10 to 2012-13 completed and turnover tax was fixed on the basis of the revised order of 2008- as Rs. 30.43 lakh at 115% of 26.46 09 thus resulting a short levy of Rs. 66.90 lakh, the turnover tax assessed for lakhs.</p> <p>previous year 2008-09. Turnover tax assessment for previous years and for the year 2008-09, a two times addition fixed as 34.99 lakh, 40.24 lakh and of the suppressed turnover detected by 46.27 lakh respectively. Subsequently the Intelligence Officer was added based on the suppression detected by towards probable omission and the Intelligence Officer, the suppression detected. The Accountant assessment for the year 2008 – 09 General has taken the tax due on this was revised (March 2014), fixing the turnover addition made also to determine turnover tax as Rs. 37.24 lakh. the compounded tax payable for the However, assessments for 2009 – 10, succeeding years also which is not 2010 – 11, 2011 – 12 and 2012 – 13 sustainable.</p> <p>were not revised by the assessing authority based on the revised assessment order for 2008 – 09. This resulted in short levy of tax, cess and the interest of Rs. 66.90 lakh.</p>	<p><b>M/s. Sea Queen Hotel, Kozhikode, 2009-10 to 2012-13</b></p>	<p>While conducting audit the AG has While completing the assessment assessment for previous years and for the year 2008-09, a two times addition fixed as 34.99 lakh, 40.24 lakh and of the suppressed turnover detected by 46.27 lakh respectively. Subsequently the Intelligence Officer was added based on the suppression detected by towards probable omission and the Intelligence Officer, the suppression detected. The Accountant assessment for the year 2008 – 09 General has taken the tax due on this was revised (March 2014), fixing the turnover addition made also to determine turnover tax as Rs. 37.24 lakh. the compounded tax payable for the However, assessments for 2009 – 10, succeeding years also which is not 2010 – 11, 2011 – 12 and 2012 – 13 sustainable.</p> <p>In this context it is to be noted that the addition given towards probable omission and suppression detected cannot be considered for determining the compounded tax payable for succeeding years. Only the tax due on the suppressed turnover detected can be taken for determining the compounded tax payable for subsequent years. This position is well established by the decision of the Division Bench ruling of Honb'le High Court of Kerala in state of Kerala Vs. Malabar Ornaments (P) Ltd; (2011) 19 KTR 413 (ker). In this case the Honb'le Division Bench of Kerala High Court held that "Statute does not, provide for</p>

reckoning the 'assessed tax' as the basis for determining compounded rate. Statute does not provide for assessment of tax at compounded rate based on the 'tax assessed or demanded'.

Hence the turnover tax payable for the succeeding years, i.e., from 2009-10 to 2012-13, based upon the turnover tax demanded for the year 2008-09 is not sustainable. However the assessment for the year 2009-10 to 2012-13 has been revised considering the suppressed turnover detected for the year 2008-09. Against the said orders, the dealer filed appeal before the Deputy Commissioner (Appeals), Kozhikode and appeal

nd disposed in favour of the dealer. The 2 appeal preferred by state pending at the Tribunal vide TA 11, 12, 13, 14, 15/2017. RR proceedings stayed by High Court vide WP(C) 33232/17.

The Hon'ble appellate Tribunal was pleaded to dispose the appeal as partially allowed on 17.12.2019. in compliance to the Tribunal order TA No. 11/2017, 12/2017, 13/2017, 14/2017 & 15/2017 dtd: 17.12.2019 the assessment for the year 2009-10 to 2012-13 was modified creating additional demand.

In compliance to the Tribunal order TA No. 11/2017, 12,2017, 13/2017, 14/2017 & 15/2017 dated 17.12.2019 the assessment for the year 2009-10 to 2012-13 was modified creating additional demand as follows.

2009-10 : Modified on 28.09.2020 and additional demand created Rs.

45,50,621/- (Tax Rs. 20,13,549/- + Interest Rs. 25,37,072/-

2010-11 : Modified on 28.09.2020 and additional demand created Rs. 63,03,357/- (Tax Rs. 29,45,494/- + Interest Rs. 33,57,863/-

2011-12 : Modified on 28.09.2020 and additional demand created Rs. 75,54,285/- (Tax Rs. 37,39,745/- + Interest Rs. 38,14,540/-

2012-13 : Modified on 28.09.2020 and additional demand created Rs. 79,73,053/- (Tax Rs. 41,96,429/- + Interest Rs. 37,76,624/-

The dealer filed WP(C) against the modified order before the Hon'ble High Court of Kerala. As per WP(c) No. 20477/22 dated 28/06/2022 Hon'ble High Court of Kerala granted interim stay for further recovery proceedings on condition that the petitioner remits a sum of Rs. 5,00,000/-. The dealer paid the amount of Rs. 5,00,000/- as per the DD No. 387727 dated 04-07-2022. Now the appeal filed by the dealer is pending before the Joint Commissioner (Appeals), SGSTD, Kozhikode

Para No.	Gist of the case	Present position
2.15(Bu llet 1)	<p>M/s. Polakulathu Tourist Home, Vytila, was an assessee engaged in the business of running a bar attached hotel. The turnover tax assessment of the assessee for 2009-10 was completed by the assessing authority (December 2012) taking the turnover as 140 per cent of the purchase value of liquor and turnover tax was fixed at Rs. 16.01 lakh. Audit found that 115 per cent of the turnover tax payable for 2008-09 amounted to Rs. 48.79 lakh which was higher than the turnover tax fixed by the assessing authority. Incorrect computation of turnover tax resulted in short levy of tax, cess and interest of Rs. 37.74 lakh.</p>	<p><b><u>M/s. Polakulathu Tourist Home,2009-10,II Circle, Tripunithura</u></b></p>

Government stated (June 2015) that assessment had been completed (June 2014) creating additional demand of Rs. 38.07 lakh and revenue recovery efforts had been initiated for recovery of the dues. Further report had not been received (January 2016).

As per the audit objection the assessment in respect of M/s. Polakulath Tourist Home, Vytila for the year 2009-10 is reopened under section 19(1) of the KGST Act by fixing a TOT of Rs.33,10,400/- with interest Rs.4,96,560/- vide order dated 02.06.2014. Assessment was modified as per order dated 13.01.2019. Additional demand of Rs.16,01,389.00 paid by the dealer.

The findings of the audit to the effect that the computation of Turnover Tax of M/s. Polakkulath Tourist Home is incorrect. The fact is that, M/s. Polakulath Tourist Home with KGST registration 232332044 is not a continuous one. Because after the death of the proprietor Sri. P.K. Narayanan (Proprietor of Former Polakkulath Tourist Home Vytila), in March 2009, his registration under the act stood automatically cancelled. The registration certificate number of late Sri. P.K. Narayanan, Polakkulath Tourist Home was 32071192492.

Subsequently after the death of P.K. Narayanan, his 3 heirs formed an association of persons and applied for registration for doing business in liquor and the same was granted by the

assessing authority by issuing fresh registration number 32071111334 (copy enclosed.)

The business conducted by late Sri. P.K Narayanan and one conducted after his death and cancellation of his certificate are distinct and different and are two different legal entities as clearly laid down in the definition of "Person" in KVAT Act. Moreover the assessing authority has issued separate registration number for the new legal entity namely Association of person.

As per the KGST Act the two firms are independent firms and the partnership firm business cannot be treated as a business in continuation of the erstwhile Polakulath Tourist Home owned by proprietor P.K.Narayanan. Therefore the contentions of the Audit that the business of firm is a continuation of erstwhile Polakulath Tourist Home and are liable to pay TOT @115% of the highest TOT payable by it as conceded in the returns or accounts or the TOT payed for any of the previous consecutive three years whichever is higher is not found acceptable. The Deputy Commissioner (Appeals) in Order No. STA.28/2017 dated 19/05/2018 has upheld the above view, which appears sustainable.

In view of the above, the objection raised by the A.G is not sustainable.

Para No.	Gist of the case	Present position
2.15 (Bullet 2)	<p>M/s. Kalyan Residency, Koyilandy was a bar attached hotel of three star category. The turnover tax assessment of the assessee for 2010-11 was completed by the assessing authority taking the star bar attached hotel and the dealer has turnover as 180 per cent of the started business in October 2009 only and purchase value of liquor during the has not opted compounding during the year. year and the turnover tax was fixed The modified assessment in respect of the as ₹ 29.99 lakh. However, Audit dealer for the year 2009-10 was completed found that the turnover tax of the on 28/08/2015 fixing a Sales Turnover of assessee for 2009-10 fixed by the Rs. 1,53,62,040/- and TOT due @10% Rs. assessing authority was ₹ 16.90 15,36,204/- and Cess due @1% Rs. lakh only. Since the assessee started 15,362/-.</p> <p>business from October 2009 only, For the year 2010-11 the dealer has the turnover tax payable for a opted for payment of tax at compounded financial year would be ₹ 33.80 rates as per Section 7 of the KGST Act lakh. Hence 125 per cent of the 1963. As per modified order, modified turnover tax payable for 2009-10 assessment in respect of the dealer for the amounted to ₹ 42.26 lakh. Incorrect year 2010-11 was completed on 25/08/2015 computation of compounded tax fixing the tax payable at the compounded resulted in short levy of tax, cess rate at 180% of the purchase value of and interest of ₹ 17.47 lakh.</p>	<p><b><u>M/s. Kalyan Residency</u></b> <b><u>2010-11,Special Circle, Kozhikode</u></b></p> <p>M/s. Kalyan Residency, Koyilandy bearing KGST No. 32111138226 is a three assessing authority taking the star bar attached hotel and the dealer has turnover as 180 per cent of the started business in October 2009 only and purchase value of liquor during the has not opted compounding during the year. year and the turnover tax was fixed The modified assessment in respect of the as ₹ 29.99 lakh. However, Audit dealer for the year 2009-10 was completed found that the turnover tax of the on 28/08/2015 fixing a Sales Turnover of assessee for 2009-10 fixed by the Rs. 1,53,62,040/- and TOT due @10% Rs. assessing authority was ₹ 16.90 15,36,204/- and Cess due @1% Rs. lakh only. Since the assessee started 15,362/-.</p> <p>For the year 2010-11 the dealer has the turnover tax payable for a opted for payment of tax at compounded financial year would be ₹ 33.80 rates as per Section 7 of the KGST Act 1963. As per modified order, modified turnover tax payable for 2009-10 assessment in respect of the dealer for the amounted to ₹ 42.26 lakh. Incorrect year 2010-11 was completed on 25/08/2015 computation of compounded tax fixing the tax payable at the compounded resulted in short levy of tax, cess rate at 180% of the purchase value of and interest of ₹ 17.47 lakh.</p> <p>As per audit objection, since the assessee started business from October 2009 only, the turnover tax payable for the financial year 2009-10 would be Rs.33.80 lakhs. Hence, 125% of the turnover tax payable for 2009-10 amounted to Rs.42.26 lakhs. But assessment is completed fixing the tax payable at the compounded rate at 180% of the purchase value of Liquor.</p> <p>As per KGST Act 1963, Section 7(1)(ii) – Payment of tax at compounded rates in respect of bar attached hotel of three stars, shall pay turnover tax on the turnover of foreign liquor calculated at the rates in</p>

clause (a) or (b) of item (ii), whichever is higher;:

(a) at one hundred and eighty per cent of the purchase value of such liquor, in the case of those situated within the area of a municipal corporation or a municipal council or a cantonment, and at one hundred and seventy per cent of the purchase value of such liquor, in the case of those situated in any other place;

or

(b) at one hundred and twenty five per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turn over tax paid for any of the previous consecutive three years.

As per audit objection the assessment has to be completed as per compounding provision Section 7(1)(ii)(b) adopting the turnover tax payable for the year 2009-10 as Rs.33.80 Lakhs. But, as per compounding provision Section 7(1)(ii)(b) compounded tax payable shall be calculated at one hundred and twenty five per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turn over tax paid for any of the previous consecutive three years. Since the assessee started business from October 2009 the highest turnover tax payable as conceded in the return or accounts is Rs.19,58,853/-.

Hence, the compounded tax payable by the dealer for the year 2010 – 11 is (a) or (b) Whichever is higher :

(a). At 180% of the purchase value of such liquor during 2010-11, i.e, 180% of Rs. 1,65,60,061.71, which is Rs. 2,98,08,111. Turnover Tax due @10% on Rs. 2,98,08,111/- is Rs. 29,80,811/- and Cess due @1% on Rs. 29,80,811/- is Rs. 29,808/-.

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Or

(b). At one hundred and twenty five per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turn over tax paid for any of the previous consecutive three years, i.e, 125% of TOT payable for the year 2009-10 Rs.15,51,566/- which is Rs. 19,39,457.50/- and Cess due Rs. 19,395/-.

The assessee has started business only from October 2009 (for 6 months during 2009-10) and conceded Sales Turnover of liquor for Rs. 1,53,62,040/- and remitted TOT @10% Rs. 15,36,204/- and Cess @1% Rs. 15,362/-.

Perusal of Section7(1)(ii) of the KGST Act 1963, reveals that compounded tax is to be arrived at one hundred and eighty per cent of the purchase value of such liquor or at one hundred and twenty five per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turn over tax paid for any of the previous consecutive three years. From this it is clear that the Act does not provide for estimation of turnover and TOT thereon for a period during which business was not in existence.

Hence, Compounded tax for the year 2010-11 is rightly fixed as per clause (a) (180% of the purchase value of such liquor during 2010-11), as against that due as per clause (b) ( one hundred and twenty five per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turn over tax paid for any of the previous consecutive three years).

Para No.	Gist of the case	Present position
2.16	<p>The turnover tax assessment of M/s. Palakkunnel Tourist Hotel, Ettumanoor, a bar hotel, which opted payment of tax at compounded rate, was finalised accepting the claim of the assessee that their business was transferred as a whole to the new partnership firm with effect from 1 October 2008 and hence a new business. The turnover tax for 2009-10 was assessed to Rs. 33.60 lakh being 135 per cent of purchase turnover of liquor. Consequently, the turnover tax for 2010-11 and 2011-12 were also fixed based on the turnover tax fixed for 2009-10. Audit found that the business was done in the name and style M/s. Palakkunnel Tourist Home upto 30 September 2008 and the business was continued with effect from 1 October 2008 under the name and style M/s. Palakkunnel Tourist Hotel. The assessee cannot be considered as a separate entity from the existing one on the fact that if they were new entities, Rules 13(3) of FL Rules, 1953 ought to have prevented if from grant of bar license as the hotel had no three star status. Hence, the compounded tax to be fixed for the year 2009-10 was Rs. 38.88 lakh being 115 per cent of the tax paid during 2008-09 (highest turnover tax paid, of three preceding years). Incorrect fixation of compounded tax for the</p>	<p><b><u>M/s. Palakkunnel Tourist Hotel,2009-10 to 2011-12,CTO, Ettumanoor</u></b></p> <p>The assessment in respect of the dealer for the year 2009-10, 2010-11 &amp; 2011-12 was completed by the Commercial Tax Officer, Ettumanoor vide order dated 17/09/2012 and 14/01/2013 respectively. Subsequently assessment for the above years re-opened under Section 19 of the KGST Act, 1963, including the objections raised in the audit. The contention raised through the notice that "a mistake was crept in while finalizing the assessment for the year 2009-10. M/s Palakkunnel Tourist Hotel is the continuation of M/s Palakkunnel Tourist Home as whole except an internal re-organization in the partnership." Since the short levy of Tax is noticed by the Accountant General on the Ground that the business was done in the name and style M/s Palakkunnel Tourist Home upto 30<sup>th</sup> September 2008 and the business was continued w.e.f 1<sup>st</sup> October 2008 under the name and style of M/s Palakkunnel Tourist Hotel. The assessee cannot be considered as a separate entity from the existing one on the fact that if they were new entities, Rule 13(3) of FL Rules 1953 ought to have prevented if from grant of bar license as the hotel had no three star status. Hence the compounded tax to be fixed for the year 2009-10 was at 38.88 lakhs being the 115% of the tax paid during 2008-09 i.e highest TOT paid of three preceding years). Incorrect fixation</p>

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year 2009-10 resulted in consequent of compounded tax for the year 2009-10 short fixation of tax for the years 2010- remitted in consequent to the short 11 and 2011-12 also. Total short levy fixation of tax fixation for the year 2010- of tax, cess and interest amounted to 11 and 2011-12 also.

Rs. 22.70 lakh.

Government stated (October 2015) completed vide Dated 30.04.2014 and that based on the audit observation, the against the section 19 order, the assessee assessment was reopened under Sec. 19 of the KGST Act, 1963. While Commissioner (Appeals) and the deciding the appeal filed by the dealer, appellate authority passed orders the Deputy Commissioner (Appeals) cancelling the assessment orders , for the Kottayam quashed the assessment. years 2009-10 to 2011-12 in Appeal Nos. Government had issued necessary STA 38,39,40/2014 dated 09.10.2014. direction to the DC, Kottayam to file In response to this appellate order , the second appeal in the case. Further department filed 2<sup>nd</sup> appeal before the Hon'ble tribunal based on the following report had not been received.

re-opened assessment were completed vide Dated 30.04.2014 and that based on the audit observation, the against the section 19 order, the assessee assessment was reopened under Sec. 19 of the KGST Act, 1963. While Commissioner (Appeals) and the deciding the appeal filed by the dealer, appellate authority passed orders the Deputy Commissioner (Appeals) cancelling the assessment orders , for the Kottayam quashed the assessment. years 2009-10 to 2011-12 in Appeal Nos. Government had issued necessary STA 38,39,40/2014 dated 09.10.2014. direction to the DC, Kottayam to file In response to this appellate order , the second appeal in the case. Further department filed 2<sup>nd</sup> appeal before the Hon'ble tribunal based on the following grounds.

As per the proceedings of the excise Commissioner in No.XC7/28934/08-rdis Dated 02.01.20229 , FL3 no.KT 33/08-09 licence already granted to M/s Palakkunnel Tourist Home , its managing partner as P J kurian has been shifted to the newly constituted firm ' M/s Palakkunnel Tourist Hotel its managing partner as Sanjo Kurian who is already a partner of the previous firm.

In the application filed before the Excise Commissioner, in connection with the shifting of FL 3 licence no.33/08-09 from old firm to new firm, following communications are made.

1. To change the name and style of the firm from M/s Palakkunnel Tourist Home to M/s Palakkunnel Tourist Hotel.
2. To re-constitute the partnership by including Smt. Mary Kurian as Partner in the existing Partnership.
3. To change the name of license of M/s Palakkunnel Tourist Home from the

name of Sri. P .J. Kurian . Managing Partner to the name of Sri. Sanoj Kurian, new Managing Partner.

On verification , under Rule 13(3) of the Foreign Liquor Rules, as amended vide SRO 223/07, with effect from 01.04.2007, only hotels of 3 Star and above eligible for FL Hotel licenses. In the 5<sup>th</sup> Proviso to the above rule by the same SRO , all existing licenses not having the above classification and were functioned as on 31.03.2007 should be regularized.

The Ministry of Tourism, Government of India, has not granted any 3 star status or above, so far to M/s Palakkunnel Tourist Hotel. Hence the reconstituted firm M/s Palakkunnel Tourist Hotel would not at all have eligible for FL 3 license, but they were continuing IMFL business.

Hence vide order TA No. 14/2015, 15/2015, and 16/2015 dated 12/02/2019 of STAT Addl. Bench, Kottayam has “Allowed” the appeals filed by the State by detailed scrutiny of the dissolution of firm and reconstitution of firm by admission.

Against this, Later vide order dated 16/03/2022 the Hon’ble High Court of Kerala set aside the order of the Hon’ble Tribunal and the order of the Deputy Commissioner (Appeals) is revived based on following grounds.

In the case where the same entity applies for payment of tax on compounded rate. In the case of new entity , the available verifiable factor is the payment of tax at a particular

percentage on the purchase made by the dealer. The acceptance of the argument of the Revenue, for the limited purpose of calculation, the earlier firm is said to be in existence is fallacious and not tenable in law. The reassessment under section 19 is literally sitting in judgement on the findings recorded by the Deputy Commissioner (Appeals) and the Tribunal in the first round of litigation. Hence the reassessment under section 19 initiated dated 30.03.2014 resulted in the assessment order is illegal.

Since the order of the Tribunal is set aside and the order of the Deputy Commissioner (Appeals) is revived.

In the above circumstances, no dues are outstanding against the dealer as per the short levy of Tax is noticed by the Accountant General and hence the objection raised in the audit may kindly be dropped.

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## Case No. 609

Para No.	Gist of the case	Present position
<b>2.7.1 (bullet 4)</b>	M/s New Modern Technomech Pvt. Ltd., Thakazhy, a works contractor filed annual return for 2010-11 to 2012-13 conceding total and taxable turnover for the above years as given below:-	<b>M/s. New Modern Technomech Pvt. Ltd 2010-11 to 2012-13, WC &amp; LT, Alappuzha</b> <b>2010-11</b> Based on the audit objection, the assessment for the year 2010-11 has been completed on 28-03-2015 fixing total turnover of Rs.7,33,57,788/- and taxable turnover of Rs.4,55,43,081/- with balance tax due at Rs.25,46,183/- and interest Rs.12,22,168/- totalling to Rs.37,68,351/-. Against the demand dealer filed appeal before Deputy Commissioner (Appeal) who disposed the Appeal as dismissed vide KVATA (ALPY) 248/15 dt 28.03.2017. Dealer preferred second appeal before Tribunal Kottayam and also approached High court for speedy disposal of stay petition before Tribunal. As per Judgment in WP(C) No.36255/2017 dt 13.11.2017 Hon'ble High court stayed the RR till the disposal of Appeal. The case is still pending before Tribunal Kottayam as per TA No. 95/2017. Final hearing of the second appeal is posted on 04.10.2023. <b>2011-12</b> Assessment for the year 2011-12 was completed with an additional demand of Rs.22,46,862/- as per order No.32041516509/11-12 dt 22.03.2016. Against the demand dealer filed appeal before Deputy Commissioner (Appeal) who disposed the Appeal as dismissed vide KVATA(ALPY) 200/16 DT 28.03.2017. Dealer preferred second appeal before Tribunal KTM and also approached High court for speedy disposal of stay petition before Tribunal. As per Judgment in WP(C) No.36255/2017 dt 13.11.2017 Hon'ble high
		<b>(in crore)</b>
	2010-11	2011-12
Total turnover	7.34	3.98
Taxable turnover	3.34	0.80
Cost of goods consumed	3.55	1.13
		1.90

The assessee failed to include the cost of goods consumed as taxable turnover. This resulted in short levy of tax, cess and interest of Rs.53.04 lakh.

	<p>court stayed the RR. The case is still pending before Tribunal Kottayam as per TA No.96/2017. Final hearing of the second appeal is posted on 04.10.2023.</p> <p><b><u>2012-13</u></b></p> <p>Assessment for the year 2012-13 was completed with an additional demand of Rs.17,93,520/- as per order no.32041516509/12-13 dt 22.03.2016. Against the demand dealer filed appeal before Deputy Commissioner (Appeal) who disposed the Appeal as dismissed vide order no. KVATA(ALPY) 201/16 dt 28.03.2017. Dealer preferred second appeal before Tribunal KTM and also approached High court for speedy disposal of stay petition before Tribunal. As per Judgment in WP(C) No.36255/2017 dt 13.11.2017 Hon'ble High court stayed the Revenue recovery proceedings against the Dealer. The case is still pending before Tribunal Kottayam as per TA No. 97/2017. Final hearing of the second appeal is posted on 04.10.2023.</p>
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Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.3)	<p><b>Explanation VII under Section 2(iii) of the KVAT Act, 2003</b> stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking into account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>M/s. Star Traders, 2009-10 to 2011-12, Special Circle, Tvpm</b></p> <p><b>2009-10</b></p> <p>M/s. Star Traders, Navaikulam, Thiruvananthapuram TIN 32011176925 was an assessee borne on the rolls of erstwhile Commercial Tax Officer, Attingal, the dealer engaged in the business of local sales of cement. The assessment in respect of the dealer for the year 2009-10 was completed by the assessing authority as per order No. 32011176925 on 13-01-2016. As per explanation VII Section 2(iii) of KVAT Act, 2003 states that when a dealer sells any goods purchased and subsequently receives any amount so received shall be deemed to be a turnover in respect of such goods. In view of this statutory provision the amount received as discount during the year is taxable and the assessing authority estimated sales turnover by adding the discount received to the tune of Rs. 49,51,256/- thereby completed the assessment and creating demand for Rs. 6,18,907/- as tax and Rs. 4,27,046/- as interest upto 01/2016. Subsequently Revenue recovery proceedings as per RR. No. 155/15-16 dated 28-03-2016 was initiated.</p> <p>Aggrieved by this order the dealer preferred appeal before the Deputy Commissioner (Appeals), Thiruvananthapuram as per order No. K/351/16 dated 28-11-2016. The appellate authority dismissed the appeal filed by the dealer and observed that assessment</p>

	<p>completed by the assessing authority is legally sustainable and no irregularities were found.</p> <p>Further the dealer preferred appeal before the Hon'ble Sales Tax Appellate Tribunal. The Hon'ble STAT in order No. TA(VAT) No. 61/2017 dated 06-07-2022 allowed the appeal filed by the dealer and directing that to modify the assessment with the following observations "<i>verify the certificates and credit notes in original produced or to be produced by the appellant to prove the claim regarding application of fifth proviso to S.11(3) on the amounts received as discount and if found genuine, accept the self assessed returns submitted by the dealer for the year. In case the claim or any part thereof remains unapproved, the assessing authority can resort to denial of proportionate input tax credit instead of adding amount to taxable turnover for assessment</i>".</p> <p>On receipt of the Tribunal order, assessing authority had issued notice under section 25(1) of the KVAT Act, 2003 dated 20-10-2022 to following proposal;</p> <p>Total sales turnover conceded for the year 2009-10 :Rs. 7,76,76,405.00  Add: discount received for the year 2009-10 :Rs. 49,51,256.00  Total sales turnover estimated :  Rs. 8,26,27,661.00  Less: Turnover conceded :  Rs. 7,76,76,405.00  Balance assessable turnover :  Rs. 49,51,256.00  The final assessment for the years 2009-10 had been completed vide order dated 14/06/2023.</p>
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**2010-11**

The assessment in respect of the dealer for the year 2010-11 was completed by the assessing authority as per order No.32011176925 on 04-05-2016. As per explanation VII to Section 2(iii) of KVAT Act, 2003 states that when a dealer sells any goods purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be deemed to be a turnover in respect of such goods. In view of this statutory provision the amount received as discount during the year is taxable and the assessing authority estimated sales turnover by adding the discount received to the tune of Rs. 74,60,346/- thereby completed the assessment creating demand for Rs. 9,32,544/- as tax and Rs. 4,45,561/- as interest upto 04/2016. Subsequently Revenue recovery proceedings as per RR. No. 39/2016-17 dated 30/07/2016 was initiated.

Aggrieved by this order the dealer preferred appeal before the Deputy Commissioner (Appeals), Thiruvananthapuram as per order No. K/533/16 dated 28-11-2016. The appellate authority dismissed the appeal filed by the dealer and observed that assessment completed by the assessing authority is legally sustainable and no irregularities were found.

Further the dealer preferred appeal before the Hon'ble Sales Tax Appellate Tribunal. The Hon'ble STAT in order No. TA(VAT) No. 62/2017 dated 06-07-2022 allowed the appeal filed by the dealer and directing that to modify the assessment with the following observations "verify the certificates and

*credit notes in original produced or to be produced by the appellant to prove the claim regarding application of fifth proviso to S.11(3) on the amounts received as discount and if found genuine, accept the self assessed returns submitted by the dealer for the year. In case the claim or any part thereof remains unapproved, the assessing authority can resort to denial of proportionate input tax credit instead of adding amount to taxable turnover for assessment".*

On receipt of the Tribunal order, assessing authority had issued notice under section 25(1) of the KVAT Act, 2003 dated 20-10-2022 to following proposal;

Total sales turnover conceded for the year 2010-11 :Rs. 8,55,67,399.00

Add discount received for the year 2010-11 :Rs. 74,60,346.00

Total sales turnover estimated :Rs. 9,30,27,745.00

Less Turnover estimated :Rs. 8,55,67,399.00

Balance assessable turnover :Rs. 74,60,346.00

The final assessment for the year 2010-2011 had been completed vide proceeding 32011176925/2010-11 dated 14/06/2023.

#### 2011-12

During the year 2011-12 the assessing authority completed the assessment under section 25 of the KVAT Act, 2003, as per order No.32011176925/10-11 dated 22/04/2014 by creating demand to the tune of, Rs. 14,63,907/- Aggrieved by this order the assessee had filed appeal before the 1<sup>st</sup> appellate authority and the appellate

authority in Order No.KVATA No.80/2014 dated 01/07/2015 was directed to modify the assessment order. Subsequently the assessing authority modified the assessment under section 25(1) of the Act as per order No. 32011176925/11-12 dated 13/01/2016. Against this, the assessee filed WP(C) No.12705/16 before the Hon'ble High Court of Kerala and the Court set aside the impugned order and to consider the matter afresh in the light of the order of Deputy Commissioner (Appeals) dated 01/07/2015.

Meanwhile the Deputy Commissioner Thiruvananthapuram pointed out in order No.B1/2694/17 dated 27/09/2017 that while completing the original assessment the assessing authority had failed to consider the material facts in right perspective with findings that non assessment of discount received in the case is prejudicial to the interest of revenue. By virtue of powers conferred under section 56 of the Act, the Deputy Commissioner, Thiruvananthapuram cancelled the original assessment order dated 22/04/2014 under the Suo-Moto Revision. In the light of the above order the assessing authority had completed the assessment under section 25A of the KVAT Act. Against the Suo-Moto Revision the assessee had filed Revision Petition before the Commissioner of State Tax. The Hon'ble Commissioner dismissed the Revision petition vide reference cited 5<sup>th</sup> and upheld & confirmed the Suo Moto Revision issued by the Deputy Commissioner, Thiruvananthapuram.

Aggrieved by the order of the Commissioner the assessee filed WP(C) No.398/2020 before the Hon'ble High Court of Kerala. The Hon'ble High Court disposed the WP(C) dated 09/01/2020

ordered that in the interest of justice further coercive steps in pursuance to the impugned suo moto revision order dated 27/09/2017 of the Deputy Commissioner, Thiruvananthapuram and Revision order dated 06/11/2019 of the Commissioner, the orders shall be kept in abeyance and will be in force for a period of 2 months. Subsequently the dealer approached before the Hon'ble STAT, Tvpm praying for interim stay against the realization of the disputed tax and interest for the year 2011-12. The main dispute in this appeal is taxability of the discount received through cement trading for the year 2011-12 and the dealer *is relying upon the decision of the Hon'ble High Court in Memana Agencies, Cherthala Vs. Commercial Tax Officer, Cherthala and others dated 24/07/2020 in WP(C) No. 5467/17* prayed for an unconditional stay.

The Hon'ble STAT disposed the interim stay application with the observation that *"in the above decision the Division Bench of Hon'ble High Court after discussing various decision on the subject referred the matter to a Full Bench. Since the dispute regarding taxability of discount received is pending before the Full Bench of the Hon'ble High Court, we are inclined to grant interim stay on condition that the petitioner shall execute simple bond for the demanded amount within a period of 30 days from the date of receipt of this order"*.

The assessing authority reported that the STAT, Thiruvananthapuram has directed in Order No. TA (VAT) No. 157/2020 dated 31.05.2023 to modify the original assessment for the year 2011-12 after verifying the certificates in original. The assessment for the year 2011-12 has been modified vide

		<p>proceedings dated 21.09.23 by the State Tax Officer, Attingal with NIL demand. Also reported that the audit objection for the years 2009-10, 2010-11 &amp; 2011-12 is not sustainable. Copy of modified order is enclosed.</p>
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Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.4)	<p><b>Explanation VII under Section 2(liv) of the KVAT Act, 2003</b> stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking into account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>M/s. Arya Agencies</b> <b>2010-11 2011-12</b> <b>Special Circle, Tvpm</b></p> <p><b>2010-11</b></p> <p>The audit objection in this case is that the dealer had received an amount of Rs.34,60,422/- as discount and it has not been assessed and hence short levy of taxable amount at 12.5%.</p> <p>The assessing authority reported that relying on VAT Appellate Tribunal Order in TA (VAT) No.661/2013, the tax payer was given opportunity for personal hearing and modified the assessment Order. The discount received was assessed to tax as per explanation u/s 2(1 ii) of KVAT Act,2003, where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be turnover in respect of such goods. In this case, the amount of Rs.34,60,440/- received on incentives and discount is the part of turnover and liability assessed on audit objection exists. The dealer opted amnesty scheme 2022 and remitted.</p> <p>Amnesty details – Application Reference No. AM3208220005401 dt:23/08/2022</p> <p>Tax amount determined as per the provisions of the amnesty scheme: <b>Rs.1,14,874</b></p> <p>Permitted to settle the amount, if paid in lump sum within thirty days : <b>Rs.68,925/-</b></p> <p>As per e-Challan KL015387797202223E dt:06/09/2022 Rs.68,925/- was remitted.</p> <p>(Copies of eChallan and assessment order are attached.)</p> <p><b>Assessment Year : 2011-12</b></p>

	<p>The Audit objection was that the sale value of Cement was less than the purchase value, discount Rs.49,12,833 received subsequently was not reckoned as turnover and assessed to tax by the assessee.</p> <p>The assessing authority reported that based on the audit objection, the escaped assessment was completed and created additional demand. As per Order No. TA (VAT) Nos. 106/2020 and 107/2020 dated 14/06/2023 of KVAT Appellate Tribunal, the appeals (Appellant - Assessee) stands allowed directing the assessing authority to verify whether the assessee claimed excess IPT than that of the available in 'Build from others' sales turnover in KVATIS. In obedience to the direction of Appellate authority, the assessing authority verified the directions and evidenced that the assessee did not claim any excess IPT than that of the admissible amount. On verification of trade analysis the assessee dealt business is in Gross profit hence no evasion of tax is there in this case.</p> <p>The Hon'ble Appellate authority directed the assessing authority to verify the credit notes issued by the seller related to incentives / discount. On the merit of Credit notes on incentives / discount produced the assessment was completed. (Copy of the Order attached)</p> <p>On observation and findings in this regard, assessing authority reported that the case is not sustainable</p>
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Case No. 621

Para No.	Gist of the case	Present position
2.8 (Bullet 1)	<p>M/s. Joy Alukkas India Pvt. Ltd., Ernakulam a multi-national company dealing with gold jewellery imported more than 50 per cent of their stock from outside the State or country during 2008-09 and 2009-10. Though their sales turnover for 2008-09 and 2009-10 amounting to Rs. 546.68 crore and 568.02 crore respectively, exceeds rupees five crore per annum and more than 75 per cent of their sales are retail business, they had not paid surcharge at the rate of ten per cent on the output tax payable. This resulted in short payment of surcharge and interest of Rs. 4.30 crore.</p>	<p><u>M/s. Joy Alukkas India Pvt. Ltd., 2008-09 2009-10,</u> <u>Special Circle I, Ernakulam</u></p> <p>Based on the Audit objection the assessment has been completed in both years 2008-09 &amp; 2009-10 as per the order dtd. 07-09-2016 creating additional demand of Rs. 4,19,88,342/- and Rs. 3,53,73,577/- respectively, including interest were recommended for Revenue Recovery. The Hon'ble High Court of Kerala stayed the recovery proceedings as per order in WP (C) No. 504/17 dtd. 03.04.2017 and the stay was extended until further orders vide order dtd. 02.08.2017.</p>

Para No.	Gist of the case	Present position
2.8 (Bullet 2) (1)	<p style="text-align: center;">M/s. Pothys</p> <p>Garments, Thiruvananthapuram, an assessee in garments had more than 75 per cent of sales through retail business and more than 50 per cent of their stocks were imported from outside the State/country during 2012-13 and 2013-14. Though their total turnover exceeded rupees five crore per annum, the output tax of Rs.4.80 crore and Rs.4.98 crore respectively were not increased by a surcharge at 10 per cent as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of Rs.1.18 crore.</p>	<p><u>M/s. Pothys Garments,</u> <u>2012-13 2013-14,</u> <u>Special Circle, Tvpn</u></p> <p>As per section 3(1A) of the Kerala Surcharge Act, 1957, only National or Multi-national companies functioning in State as retail chains are liable for levy of surcharge. This explanation clearly shows the fact that only retail outlets of Big Retail Chains managed by a Company are leviable to surcharge under Act and not partnership firms managed independently. Pothys Garments is a partnership firm constituted in the year 2009 and commenced business activity in Thiruvananthapuram in the year 2011 and without qualify as a National or Multinational Company leviable to surcharge under section 3(1A) of Surcharge Act. Since the dealer is a separate legal entity constituted as a partnership firm and not working as retail chain of a national company, the audit objection may be dropped.</p>

Para No.	Gist of the case	Present position
<b>2.8</b> <b>(Bullet 2)</b> <b>(2)</b>	<p>M/s. Pothys Textiles, Thiruvananthapuram, an assessee in textile business had more than 75 per cent of sales through retail business and more than 50 per cent of their stocks were imported from outside the State/country during 2012-13 and 2013-14. Though their total turnover exceeded rupees five crore per annum, the output tax of Rs.20.56 lakh and Rs.28.70 lakh respectively were not increased by a surcharge at 10 per cent as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of Rs.5.86 lakh.</p>	<p><b>M/s. Pothys Textiles, 2012-13 2013-14, Special Circle, Tvpm</b></p> <p>As per Sec 3(1A) of the Kerala Surcharge Act 1967, only national or multinational companies functioning in the state are retail chains are liable for levy of surcharge. This explanation clearly shows the fact that only retail outlets of big retail chains managed by a company are leviable to surcharge under the Act and not partnership firms managed independently. Pothys Textiles is a partnership firm constituted in the year 2009 and commenced business activity in, Tvpm in the year 2011 and without qualify as a national or multinational company leviable to surcharge under Sec 3(1A) of surcharge Act. Since the dealer is a separate legal entity constituted as a partnership firm and not working as a retail chain of a national company, the audit objection may be dropped.</p>

Para No.	Gist of the case	Present position
2.8 (Bullet 3) (1)	M/s. Lulu International Shopping Mall Private Ltd. Was a retail venture by the Lulu Group. Audit found that during 2012-13, more than 75 per cent of sales of the assessee were through retail business and more than 50 per cent of their stocks were imported from outside the State/country. Though their total turnover exceeded rupees 5 crore per annum, the output tax of Rs. 195.63 lakh was not increased by a surcharge at 10 per cent as per the provisions of KST Act, 1957. This resulted in short payment of surcharge and interest of Rs. 23.13 lakh.	<u>M/s. Lulu International Shopping Mall Pvt. Ltd. 2012-13, Special Circle II, Ernakulam</u>  M/s. Lulu International shopping Mall Private Ltd was retail venture by the Lulu Group. Audit found that during 2012-13, more than 75% of sales of the assessee was through retail business and more than 50% of these sales were imported from outside the state/country. Though their total Turnover exceeds Rs.5 Crores per annum, the OPT Rs. 195.63 Lakhs was not increased by a surcharge at 10% as per the provisions of KST Act 1957. This resulted in short Payment of 23.13 lakhs as detailed below:-
		Total Output Tax due Rs. 1,95,63,267/-
		Purchase Tax due - Rs. 34,787/-
		Total Rs. 1,95,98,054/-
		Surcharge due @10% Rs. 1,95,985/-
		Interest @18% Rs. 3,52,765/-
		<b><u>REPLY</u></b>
		The issue involved in this case is non-payment of surcharge under 3(1A) of Kerala Surcharge on Taxes Act 1957.
		The Act is one providing for levy of surcharges on certain taxes. Sub-section (1A) of Section 3 of the Act provides that the tax payable under sub-sections (1) and (2) of Section 6 of the Kerala Value Added Tax Act shall, in the case of national or multinational companies functioning in the

State as retail chains or direct marketing chains, who import not less than 50 percent of their stock from outside the State or country, and not less than 75 percent of whose sales are retail business, and whose turnover exceeds Rs.5 crores per annum, be increased by a surcharge at the rate of 10 percent. Explanation I to the said provision clarifies that retail chains and direct marketing chains mentioned therein mean retail sales outlets or part of retail sales outlets of companies which share a registered business name or commercial name by way of franchise agreements or otherwise with standardized sales, purchase and promotional activities. Explanation II to the said provision clarifies that retail business mentioned therein shall mean, sales to persons other than registered dealers.

The Counsel held that :

*The scope and amplitude of Articles 301 and 304 of the Constitution have been dealt with in finer details by a Nine Judge Bench of the Apex Court recently in Jindal Stainless Steel Ltd. and another v. State of Haryana and others [2016 (11) Scale 1]. The Apex Court referred to and considered in the said case almost every judgment dealing with the said Articles rendered by the court till then and disapproved the ratio of some of the judgments. Paragraph 72 of the majority judgment in the Rajasthan [AIR 1997 SC 2609], the Apex Court held that prescription of different rates of tax for interstate and intrastate sales of cement on the basis that the same would lead to increase in sales and consequent increase in the revenue earnings of the State, cannot be accepted as sufficient justification for making such a differentiation. Even otherwise, it is trite that a classification can only be based on an intelligible differentia*

that bears a rational nexus with the object sought to be achieved by the legislation. Such classification shall be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. It must be based on some qualities or characteristics which are to be found in all the persons put together and not in others who are left out and those qualities or characteristics must have a reasonable relation to the object of the legislation. Article 14 forbids class discrimination in the matter of imposing liabilities upon persons arbitrarily selected out of a large number of persons similarly placed. In the instant case, as noted, the object sought to be achieved is augmentation of revenue. If the object of the legislation is augmentation of revenue, according to me, a classification of the dealers based on the criterion viz., whether they import goods into the State is per se unjustifiable and unintelligible. I have, therefore, no hesitation to hold that the impugned levy is discriminatory and violative of Article 301 read with clause (a) of Article 304 as also Article 14 of the Constitution.

The State filed appeal against the said judgment. In Writ Appeal No.2245 of 2018 the Hon'ble High Court heard and disposed the Writ Appeal along with W.A.No.1923/2018 and connected case held as follows:

The whole doctrine of classification is based upon the distinction and on a well known fact that the circumstances which govern one set of the persons and objects may not necessarily be the same governing the other set of persons. The expression discrimination has not been defined in the Constitution though the same has fallen for interpretation by the Supreme Court in

Kathi Raning Rawat vs. State of Saurashtra

AIR 1952 SC 123 where the 7-Judge Bench held that all the legislative differentiation is not necessarily discriminatory. The 9 (nine) Judges Bench of Supreme Court has clearly held that if the levy is for a limited period, it cannot be said to be discriminatory, if otherwise would be act of hostile discrimination as has been decided by the learned single Judge. We do not find any illegality or perversity in the order of the learned single Judge to form a different opinion than the one held

The assessment as per the audit objections had been completed vide order dated 06.12.2014 discloses total tax due Rs. 1,95,98,054/- demanding surcharge @10% of Rs. 19,59,805/- and interest Rs.3,91,961/- Remitted Rs.19,59,805/- vide Chl no.559/05.01.2015. The dealer preffered appeal before DC(A) Ernakulam but dismissed vide KVATA 213/2015 dated 29.02.2016. The dealer filed appeal before Honable Tribunal and vide TA VAT No.154/2016 dated 28/09/2017 the case is partly allowed and order issued to remanded to fresh assessment with remarks as follows.:-

In order to apply provisions of Section 3(1)A of the KST Act it must be proved that the appellant is a national or multinational company functioning in the State as retail chains or direct marketting chains who imprt not less than 50% of their stock from outside state or country and not less than 75 % of whose sales are retail business. The appallent has never admitted that it is a national or multi national company having retail oulets in the state.

Considering the entire facts and circumstances we find that the matter can

		<p>be remanded to the assessing authority to verify as to whether there are any materials to suggest that the appellant is a company within the purview of Section 3(1)A of the KST ACT and to decide the matter after giving an opportunity to the appellant to place its defects.</p> <p>Moreover the dealer had paid the entire surcharge with interest. Hence the audit objection in this regard may be dropped.</p>
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Para No.	Gist of the case	Present position
2.8 (Bullet 3) (2)	<p>M/s. Fab India Overseas (P) Ltd., Kochi, a shopping mall was liable to pay surcharge under Section 3(1A) since their entire purchase were from outside the State and entire sales were to customers within the State. Audit found that during 2012-13 surcharge of Rs. 14.35 lakh was due from the assessee on the output tax of Rs. 143.52 lakh disclosed by them. But the assessee paid Rs. 2.29 lakh only towards surcharge. Short remittance of surcharge and interest worked to Rs. 14.23 lakh.</p> <p>Government stated (July 2015) that assessment had been completed (February 2015) creating additional demand of Rs. 17.65 lakh. The assessee remitted (March 2015) an amount of Rs. 7.50 lakh as per the conditional stay granted by Hon'ble High Court of Kerala in writ petition filed by the assessee. Further report had not been received (January 2016).</p>	<p><u>M/s. Fab India Overseas (P) Ltd.</u> <u>2012-13, Special Circle II, Ernakulam</u></p> <p>The issue involved in this case is non-payment of surcharge under 3(1A) of Kerala Surcharge on Taxes Act 1957.</p> <p><i>“The Act is one providing for levy of surcharges on certain taxes. Sub-section (1A) of Section 3 of the Act provides that the tax payable under sub-sections (1) and (2) of Section 6 of the Kerala Value Added Tax Act shall, in the case of national or multinational companies functioning in the State as retail chains or direct marketing chains, who import not less than 50 percent of their stock from outside the State or country, and not less than 75 percent of whose sales are retail business, and whose turnover exceeds Rs.5 crores per annum, be increased by a surcharge at the rate of 10 percent. Explanation I to the said provision clarifies that retail chains and direct marketing chains mentioned therein mean retail sales outlets or part of retail sales outlets of companies which share a registered business name or commercial name by way of franchise agreements or otherwise with standardized sales, purchase and promotional activities. Explanation II to the said provision clarifies that retail business mentioned therein shall mean, sales to persons other than registered dealers.”</i></p> <p>Fab India Overseas Limited Vs. The Assistant Commissioner (Assessment) in W.P. (C) No.22192/2012 the Hon'ble High Court allowing the Writ Petition declared that <i>Sub</i></p>

(1A) of Section 3 of the Surcharge Act 1957 is discriminating and violating of Article 301 and 14 of the Constitution. The Counsel held that :

The scope and amplitude of Articles 301 and 304 of the Constitution have been dealt with in finer details by a Nine Judge Bench of the Apex Court recently in Jindal Stainless Steel Ltd. and another v. State of Haryana and others [2016 (11) Scale 1]. The Apex Court referred to and considered in the said case almost every judgment dealing with the said Articles rendered by the court till then and disapproved the ratio of some of the judgments. Paragraph 72 of the majority judgment in the Rajasthan [AIR 1997 SC 2609], the Apex Court held that prescription of different rates of tax for interstate and intrastate sales of cement on the basis that the same would lead to increase in sales and consequent increase in the revenue earnings of the State, cannot be accepted as sufficient justification for making such a differentiation. Even otherwise, it is trite that a classification can only be based on an intelligible differentia that bears a rational nexus with the object sought to be achieved by the legislation. Such classification shall be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. It must be based on some qualities or characteristics which are to be found in all the persons put together and not in others who are left out and those qualities or characteristics must have a reasonable relation to the object of the legislation. Article 14 forbids class discrimination in the matter of imposing liabilities upon persons arbitrarily selected out of a large number of persons similarly placed. In the instant case, as noted, the object sought to be achieved is augmentation of revenue. If the object of the legislation is augmentation of

revenue, according to me, a classification of the dealers based on the criterion viz., whether they import goods into the State is *per se* unjustifiable and unintelligible. I have, therefore, no hesitation to hold that the impugned levy is discriminatory and violative of Article 301 read with clause (a) of Article 304 as also Article 14 of the Constitution.

The State filed appeal against the said judgment. In Writ Appeal No.2245 of 2018 the Hon'ble High Court heard and disposed the Writ Appeal along with W.A.No.1923/2018 and connected case held as follows:

*The whole doctrine of classification is based upon the distinction and on a well known fact that the circumstances which govern one set of the persons and objects may not necessarily be the same governing the other set of persons. The expression discrimination has not been defined in the Constitution though the same has fallen for interpretation by the Supreme Court in Kathi Rani Rawat vs. State of Saurashtra AIR 1952 SC 123 where the 7-Judge Bench held that all the legislative differentiation is not necessarily discriminatory. The 9 (nine) Judges Bench of Supreme Court has clearly held that if the levy is for a limited period, it cannot be said to be discriminatory, if otherwise would be act of hostile discrimination as has been decided by the learned single Judge. We do not find any illegality or perversity in the order of the learned single Judge to form a different opinion than the one held.*

The assessment for the year 2012-13 was completed as per order no.32071831874/2012-13 dated 07.02.2015 and the same was challenged by the assessee in the High Court of Kerala. Subsequently order was given by the High Court of Kerala in favour of the assessee as judgment is WP(C) 14880 of 2015

		<p>dated 06.06.2018 of single bench of Apex Court. Against this order, appeal was filed by the department and the same was dismissed as per judgment in W.A No.1923 of 2018 dated 19.02.2020 of the Division bench of Hon'ble High Court of Kerala following this assessment for the year 2012-13 has modified and the amount of surcharge Rs.7,50,000/- remitted by the dealer has been refunded through DDO code -11027740016. Hence there is no short levy and escapement of assessment in this case. The copy of the assessment order and refund order is submitted herewith for your perusal. The audit objection may kindly be dropped.</p>
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Para No.	Gist of the case	Present position
2.11(1)	<p>M/s. HCL Infosystems Ltd., Kochi was a dealer in computer and accessories. During 2011-12, they claimed exemption of Rs. 4.95 crore from the total receipt of Rs. 5.95 crore towards AMC against the actual eligible exemption of Rs. 2.97 crore. During 2012-13, they claimed exemption of Rs. 4.65 crore from the total receipt of Rs. 6.40 crore towards AMC, against the actual eligible exemption of Rs. 3.20 crore. Availing of excess exemption resulted in short payment of tax and interest of Rs. 29.42 lakh and Rs. 8.53 lakh during 2011-12 and 2012-13.</p> <p>Government stated (July 2015) that the assessment for the year 2012-13 had been completed (June 2015) creating additional demand of Rs. 9.68 lakh and the amount is under collection. Further report for the remaining period had not been received (January 2016).</p>	<p><b>M/s. HCL Infosystems Ltd</b>  <b>2011-12 2012-13, Special Circle II, Ernakulam</b></p> <p><b>2011-12</b>  Assessment for the year 2011-12 has been completed vide Order No. 32070312742/2011-12 dtd. 18.03.2019 additional demand created vide the said order is given below.</p> <p>Tax due :Rs. 16,41,665  Interest :Rs. 13,46,165  Total :Rs. 29,87,830</p> <p>The original assessment dated 18.03.2019 has been modified vide order dated 17.08.2021 and as per the modified order the assessee is in excess of Rs.1,38,704/-.</p> <p><b>2012-13</b>  Assessment for the year 2012-13 has been completed vide Order No. 32070312742/2012-13 creating additional demand as follows.</p> <p>Tax due: Rs. 7,22,624  Interest : Rs. 1,95,109  Total : Rs. 9,17,733</p> <p>Aggrieved by this order of assessments, the assessee preferred appeal before DC (Appeals), Ernakulam and remitted Rs. 2,75,320/- (i.e., 30% of the demand) for getting stay for the realization of the balance demand. DC (Appeals), Ernakulam disposed the appeal in favour of the assessee vide Order No. KVATA-1596/2015 dtd. 31.10.2018. As per the order of the</p>

appellate authority, the audit objection raised by the Accountant General is not sustainable.

The audit objection was to the effect of short payment of tax due to the incorrect exemption allowed. The assessment is completed for the years 2011-12 and 2012-13 on 18-03-2019. As per the appellate order No. KVATA 1403/19 dated 30-07-2020, the disputed points of levy of tax on 50% on AMC turnover disallowance of claim of exemption has been modified on 17-08-2021 as per remedies ordered in the appellate order and no arrear is outstanding for the year 2011-12.

As per the appellate order KVATA No 1596/2015 dated 31-10-2018, the exemption claim on turnover of AMC proved and allowed, the assessment modified on 22-10-2021 and no arrears outstanding for the year 2012-13. Hence the audit objection may be dropped.

Para No.	Gist of the case	Present position
2.11(1)b	<p>M/s. Crompton Greaves Limited, Kochi was a dealer in electrical goods, pump sets and parts etc. During 2012-13 they self assessed to tax at 5% turnover of Annual Maintenance contract amounting to Rs. 57.66 lakh after availing deduction under Rule 10(2)(b) for Rs. 60.54 lakh from the total turnover of Rs. 118.19 lakh. Since the turnover was arrived at under Rule 10(2)(b), the deduction admissible is Rs. 59.10 lakh (50%)only and the balance turnover should have been assessed at 13.5%. Failure to do this resulted in short payment of tax interest of Rs. 6.06 lakh.</p>	<p><u>M/s Crompton Greaves Ltd.</u>  <u>32070379915/2012-13, Special Circle II,</u>  <u>Ernakulam</u></p> <p>Based on the Audit objection the assessment has been completed by the assessing authority as per proceedings dtd. 18-06-2015 creating an additional demand of Rs. 17,89,154/- which includes Rs. 14,08,783/- and Rs. 3,80,371/- towards tax and interest respectively. The assessee has paid excess tax under KVAT Act and CST Act for the years 2009-10 and 2010-11 are transferred and adjusted towards the tax dues under KVAT Act for the years 2010-11 and 2012-13 to 2015-16 as per Modified order dated 26.02.2021. Copy of orders attached.</p>

Para No.	Gist of the case	Present position
2.12.2(1)	<p>M/s. Mascon Tillers and Tractors, Palakkad, was a dealer in tillers, tractors etc. During 2010-11, 2011-12 and 2012-13, the assessee purchased tillers and tractors for Rs. 6.48 crore, Rs. 4.15 crore and Rs. 9.42 crore respectively and availed input tax credit of Rs. 27.68 lakh, Rs. 33.23 lakh and Rs. 47.08 lakh respectively. Audit found that out of the total disposal of goods for Rs. 9.09 crore, Rs. 10.06 crore and Rs. 12.61 crore, 9.41 per cent, 6.23 per cent and 9.39 per cent respectively were stock transferred outside the State during the above period. As such four/five per cent input tax credit proportionate to interstate stock transfer to outside the State had to be reversed which was not done. Availing of excess input tax credit resulted in short payment of tax and interest of Rs. 10.57 lakh.</p>	<p><u>M/s. Mascon Tillers and Tractors, Palakkad.</u>  <u>32090634101/ 2010-11 to 2012-13</u></p> <p>The defect referred in the audit report had already been cured by a demand arose subsequent to an audit visit under section 23 of the KVAT Act 03 for the period 2010-11, 2011-12 and 2012-13. The demand of reversal was admitted by the dealer during the audit visit on 31.06.2013. Accordingly the dealer remitted an amount of Rs. 3,13,421/- vide challan no. 397/03.08.2013, Rs.1,50,000/- vide challan No.531/07.07.2014, Rs.5,26,070/- vide challan number 592/25.09.2014, 467/21.01.2015, 639/05.03.2015, 821/15.12.2014 for the years 2010-11, 2011-12, 2012-13 respectively.</p>

Para No.	Gist of the case	Present position
2.13	<p>M/s. Five Star Metals (p) Ltd, Pallavur, a metal crushing unit purchased (December 2010) an electric generator set for Rs. 31.21 lakh. The assessee in response to a notice issued by the Intelligence Officer declared (January 2011) that the generator set with accessories purchased by them was for own use and had no direct connection to their business. Though the generator was purchased for purposes other than that connected with the manufacturing or processing of goods, the assessee issued Form -C declaration for the above purchase (March 2011) which would attract penalty u/s 10(d) of the CST Act, 1956. Amount of penalty that could be imposed comes to Rs. 5.85 lakh.</p>	<p><b>M/s Five Star Metals (p) Ltd. CTO, Chittur, <u>32090990782/2010-11</u></b></p> <p>Based on the Audit objection notice was issued to the assessee on 06.09.2011 u/s 10(d) of the CST Act proposing a penalty of Rs. 5,85,280/- (one and half time of the tax evaded) and same was confirmed as per order No. 32090990782/2010-11 dated 04.11.2013.</p> <p>The Asst. Commissioner (Appeals), Palakkad allowed the appeal filed by the assessee as per order No. KVATA 4/2014 dtd. 24.02.2014 in which the Asst. Commissioner (Appeals), held that there was no mens rea for misuse of 'C' Forms to evade tax and hence the penalty imposed was not sustainable relying on the cases between Jai Glasskow vs Commercial Tax Officer [(2007) 8 VST 770 (rAJ)], Sanjiv Fabrics vs Commissioner of Sales Tax, U.P [(2004) 137 STC 563 (AIT)] and State of Tamil Nadu vs Parry Agro Industries Ltd and another [(2010) 27 VST (131)].</p> <p>Against the order of the Asst. Commissioner (Appeals) State filed second appeal before the Appellate Tribunal. The appeal was dismissed vide Order No. TA (VAT) No. 100/2014 dtd. 07.03.2015.</p> <p>The findings of the Tribunal is as follows:</p> <p>“ The respondent is running a metal Crusher unit for crushing Granite to make metal. It is evident that, the machinery runs upon electrical power. Therefore, a high capacity electric generator, as contented by the</p>

respondent, will be necessary in the crushing unit to ensure uninterrupted power supply for continuous manufacturing process. An rightly pointed out by the learned representative when tax concession is available only for interstate sales of goods mentioned in the Registration Certificate of the purchasing dealer or those goods necessary for him to process or manufacture goods for resale, there is no possibility of the respondent dealer effecting a purchase stating that the commodity purchased is not connected with its business or manufacturing process. Therefore, contentions taken that there was typographical error in the letter of the respondent and further that intended communication was of the machinery being connected with the business and an inevitable part of it are very much convincing. Besides the nature of the commodity purchased rules out any possibility of the same being used for any other use than commercial included industrial or manufacturing process. Contentions int the appeal memorandum that only those goods mentioned in the Registration Certificate of the purchasing dealers are liable to taxed at concessional rates are also not well taken. Apart from these goods, concessional rates are available to those goods also which are necessary for the process of manufacture of goods for sale by the purchasing dealer. In the instant case purchase is of a high-capacity electric generator set which is necessary for providing uninterrupted power supply to the metal crushing unit run by the respondent. This

machinery is connected with the manufacturing business of the respondent purchaser and hence its sale by the interstate seller will be taxable only at concessional rates u/s 8 (3) (b) of the Act. None of the decision cited on the side of the revenue are applicable to the facts and circumstances of the present case in as much as that we find no mens rea in the actions of the respondent. To constitute an offence under any of the sub clauses (a) to (f) of section 10, a reading of the provisions reveal that, there should be a conscious of deliberate attempt or act by the offending dealer, which makes the elements of 'mens rea' indispensable. We do not think that there was an attempt to evade tax by misuse of C-Form".

Hence the para is not sustainable. So the Para may kindly be waived.

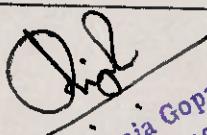
MANOJ.K  
MANOJ.K  
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### Action taken Notes on C & AG's Report

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject / Title of the Review Paragraph	Escape of turnover from assessment
	(c)	Paragraph No	2.7.1 (1)
	(d)	Report No. and Year	C & AG report for the year ended 31-03- 2015.
II	(a)	Date of receipt of the Draft Para/ Review inthe Department	27/05/2015
	(b)	Date of Department's Reply	30-06-2015
III		Gist of Paragraph/ Review	Accountant General on scrutiny of assessment records of M/s. ABB Ltd. for 2011-12 found that the assessee claimed exemption under Rule 10 for Rs. 19,26,53,239/- on total contract receipts of Rs. 25,30,61,775/- and taxable turnover of Rs. 6,04,08,536/- was assessed to tax @ 12.5% . Purchase turnover of the assessee was found by Accountant General to be Rs. 17,14,84,040/-. Rule 10(2) (a) of KVAT Rules 2005 in relation to works contract was applied to this case. As the taxable turnover arrived after deductions fall below the cost of goods transferred in execution of works contract, an amount equal to the cost of goods transferred together with profit was taken as taxable turnover. Thus it was observed that the turnover of Rs.110.78 Lakhs had escaped from assessment which resulted I short levy of tax, cess and interest of Rs.171.08 Lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph ?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions ?	Yes
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

### Remedial action taken

VI	(a) Improvement in system and procedures including internal controls.	<p>The findings of the Accountant General is factually incorrect. On verification of the assessment records of M/s. ABB Ltd; for 2011-12 by the assessing authority it is found that the assessee had declared a contract receipt of Rs. 30,44,05,336.76. The assessee has claimed exemption of Rs. 25,97,85,611.67 as being E1 sale, High Sea Sale, labour charge and sub contract. But as the assessee failed to produce document in support of claim of exemption a notice was issued proposing to reject the claim of exemption for Rs. 25,97,85,611.67. In the reply the assessee has contented that they have already filed documents in support of claim for Rs.3,24,83,368/- and has sought time to produce the other documents.</p> <p>The dealer filed reply on 30-03-2015 along with supporting documents. On verifying the reply and supporting documents in detail, the assessment for the year 2011-12 has been completed vide order No. 32072097464/2011-12 Dated 02-05-2015 creating an additional demand of Tax Rs. 1,10,43,065.40 and interest Rs.41,96,364.85. On receiving the assessment order dealer filed rectification application under section 66 of the KVAT Act on 24-05-2015. The order has been rectified vide order No. 32072097464/2011-12 dated 30-05-2015 by giving credit for an amount of Rs. 1,00,70,121/- On rectifying the order additional demand of tax comes to Rs. 95,43,065/- and Interest Rs. 36,26,365/-.</p>
	(b) Recovery of overpayment pointed out by audit	NA
	(c) Recovery of under assessment, short levy or other dues	Short levy
	(d) Modification in the schemes and programmes including financing pattern	----
	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit.	----

  
 R. Raja Gopal  
 Additional Secretary  
 Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a) Department	COMMERCIAL TAXES
I	(b) Subject / Title of the Review	Incorrect Computation of Compounded Turnover
	(c) Paragraph No.	2.7.1.(3)
	(d) Report No. & Year	C & AG Report for the year ended 31/3/2015
II	(a) Date of receipt of the Draft Para / Review in the Department	12/06/15
	(b) Date of Department's reply	25/07/15
III	Gist of the Paragraph / Review	The audit objection in this case is that M/s. Essar Projects (India) Limited a works contractor self assessed to tax a turnover of ₹ 9.03 Crore during 2011-12. Audit found that the cost of goods transferred in the execution of work was ₹ 12.88 Crore. As such the taxable turnover should not be less than ₹ 12.88 Crore. Escape of turnover from assessment resulted in short payment of tax, cess and interest of ₹ 33.88 Lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit Conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

VI

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	In the light of audit the assessment has been completed reckoning the contract receipt as per returns amounting to ₹ 16,37,76,698/- . Total turnover has been fixed at ₹ 25,10,08,510 allowing exemption under Rule 10 (2) (a) amounting to ₹ 7,09,42,826/- . Therefore the taxable turnover comes to Rs. 18,00,65,684/- . The assessment has been completed on 30-06-2015 creating additional demand of ₹ 65,92,782/- and ₹ 25,71,185/- towards interest.
(b)	Recovery of overpayment pointed out by audit	NA
(c)	Recovery of under assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	—
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by Audit	—



Addl. Director  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Escape of turnover from assessment
	(c)	Paragraph No.	2.7.1.5 (b)
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015.
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	18.06.2015
	(b)	Date of Department's Reply	13.07.2015
III		Gist of Paragraph/Review	M/s. John Panackal Peter, Alappuzha a works contractor filed annual return for 2012-13 conceding a taxable turnover of Rs. 3.30 crore availing exemption of Rs. 6.31 crore from the total contract receipts of Rs. 9.62 crore. Audit found that the cost of goods transferred into the works during the year was Rs. 4.27 crore. As such the taxable turnover should not be less than Rs. 4.27 crore. Escape of turnover of Rs. 95.45 lakh from assessment resulted in short payment of tax and interest of Rs. 12.26 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

VI

REMEDIAL ACTION TAKEN

	Improvement in system and procedures, including internal controls.	<p>Sri. P.P. John, PWD Contractor is an assessee on the rolls of Commercial Tax Officer (WC), Alappuzha. In the annual return filed for the year 2012-13, they had disclosed a total and taxable turnover of Rs. 9,62,22,609/- and 3,31,45,121/- respectively and claimed exemption under rule 10(2) for Rs. 6,30,77,488/-. The annual return, trading Profit &amp; Loss Account and inventory of closing stock showed that the purchase value of goods transferred into the work was Rs. 3,76,50,667/-.</p> <p>During Accountant General's audit, it was pointed out that as per rule 10(2) (a) of the KVAT Rules 2005 in relation to works contract, the taxable turnover in respect of the transfer of property involved in the execution of work contract shall be arrived at after deducting labour and other charges specified there under from the total amount received for the execution of the works contract. If the taxable turnover so arrived falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit if any shall be the taxable turnover in respect of such works contract. Short levy of tax, cess and interest due to escape of turnover from assessment comes to Rs. 12,46,513/-. On the basis of the audit objection assessment has been completed under section 25 of KVAT Act as per order No. 32041589365/12-13 dated 28.05.2015 by the Commercial Tax Officer (WC), Alappuzha. An amount of Rs. 3,80,085/- was paid as per challan No. 100/04-07-2015 and 103/04.07.2015. The dealer filed appeal and stay petition before the Deputy Commissioner (A), Kollam and the balance amount is under revenue recovery of Inspecting Assistant Commissioner, Alappuzha.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Rs. 3,80,085/ collected vide chalan no. 100 dated. 04.07.2015.
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	Pending with the Deputy Commissioner(A), Kollam.



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Escape of turnover from assessment
	(c) Paragraph No.	2.7.2
	(d) Report No. and Year	C & AG Report for the year ended 31.03.2015.
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	02.07.2015
	(b) Date of Department's Reply	31.07.2015
III	Gist of Paragraph/Review	M/s. KEC International Limited, Mavelikkara self assessed to tax a contract receipts of Rs. 2.87 crore after availing exemption of Rs. 2.94 crore from the total contract receipt of Rs. 5.81 crore. Audit found that cost of goods transferred into the work during the years was Rs. 7.99 crore. As such the taxable turnover should not be less than Rs. 7.99 crore. Escape of turnover from assessment resulted in short payment of tax and interest of Rs. 89.77 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. KEC International Limited, Mary Sadanam, Mavelikkara is an assessee on the rolls of the Commercial Tax Officer (Works Contract), Alappuzha bearing TIN 3204156839. The revised return filed for 2012 – 13 disclosed a total and taxable turnover of Rs. 5,80,74,239/- &amp; Rs. 2,87,06,544/- respectively.</p> <p>During Accountant General's audit, on scrutiny of assessment records of 2012 – 13 relating to the assessee, it is revealed that the contract receipt of Rs. 1778.16 lakhs corresponding to material cost of Rs. 1266.04 lakh was omitted to be disclosed in the self assessed return. The assessee did not file certified Profit and Loss Account and Balance Sheet for the year end 31.03.2013. On an analysis of the closing stock inventory uploaded in KVATIS, with reference to the contract receipt and purchase returned for the year 2012 – 13 and closing stock and accounted gross profit for the year 2011 – 12, there was a short levy of tax with interest of Rs. 2,58,10,950/- (Tax Rs. 2,08,15,282 + Interest Rs. 49,95,668/-) occurred. Commercial Tax Officer (Works Contract) issued notice under Section 25 on 23.01.2015 and the assessee requested one month time. The assessing authority rejected the request and completed the assessment on 28.05.2015 with balance tax due at Rs. 2,08,15,282/- and interest Rs. 49,95,668/- totaling to Rs. 2,58,10,950/-. The Accountant General arrived the short levy considering purchase turnover conceded by the assessee only and tax due was worked out @ 5% on declared goods and 13.5% on others. But while doing the assessment the assessing authority</p>
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		<p>arrived sales turnover by taking the closing stock value of the previous year together with the purchase and profit. Not only that entire sales turnover was assessed @ 13.5% also. That is why the difference in short levy worked out by Accountant General and additional demand created. The assessment order and demand notice dispatched on 03.06.2015.</p> <p>Revenue Recovery is not initiated as the demand is under conditional stay before Deputy Commissioner (Appeals) – II, Kollam, vide appellant order No. 328/15 KVAT (ALPY) Dated. 13.07.2015. The appellant should remit 30% of the balance amount demanded within three weeks from the date of receipt of this order and should also furnish adequate security for the balance amount.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Stayed by the Deputy Commissioner (Appeals), Kollam
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	NA



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject / Title of the Review	Turnover escaped assessment.
	(c)	Paragraph No.	2.7.2.1
	(d)	Report No. & Year	C&AG Report for the year ended 31.03.2015
II	(a)	1. Date of receipt of the Draft Para / Review in the Department	18.05.2015
	(b)	Date of Department's Reply	18.06.2015
III		Gist of the Paragraph / Review	M/s. A.B. Traders, Amaravila a dealer in cement, self assessed to tax a sales turnover of Rs. 20.46 crore during 2011-12, the purchase price of which was Rs. 21.16 crore. Though the goods were sold at a price lower than the purchase price, discount of Rs. 2.08 crore received subsequently was not reckoned as turnover and assessed to tax. This resulted in short payment of tax, cess and interest of Rs. 30.71 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph ?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions ?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	NA

### REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	The assessment was completed u/s.25 of the KVAT Act 2003 dtd. 2.05.2014 creating a demand of Rs. 11,47,195/- and Rs. 2,86,799/- as interest. The assessee had filed appeal and interlocutory stay petition before the Deputy Commissioner (Appeals), Thiruvananthapuram. As per order No. KVATA.106/14, dtd. 24.10.2014, the Deputy Commissioner (Appeals), Thiruvananthapuram granted stay for collection of the disputed tax and interest on the condition that the appellant remits 30% of the disputed amount and on furnishing adequate security for the balance amount before the assessing authority within 3 weeks from the date of receipt of the order. In response to the above the dealer has remitted Rs. 4,30,198/-, 30% of the disputed tax and interest vide chalan No.343 dtd. 2.01.2015 and furnished adequate security for the balance amount.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Rs. 4,30,198/- Ch. No.343, dtd. 2.01.15.
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by Audit	Stayed by DC(A), Tvpm. vide KVATA No.106/14.

  
 R. Raja Gopal  
 Additional Secretary  
 Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

		Department	COMMERCIAL TAXES
I	(a) Subject/Title of the Review		Escape of turnover from assessment.
	(b) Paragraph No.		2.7.2(1)(6)
	(c) Report No. and Year		C & AG Report for the year ended 31.03.2015.
II	(a) Date of receipt of the Draft Para/Review in the Department		02.07.2015
III	(b) Date of Department's Reply		10.09.2015
	Gist of Paragraph/Review	<p>In Agricultural Income Tax &amp; Commercial Tax Officer, Vythiri at Kalpetta, M/s. Krishna Hardwares a dealer in cement assessed tax on ₹ 3.75 crore and ₹ 4.74 crore during 2010 – 11 and 2011 – 12 respectively whereas its purchase cost were ₹ 3.76 crore and ₹ 4.83 crore respectively. Though the assessee sold goods at a price lower than the purchase cost of goods, discount of ₹ 19.02 lakh and ₹ 28.81 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in short payment of tax, cess and interest of ₹ 7.66 lakh.</p>	
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA	
V	(a) Does the Department agree with the Audit conclusions?	Yes	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA	

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Krishna Hardwares, Kalpetta is an assessee on the rolls of Commercial Tax Officer, Kalpetta bearing TIN No. 32140435645C dealing with Cement, White Cement and Cement products.</p> <p>On receipt of the above audit objection, notice has been issued to the dealer on 08.10.2014 by the Commercial Tax Officer, Kalpetta and the assessments have been completed on 10.06.2015 demanding the following amounts.</p> <table border="1" data-bbox="722 786 1448 999"> <thead> <tr> <th>Year</th><th>VAT</th><th>Cess</th><th>Interest</th><th>Total</th></tr> </thead> <tbody> <tr> <td>2010 – 11</td><td>2,37,590</td><td>2,338</td><td>1,53,554</td><td>3,93,482</td></tr> <tr> <td>2011 – 12</td><td>3,60,728</td><td>3,400</td><td>1,89,035</td><td>5,53,163</td></tr> <tr> <td>Total</td><td></td><td></td><td></td><td>9,46,645</td></tr> </tbody> </table>	Year	VAT	Cess	Interest	Total	2010 – 11	2,37,590	2,338	1,53,554	3,93,482	2011 – 12	3,60,728	3,400	1,89,035	5,53,163	Total				9,46,645
Year	VAT	Cess	Interest	Total																		
2010 – 11	2,37,590	2,338	1,53,554	3,93,482																		
2011 – 12	3,60,728	3,400	1,89,035	5,53,163																		
Total				9,46,645																		
(b)	Recovery of overpayment pointed out by Audit	NA																				
(c)	Recovery of under Assessment, short levy or other dues	Short levy																				
(d)	Modification in the schemes and programmes including financing pattern																					
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit																					



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORTS

		Department	COMMERCIAL TAXES
I	(a) Subject/Title of the Review	Escape of turnover from assessment	
	(c) Paragraph No.	2.7.2(2)	
	(d) Report No. and Year	C & AG Report for the year ended 31.03.2015	
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	18.06.2015	
	(b) Date of Department's Reply	25.07.2015	
III	Gist of Paragraph/Review	<p>M/s. Ramesh Iron and Steel Company India Pvt. Ltd. is a dealer in iron &amp; steel and its products. During 2012-13 the dealer self assessed tax on a sales turn over of Rs. 109.72 crore while its purchase cost was Rs. 111.22 crore. Though the assessee sold goods at a price lower than the purchase price, discount of Rs. 240.19 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in the short levy of tax and interest of Rs. 10.73 lakh.</p>	
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA	
V	(a) Does the Department agree with the Audit conclusions?	Yes	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA	

**REMEDIAL ACTION TAKEN**

(a)	Improvement in system and procedures, including internal controls.	Based on the audit observation notice U/s 25(1) was issued to the assessee by the Assistant Commissioner (Assmt.), Palakkad on 20.12.2014. Again on further scrutiny, sales suppression to a tune of Rs. 38,17,188/- related to job work was also detected. Consequently a revised notice was issued on 10.03.2015. The assessment for the year 2012-13 was thus completed on 12.05.2015 creating an additional demand of Rs. 14,05,007 /-. (Tax Rs. 11,05,085/-, interest Rs. 2,89,922/-). The assessee paid Rs. 4,21,502/- vide chalan No. 846 dated 03.06.2015.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Collected Rs. 4,21,502/- vide Chalan No. 846 dated. 03.06.2015.
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	NA

*Raja Gopal*  
R. Raja Gopal  
Additional Secretary  
Taxes Dept

**ACTION TAKEN NOTES ON C & AG'S REPORT**

		COMMERCIAL TAXES
I	(a) Department	
	(b) Subject/Title of the Review	Escape of turnover from assessment
	(c) Paragraph No.	2.7.2(5)
	(d) Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	18.05.2015
	(b) Date of Department's Reply	20.06.2015
III	Gist of Paragraph/Review	<p>The audit objection in this case is that, scrutiny of assessment records of M/s Kizhakkedathu Enterprises, with the Commercial Tax Officer, Ranni, for the year 2011 – 12 revealed that a dealer in cement had assessed tax on a sales turnover of Rs. 9.69 crore where its purchase cost (including freight) was Rs. 9.87 crore. Though the goods sold was at a price below the purchase value, discount of Rs. 73.17 lakh and price difference of Rs. 2.06 lakh received subsequently was omitted to be reckoned as turnover for assessment of tax. This resulted in short levy of tax amounting to Rs. 11.39 lakh including interest upto 12/13.</p>
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of the audit objection, the assessment for the year 2011-12 was completed under section 25(1) of the KVAT Act, 2003 demanding Rs. 9,40,553/- towards tax and cess and Rs. 2,27,990/- towards interest vide order No. 32030966575/2011-12 dated. 25.03.2014 of the Agricultural Income Tax and Commercial Tax Officer, Ranny. The amount was advised for Revenue Recovery as per RRC No. 26/2013-14 dated. 16.06.2014.</p> <p>Aggrieved by the above order of assessment, the dealer filed appeal before the Deputy Commissioner (A) II, Kollam. The stay petition filed was disposed on condition that the appellant will remit 35% of the tax and interest demanded and furnish adequate security for the balance amount. The dealer has remitted Rs. 4,32,724/- vide chalan No. 232/17.07.2014 and furnished security before the assessing authority. The case is still pending for final disposal.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Remitted Rs. 4,32,724/-
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	



R. Raja Gopal  
Additional Secretary  
Taxes Dept

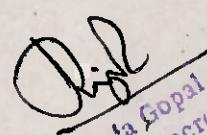
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ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Escape of turnover from assessment
	(c) Paragraph No.	2.7.2 (1)(7)
	(d) Report No. and Year	C & Ag Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	27/05/2015
	(b) Date of Department's Reply	23/12/2015
III	Gist of Paragraph/Review	The audit objection in this case is that M/s. Akhil Ansu Agencies, Kidangoor a dealer in cement self assessed to tax a sales turnover of Rs.4.78 crore during 2011-12 whereas its purchase cost was Rs.4.85 crore. Though goods were sold at a price lower than the purchase price discount of Rs.42.96 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in short payment of tax, cess and interest of Rs.6.40 lakh.
	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

(a)	Improvement in system and procedures, including internal controls.	<p>The factual report submitted by the Deputy Commissioner, Kottayam has been examined by this office with reference to the assessment records and found that the remedial action taken by the assessing authority on the basis of the proviso to Section 11(3) of the KVAT Act is not fit enough to set right the short levy pointed out by the Accountant General. So direction has been given to the assessing authority to re-examine the case in the light of Expln. VII to Section 2(Iii) of the KVAT Act.</p> <p>Accordingly the assessing authority re-examined the case and the assessment was completed on 25.08.2015 creating an additional demand of Rs.7,62,534 lakhs. The assessment order and demand notice were served to the assessee on 25.08.2015 by the Commercial Tax Officer, Pala.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	-



R. Raja Gopal  
Additional Secretary  
Taxes Dept

**ACTION TAKEN NOTES ON C&AG'S REPORTS.**

I	(a) Department	COMMERCIAL TAXES
	(b) Subject/Title of the Review	Turnover escaped assessment
	(c) Paragraph No.	2.7.2.2
	(d) Report No.& Year	C&AG report for the year ended 31.03.15
II	(a) 1. Date of receipt of the Draft Para/Review in the Department.	18-05-2015
	(b) Date of Department's Reply	17-06-2015
III	Gist of the Paragraph/Review	Sri.M.,Abubacker, a dealer in cement, self assessed to tax a sales turnover of Rs.9.03 crore during 2011-12 where the purchase cost of goods was Rs.9.38 crore. Though the assessee sold goods at a price lower than the purchase price, discount of Rs.91.39 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in short levy of tax, cess and interest of R.13.50 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph ?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions ?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	NA

VI

## REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	The escaped assessment in respect of the above dealer was completed on 02.05.2014 demanding an amount Rs.5,54,001/- as tax and Rs.1,38,500/- as interest. The dealer filed appeal and interlocutory stay petition before the Deputy Commissioner (Appeals) Thiruvananthapuram. As per Order No.KVATA 107/14 dated. 24.10.2014 of the Deputy Commissioner (Appeals) Thiruvananthapuram granted stay for collection of the disputed tax and interest on the condition that appellant remits 30% of the disputed amount within a week from the date of order and furnishing adequate security for the balance amount before assessing authority. The dealer fulfilled the conditions within the stipulated time.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment,short levy of other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Stayed by DC(Appeals) Tvm.
(e)	Review of similar cases/ complete scheme/project in the light of findings of sample check by Audit.	KVATA No.107/14 dt.24.10.14



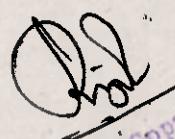
R. Raja Gopal  
Additional Secretary  
Taxes Dept

**ACTION TAKEN NOTES ON C & AG'S REPORTS**

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Escape of turnover from assessment.
	(c)	Paragraph No.	2.7.3.1
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015.
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	02.07.2015
	(b)	Date of Department's Reply	19.08.2015
III		Gist of Paragraph/Review	M/s. Sree Vinayaka Motors, Kottarakara, a dealer in motor vehicles submitting annual return for 2011 – 12, after remitting total payable tax of ₹ 6.20 crores. Subsequently the assessee revised the annual return with total tax liability of ₹ 7.20 crores. Though the assessee paid differential tax and cess payable as per revised annual return, they had not remitted the interest and penal interest due thereon. Moreover payment made by the assessee amounting to rupee one crore was not appropriated first towards interest. Non levy of interest and non appropriation of payment resulted in short payment of tax, interest and penal interest of ₹ 33.74 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

**REMEDIAL ACTION TAKEN**

(a)	Improvement in system and procedures, including internal controls.	Assessment under Section 25(1) of the KVAT Act, 2003 was completed, based on the audit objection, vide order dated 23.12.2014 creating demand of ₹ 13.74 lakhs. The demand has been advised for Revenue Recovering to District Collector vide No. RR 2015/2706/2 dated. 28.03.2015.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Collected Rs.
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	Under R.R.



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Escape of turnover from assessment
	(c) Paragraph No.	2.7.4
	(d) Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	18/05/2015
	(b) Date of Department's Reply	24/06/2015
III	Gist of Paragraph/Review	<p>M/s. Sivasakthi Engineering and Fabrications was a manufacturer of cement products. The assessee filed the annual return for 2012-13 disclosing a sales turnover of Rs. 9.63 crore. As per the P &amp; L account of the assessee, they received Rs. 1.56 crore towards transportation charges during the year. Audit found that the assessee entered into agreement with KSEB for supply of electric poles to various electrical circles during 2012-13. In the agreement with KSEB, it was stipulated that contract is for manufacture and delivery of poles within or outside the concerned electrical circles.</p> <p>As such the transportation charges received would form part of the turnover. However the assessee did not assess to tax the above turnover. This resulted in short payment of tax and interest of Rs. 9.07 lakh.</p>
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Escape of turnover from assessment
	(c) Paragraph No.	2.7.4
	(d) Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	18/05/2015
	(b) Date of Department's Reply	24/06/2015
III	Gist of Paragraph/Review	<p>M/s. Sivasakthi Engineering and Fabrications was a manufacturer of cement products. The assessee filed the annual return for 2012-13 disclosing a sales turnover of Rs. 9.63 crore. As per the P &amp; L account of the assessee, they received Rs. 1.56 crore towards transportation charges during the year. Audit found that the assessee entered into agreement with KSEB for supply of electric poles to various electrical circles during 2012-13. In the agreement with KSEB, it was stipulated that contract is for manufacture and delivery of poles within or outside the concerned electrical circles.</p> <p>As such the transportation charges received would form part of the turnover. However the assessee did not assess to tax the above turnover. This resulted in short payment of tax and interest of Rs. 9.07 lakh.</p>
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	Based on the audit observation the assessment has been completed vide the order No. 32090632784/12-13 dated 23/01/2015 creating additional demand of Rs. 9,38,380/- . Against the revised order, the assessee filed appeal before the Deputy Commissioner (Appeals) , Ernakulam. Simultaneously the dealer approached the Honourable High Court of Kerala against the revenue recovery proceedings . The Honourable High Court of Kerala in its order dated 06/03/2015 in WP ( C ) No. 7209/2015 (A) has stayed the collection of the additional demand till the disposal of stay petition filed by the assessee before the Deputy Commissioner (Appeals) , Ernakulam. The Honourable High Court of Kerala has also issued direction to the Deputy Commissioner ( Appeals ) Ernakulam to dispose the stay petition within two months from the date of receipt of its order. The Deputy Commissioner (Appeals), Ernakulam, disposed the case and granted conditional stay to the dealer , directing to the dealer to pay 30% of the amount due and furnish adequate security for the remaining amount. The dealer had paid 30% of the amount and furnished Form No. 6 Security bond for the balance amount.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Conditional stay by Deputy Commissioner ( Appeals ), Ernakulam .
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	



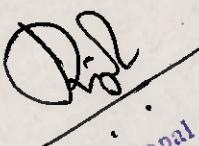
R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Short Remittance of surcharge
	(c) Paragraph No.	2.8.(3) (b)
	(d) Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	05/06/2015
III	(b) Date of Department's Reply Gist of Paragraph/Review	20/06/2015 The audit objection in this case is that during 2012 – 13, M/s Fab India Overseas (P) Limited who is liable to pay surcharge under section 3(1A) of the surcharge Act 1957 had paid Rs. 2.29 lakh only as surcharge as against Rs. 14.35 lakh due.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p>M/s Fab India Overseas (P) Limited, is an assessee on the rolls of the Assistant Commissioner, Special Circle II, Ernakulam with TIN – 32071831874, functioning as a retail chain dealer dealing in ready made garments, furniture, gift article, cosmetics etc.</p> <p>On the basis of the audit observation the escaped assessment was completed by the assessing authority under section 25(1) of the KVAT Act on 07.02.2015.</p> <p>The assessee has filed Writ Petition WP(C) No. 8900/2015 against the revised assessment. In obedience the judgment of the Honourable High Court of Kerala, assessee remitted an amount of Rs. 7,50,000/- as per DD No. 496365 and 496366 dated. 30.03.2015 of SBT towards the compliance of conditional stay.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Collected Rs. 7,50,000/-
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	Conditional stay WP (C ) No. 8900/2015



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Non payment of surcharge
	(c) Paragraph No.	2.8 (4)
	(d) Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	18/05/2015
	(b) Date of Department's Reply	24/06/2015
III	Gist of Paragraph/Review	M/s. Monavie India Enterprises Pvt Ltd. , Palarivattom was a multinational company involved in direct marketing of health drinks. As per annual return for 2011-12 filed by the assessee, the entire product for sal were stock transferred from outside the state and sales turnover for the eyar was Rs. 6.70 crore. Though their entire sales were through direct marketing / retail chain the output tax of Rs. 83.70 lakh was not increased by a surcharge at 10% as per the provision of Kst Act, 1957. This resulted in short payment of surcharge and interest of Rs. 9.29 lakh
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Partly
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Partly
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	<p>Improvement in system and procedures, including internal controls.</p>	<p>The audit objection is that the assessee is a multinational company involved in direct marketing of health care product and it is revealed that entire product for sale is imported from outside the state and turnover was Rs. 6,69,56,321/- . In the circumstances, it was liable to pay surcharge @ 10% on Vat due under Section 3(IA) of the Kerala Surcharge on Taxes Act 1957.</p> <p>Under Section 3 (IA) of the Kerala surcharge on taxes Act 1957, in the case of national or multinational companies functioning in the state as retail chains or direct marketing chains who import not less than 50% of their stock from outside the state or country, and not less than 75% of whose sales are retail business and whose total turnover exceeds 5 crore rupees per annum, output tax and purchase tax payable under KVAT Act shall be increased by a surcharge at the rate of 10% .</p> <p>On the basis of audit objection the assessment for the year 2011-12 has been completed under Section 25 (1) on 05/06/2013 and additional demand created Rs. 9,54,128/- ( surcharge Rs. 8,36,954/- ) , interest Rs. 1,17,174/- )</p> <p>The assessee preferred appeal before the Assistant Commissioner (Appeals), Ernakulam. The Assistant Commissioner (Appeals) , Ernakulam allowed the appeal vide Order No. KVATA 3891/2013 dated 21/07/2014 for the reason that, the appellant company was not a retail chain as they do not have any retail outlets. It was held that they are not direct marketing chains and they do not have</p> <p>direct sales to customers. It was found by the first appellants sales are only to distributors and out of such distributors most of them are registered VAT dealers. The sales to unregistered distributors was found only Rs. 3,01,00,566/- ie. 46.48 % of the total sales. Thus the appellant falls out of the provisions attractive levy of surcharge and the said turnover is below the stipulated 75% of total sales. Thereafter the assessing authority modified the assessment vide proceedings No. 32071335107/2011-12 dated 26/11/2014 and an amount of Rs. 8,36,954/- found excess.</p>
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		Against the order of the 1 <sup>st</sup> appellate authority the Deputy Commissioner, Ernakulam has filed 2 <sup>nd</sup> appeal before the Honourable Tribunal, Ernakulam on 17/01/2015.
b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	

*R. Maja Gopal*  
R. Maja Gopal  
Additional Secretary  
— Taxes Deptt

ACTION TAKEN NOTES ON C & AG'S REPORT

		COMMERCIAL TAXES
I	(a) Department	
	(b) Subject/Title of the Review	Misclassification of commodities
	(c) Paragraph No.	2.9 (1)
II	(d) Report No. and Year	C & AG Report for the year ended 31.03.2015
	(a) 1. Date of receipt of the Draft Para/Review in the Department	28.05.2015
III	(b) Date of Department's Reply	30.06.2015
	Gist of Paragraph/Review	M/s Crompton Greaves Limited, Kochi was a dealer in electrical goods, pump sets and parts etc. During 2012 – 13, sales turnover of Home UPS for Rs. 110.91 lakh was classified as computer systems and peripherals and assessed at five per cent instead of at the applicable rate of 13.5 per cent. The misclassification resulted in the short payment of tax and interest of Rs. 11.22 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	M/s Crompton Greaves Limited is an assessee on the rolls of the Assistant Commissioner, Special Circle II, Ernakulam with TIN - 32070379915 who is a dealer in Electrical Goods, Pump sets and parts etc. The assessee filed annual return for 2012 - 13 declaring total turnover of Rs. 1,76,77,71,861/- which includes sale of computer systems and peripheral amounting to Rs. 1,10,91,037/- which was subjected to tax @ 5%.  Based on the audit objection the assessment has been completed by the assessing authority as per proceedings dated. 18.06.2015 creating an additional demand of Rs. 17,89,154/- which includes Rs. 14,08,783/- + Rs. 3,80,371/- towards tax and interest respectively.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	-



R. Raja Gopal  
Additional Secretary  
Taxes Deptt

ACTION TAKEN NOTES ON C & AG'S REPORTS

		Department	COMMERCIAL TAXES
I	(a) Subject/Title of the Review		Application of incorrect rate of tax.
	(b) Paragraph No.		2.9.(2)
	(c) Report No. and Year		C & AG Report for the year ended 31.03.2015.
II	(a) Date of receipt of the Draft Para/Review in the Department		12.05.2015
III	(b) Date of Department's Reply		30.06.2015
	Gist of Paragraph/Review		The audit objection in this case is that M/s Sreehari Metals, Office of the Commercial Tax Officer, First Circle, Thrissur was a dealer in rubber products and lubricants. During 2011 - 12, the assessee self assessed to tax the turnover of lubricants for Rs. 166.01 lakh assessable at the rate of 12.5 per cent at a lower rate of four per cent. Application of incorrect rate of tax resulted in short payment of tax, cess and interest of Rs. 16.82 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?		Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support		NA
V	(a) Does the Department agree with the Audit conclusions?		Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary		NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p>M/s Sreehari Metals &amp; Chemicals India Private Limited, Varadiyam Road, Avanur P.O., Thrissur was a registered dealer on the rolls of this office having TIN 320805 91686 C had stopped business with effect from 31.03.2013.</p> <p>The audit wing pointed out that M/s Sreehari Metals &amp; Chemicals India Private Limited, Avanur has applied in correct rate of tax for their sales turnover for the year 2011 – 12 which resulted in a revenue loss of Rs.16,81,715/- including tax, cess &amp; interest.</p> <p>The assessment of the dealer for the year 2011 – 12 was completed and a demand of Rs. 19,86,789/- created including tax, interest &amp; cess as per assessment No. 32080591686/11-12 dated. 26.12.2013 by the Commercial Tax Officer, First Circle, Thrissur incorporating other defects also. The assessment order and demand notice served to the dealer on 10.01.2014.</p> <p>The dealer filed appeal against the assessment order for the year 2011 – 12. The Assistant Commissioner (A), Commercial Taxes, Thrissur set aside the order passed by the assessing officer for the year 2011 – 12 as per order No. KVATA – 15/14 dated. 30.01.2014 directing the assessing authority to re-examine inter-alia the aspects of difference in turnover and closing stock between audited statements and return filed.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Ramanded by the Deputy Commissioner (Appeals)
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	NA

*Raj Gopal*  
R. Raj Gopal  
Additional Secretary  
Taxes Dept

### Action taken Notes on C & AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject / Title of the Review Paragraph	Misclassification of Commodities
	(c)	Paragraph No	2.9. (3)
	(d)	Report No. and Year	C & AG report for the year ended 31-03-2015
II	(a)	Date of receipt of the Draft Para/ Review in the Department	10-07-2015
	(b)	Date of Department's Reply	19-08-2015
III		Gist of Paragraph/ Review	M/s. Malabar Laminates, Kochi a dealer in bamboo and plywood products conceded in their annual return for 2012 – 13 sales turnover of ₹ 2.38 crore and ₹ 50.08 lakh respectively of these products. The interstate purchase turnover of these products conceded in the return were ₹ 1.71 crore and ₹ 84.92 lakh respectively. However as per the certified annual accounts of the company the purchase turnover accounted was ₹ 2.17 crore and ₹ 38.97 lakh respectively for the same sales turnover returned. Audit found from the check post module of KVATIS, that the interstate purchase turnover of plywood of this company was more than ₹ 85 lakhs. Thus the assessee misclassified the purchase turnover and corresponding sales turnover of plywood as that of bamboo products to evade tax. This resulted in short payment of tax and interest of ₹ 8.02 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph ?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions ?	Yes
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

Remedial action taken

VI	(a)	Improvement in system and procedures including internal controls.	Considering the audit objection, the assessment was completed by the assessing authority for the year 2012 – 13 under Section 25(1) of the KVAT Act on 25.06.2015 as under.
			Total sales turnover of plywood estimated
			₹ 1,01,16,894/-
			Less turnover already assessed under Section 21 ₹ 50,08,366/-
			Balance taxable under Section 25(1) @ 13.5% ₹ 51,08,528/-
			Tax due @ 13.5% ₹ 6,89,651/-
			Interest due as per rule @ 27% ₹ 1,86,206/-
			Against, the above order the assessee preferred appeal before the Assistant Commissioner (Appeals), Ernakulam and the appellate authority granted conditional stay as per order No. KVATA-1449/15 dated. 08.07.2015. Accordingly the dealer remitted ₹ 2,62,757/- to fulfill the stay conditions and furnished security as bank guarantee in Forms 6C dated. 14.07.2015 for the balance amount of ₹ 6,13,100/-.
			Aggrieved by this order the dealer preferred appeal before Deputy Commissioner(A), Ernakulam. The Assistant Commissioner(A), O/o the Deputy Commissioner (A) , Ernakulam vide order KVATA No. 1449/15 for the year 2012-13 dated 10-08-2015 has directed the assessing authority to call for the books of accounts and to verify the alleged transactions with reference to copy of 8F declarations produced by the appellant. If any variation is noticed on verification the turnover shall be assessed to tax, adding gross profit and the assessment is modified.
			Thus the books of accounts were called for and verified by the assessing authority . On cross verification of interstat e purchase invoices 8F etc. with reference to check post transactions, it is noticed that it contains checkpost seals. The purchase value of bamboo ply board and plywood are ₹.2,17,05,101/- and ₹.38,96,733/- respectively, It also agrees with audit report in Form 13 & 13A and copies of 'C' Forms produced. On further verification it is noticed

		that some purchase of bamboo ply board items have been wrongly entered as plywood in the KVATIS by checkpost authorities.
		Hence the original assessment has been modified on 30-11-2015. As per the modified order, the dealer has paid excess tax ₹. 2,06,894/- and interest ₹. 55,862/-.
(b)	Recovery of overpayment pointed out by audit	NA
(c)	Recovery of under assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	----
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit.	----

*R. Raja Gopal*  
R. Raja Gopal  
Additional Secretary  
Taxes Dept

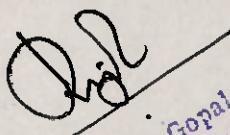
### ACTION TAKEN NOTES ON C & AG'S REPORT

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject / Title of the Review	Misclassification of Commodities
	(c)	Paragraph No.	2.9.(4)
II	(a)	Report No. & Year Date of receipt f the Draft Para/ Review in the Department	C & AG Report for the year ended 31.03.2015. 12.05.2015
	(b)	Date of Department's reply	20.06.2015
III		Gist of the Paragraph/ Review	M/s. Sree Vijayalekshmi Traders, Thodupuzha was a dealer in Grocery and Pulses. Audit cross verified the annual return of the assessee for 2012-13 with the check post transaction in KVATIS Module and found that the inter state stock transfer into the state and inter state purchase turnover of items taxable at 5% conceded in the annual return was less than that in the KVATIS check post transaction while the turnover of goods taxable at 1% conceded was more than that in the KVATIS check post transaction. It is evident that the assessee has wrongly classified 5% taxable goods as 1% taxable goods. Aparant misclassification of goods resulted in the short payment of tax and interest of Rs. 7.59 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit Conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

## VI

## REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	M/s. Sree Vijayalekshmi Traders, Thodupuzha is an assessee bearing TIN. 32060455852 on the roll of Assistant Commissioner, Special Circle, Thodupuzha. The assessee was a dealer in Grocery, Cereals and such kind of article during the year 2012-13. The assessee has effected interstate purchase/interstate stock transfer (IN) of 5% taxable items for Rs. 289.08 lakhs and wrongly classified the turnover under 1% taxable items. This resulted in a short levy of Rs. 7.34 lakhs including interest.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the scheme and programmes including financing pattern	-
(e)	Review of similar cases / complete scheme/project in the light of findings of sample check by Audit	-



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Taxes Dept

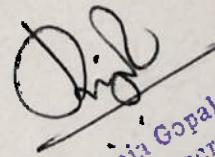
ACTION TAKEN NOTES ON C & AG'S REPORT

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Non-payment of purchase tax
	(c) Paragraph No.	2.10.1
	(d) Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	29/05/2015
	(b) Date of Department's Reply	22/02/2016
III	Gist of Paragraph/Review	Scrutiny of assessment records in the office of Assistant Commissioner, Special Circle, Kollam revealed that during 2011-12 a dealer in gold jewellery stock transferred outside the state goods valued Rs. 52.77 lakh purchased from unregistered dealers and had not paid purchase tax for the same. Failure to pay purchase tax @ 4% in respect of the goods stock transferred outside the state had resulted in short levy of tax, cess and interest of Rs. 64.49 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

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REMEDIAL ACTION TAKEN

153

(a)	Improvement in system and procedures, including internal controls.	The Assistant Commissioner(Assessment), Special Circle, Kollam completed the assessment in respect of M/s.Kalyan Jewellers for the year 2011-12 vide order No.32020678607/11-12 dated 08.01.2016 rectifying the defects pointed out in the audit, creating additional demandas shown below:-
		Tax + cess - Rs.53,29,848/-
		Interest - Rs.23,98,432/-
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	
-(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	Appeal pending



R. Raja Gopal  
Additional Secretary  
Sales Dept

**ACTION TAKEN NOTES ON C & AG'S REPORT**

		Department	COMMERCIAL TAXES
I	(a) Subject/Title of the Review	Incorrect exemption allowed.	
	(c) Paragraph No.	2.11.(1)	
	(d) Report No. and Year	C & AG Report for the year ended 31.03.2015	
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	12.06.2015	
	(b) Date of Department's Reply	25.07.2015	
III	Gist of Paragraph/Review	<p>M/s. HCL infosystems (P) Ltd, Ernakulam is an assessee on the rolls of the Assistant Commissioner, Special Circle II, Ernakulam with TIN-32070312742 and a dealer in computer systems, peripherals, electronic goods, photocopier, telephone equipment etc. The assessee filed annual return for 2012-13 declaring total turnover of Rs. 3,68,68,05,625/- which includes AMC amounting to Rs. 6,40,21,141/- for which an exemption of Rs. 4,64,63,050/- has been availed resulting in taxable turnover of Rs. 1,75,58,094/- for which tax has been paid accordingly.</p> <p>The Accountant General's audit wing pointed out that the claim of exemption for Rs. 4,64,63,050/- was not ascertainable from the assessment records. Hence the exemption should be limited under Rule 10(2)(b) of KVAT Rules 2005. Rule 10(2)(b) of the KVAT Rules stipulates that where the actual turnover in respect of the works contract in which the transfer of goods takes place not in the form of goods, but in some other form is not ascertainable from the books of accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges as given in the table from the total amount of contract. As per the table 50% of the total receipt can be taken as labour and exemption can be availed. The assessee have claimed more exemption than permissible U/s 10(2)(b) which is to be reversed and added back to the turnover.</p>	
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA	
V	(a) Does the Department agree with the Audit conclusions?	Yes	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA	

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p>Turnover escaped assessment as above for the year 2012-13 has been assessed U/s 25(1) of the Act on 20-06-2015 as under:</p> <table> <tr> <td>Turn over of AMC conceded</td><td>Rs. 6,40,21,141.00</td></tr> <tr> <td>Exemption availed</td><td>Rs. 4,64,63,050.00</td></tr> <tr> <td>Exemption eligible as per rule 10(2)(b) 50%</td><td>Rs. 3,20,10,571.00</td></tr> <tr> <td>Excess exemption availed</td><td>Rs. 1,44,52,479.00</td></tr> <tr> <td>Tax due @ 5%</td><td>Rs. 7,72,624.00</td></tr> <tr> <td>Interest due @ 27% 4/13 to 6/15</td><td>Rs. 1,95,109.00</td></tr> </table>	Turn over of AMC conceded	Rs. 6,40,21,141.00	Exemption availed	Rs. 4,64,63,050.00	Exemption eligible as per rule 10(2)(b) 50%	Rs. 3,20,10,571.00	Excess exemption availed	Rs. 1,44,52,479.00	Tax due @ 5%	Rs. 7,72,624.00	Interest due @ 27% 4/13 to 6/15	Rs. 1,95,109.00
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Excess exemption availed	Rs. 1,44,52,479.00													
Tax due @ 5%	Rs. 7,72,624.00													
Interest due @ 27% 4/13 to 6/15	Rs. 1,95,109.00													
(b)	Recovery of overpayment pointed out by Audit	NA												
(c)	Recovery of under Assessment, short levy or other dues	Short levy												
(d)	Modification in the schemes and programmes including financing pattern	-												
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	-												



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

I	(a) Department	COMMERCIAL TAXES
	(b) Subject/Title of the Review	Input tax credit availed ( Incorrectly )
	(c) Paragraph No.	2.12.1
	(d) Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	10/07/2015
	(b) Date of Department's Reply	25/07/2015
III	Gist of Paragraph/Review	The audit objection in this case is that M/s. Sreeragh General Finance Ltd. Kochi, a dealer in motor vehicles and computer products, availed input tax credit of Rs. 1.09 crore during 2012-13, on the purchases of goods for Rs. 8.13 crore. Audit found from the KVATIS that this included IPT of Rs. 16.15 lakh on the purchase of goods for Rs. 1.20 crore from two dealers, but not supported by proper invoices issued to the assessee. The invoices filed by the assessee were issued by these two dealers in Form 8B to end customers. Availing input tax credit without proper invoice was not in order. The incorrect availing of input tax credit had resulted in the short payment of tax and interest of Rs. 19.21 lakh.
		NA
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	NA
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Yes
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	The assessment of M/s. Sreeragh General Finance Ltd for the year 2012-13 was completed by the Commercial Tax Officer, 2 <sup>nd</sup> Circle, Ernakulam by considering the aspects pointed out by the Accountant General and created an additional demand of Rs. 22,12,110/- including interest. Revenue Recovery steps have been initiated by the assessing authority vide RRC No. 13/16-17 dated 11/05/2016.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	

*Q:D*  
 R. Raja Gopal  
 Additional Secretary  
 Taxes Deptt

**ACTION TAKEN NOTES ON C & AG'S REPORTS**

		Department	COMMERCIAL TAXES
I	(a) Subject/Title of the Review		Incorrect availing of input tax credit in excess
	(b) Paragraph No.		2.12.2.(2)
	(c) Report No. and Year		C & AG Report for the year ended 31.03.2015.
II	(a) Date of receipt of the Draft Para/Review in the Department	28.05.2015	
	(b) Date of Department's Reply	19.06.2015	
III	Gist of Paragraph/Review	<p>The audit objection in this case is relating to M/s Classic Foot Care (India) Private Limited, Office of the Commercial Tax Officer, Tirurangadi, Malappuram a manufacturer of footwear. During 2012 - '13, they availed input tax credit of Rs. 41.02 lakh on local purchases amounting to Rs. 5.78 crore. They reversed input tax of Rs. 7.43 lakh against stock transferred to outside the State, amounting to Rs. 3.29 crore. Audit found that five per cent input tax credit to be reversed proportionate to interstate stock transfer would come to Rs. 13.42 lakh. Availing of excess input tax credit resulted in short payment of tax and interest of Rs. 7.07 lakh.</p>	
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA	
V	(a) Does the Department agree with the Audit conclusions?	Yes	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	NA	

**ACTION TAKEN NOTES ON C & AG'S REPORT**

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Incorrect claim of input tax & special rebate.
	(c)	Paragraph No.	2.12.2(3)
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	27.05.2015
	(b)	Date of Department's Reply	30.07.2015
III		Gist of Paragraph/Review	M/s. Institute of Indian Therapies is a dealer in medicine paying tax under section 8(e) of the Act. Audit found that during 2010-11, the assessee availed special rebate of Rs. 5.19 lakh corresponding to the purchase turnover of Rs. 119.06 lakh. Incorrect availing of special rebate resulted in short payment of tax, cess and interest of Rs. 6.44 lakh. But when this was pointed out by Audit in April 2013, the department stated (October 2013) that the assessment had been revised disallowing special rebate of Rs. 4,86,407/- Reason for allowing balance special rebate of Rs. 32,151/- had not been explained.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partly. Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Partly. Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

(a)	Improvement in system and procedures, including internal controls.	Compounded dealer U/s. 8 are not entitled to claim the special rebate. But a provision inserted by Kerala Finance Act 2012 under subsection 2 of section 12 of KVAT Act 2003. "Provided that notwithstanding anything contained in this Act, a manufacturer of medicines who have opted for payment of compounded tax under clause (e) of section 8 shall be eligible for special rebate of the tax paid under sub section (2) of section 6 of this Act on the purchase of raw materials with effect from the 1 <sup>st</sup> day of April 2005". The dealer had opted for payment of compounded tax U/s 8(e) of KVAT Act 2003. It has been proved that 93.80% of the total local sales turnover are from the sale of cosmetic and other ayurvedic preparation and these items are not treated as medicine and the special rebate claimed by the assessee to the extent of 93.8% on Rs. 5,18,558/- has been disallowed i.e. Rs. 4,86,407/- (93.8% of Rs. 5,18,558/-) The remaining 6.2 % of special rebate are allowed for the manufacturing of medicines. This is the reason for allowing balance special rebate of Rs. 32,151/-.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	NA
(d)	Modification in the schemes and programmes including financing pattern	NA
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	NA

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Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Short levy of turnover tax due to non revision of assessment order.
	(c)	Paragraph No.	2.14
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015.
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	28.05.2015
	(b)	Date of Department's Reply	30.06.2015
III		Gist of Paragraph/Review	M/s Sea Queen Hotel, Kozhikode is a bar attached two star hotel situated in municipal area, who opted for compounding scheme for payment of turnover tax. The turnover tax assessment for 2009 – 10 was completed (March 2014) and turnover tax was fixed as Rs. 30.43 lakh at 115 per cent of Rs. 26.46 lakh, the turnover tax assessed for previous year 2008 – 09. Turnover tax assessment for 2010 – 11, 2011 – 12 and 2012 – 13 were completed based on the turnover tax for previous years and fixed as Rs. 34.99 lakh, Rs. 40.24 lakh and Rs. 46.27 lakh respectively. Subsequently based on the suppression detected by the Intelligence Officer, the assessment for the year 2008 – 09 was revised (March 2014), fixing the turnover tax as Rs. 37.24 lakh. However, assessments for 2009 – 10, 2010 – 11, 2011 – 12 and 2012 – 13 were not revised by the assessing authority based on the revised assessment order for 2008 – 09. This resulted in short levy of tax, cess and interest of Rs. 66.90 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

## REMEDIAL ACTION TAKEN

<p>(a) Improvement in system and procedures, including internal controls.</p>	<p>While revising the assessment for the year 2008-09 based on the suppression detected by the Intelligence Officer, a two times addition of the suppressed turnover detected was added towards probable omission. The Accountant General has taken the tax due on this addition made also to determine the short levy. Only the actual suppression can be considered for determining the turnover tax payable and the compounded tax payable for the subsequent years. This position is well established by the decision of Hon'ble High Court of Kerala in State of Kerala Vs. Malabar Omaments (P) Ltd – (2011) 19 KTR 413 (Ker). In this case the Hon'ble High Court held that statute does not provide for reckoning the assessed tax as the basis for determining compounded rate.</p> <p>Hence, considering the suppressed turnover detected for the year 2008-09, the assessment for the year 2009-10 to 2012-13 have been revised creating an additional demand as given below.</p> <p><b>2009-10</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Turnover tax payable for the year 2009-10 @ 115% of Rs.30,05,031.00</td><td style="width: 30%; text-align: right;">: Rs. 34,55,786.00</td></tr> <tr> <td>Add Cess due @ 1%</td><td style="text-align: right;">: Rs. <u>34,577.00</u></td></tr> <tr> <td>Total</td><td style="text-align: right;">: Rs. 34,90,350.00</td></tr> <tr> <td colspan="2">Tax demanded as per the assessment order dtd. 5-3-14</td></tr> <tr> <td></td><td style="text-align: right;">: Rs. <u>30,72,974.00</u></td></tr> <tr> <td>Short levy</td><td style="text-align: right;">: Rs. 4,17,376.00</td></tr> <tr> <td>Interest @ 47%</td><td style="text-align: right;">: Rs. 1,96,167.00</td></tr> </table> <p><b>2010-11</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Turnover Tax payable for the year 2010-11 @ 115% of 34,55,786.00</td><td style="width: 30%; text-align: right;">: Rs. 39,74,159.00</td></tr> <tr> <td>Add Cess due 1%</td><td style="text-align: right;">: Rs. <u>39,741.00</u></td></tr> <tr> <td>Total</td><td style="text-align: right;">: Rs. 40,13,900.00</td></tr> <tr> <td colspan="2">Tax demanded on the previous order dtd. 11-2-14</td></tr> <tr> <td></td><td style="text-align: right;">: Rs. <u>35,33,920.00</u></td></tr> <tr> <td>Short levy</td><td style="text-align: right;">: Rs. 4,79,980.00</td></tr> <tr> <td>Interest @ 30%</td><td style="text-align: right;">: Rs. 1,43,994.00</td></tr> </table> <p><b>2011-12</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Turnover Tax payable for the year 2011-12 @ 115% of 39,74,160.00</td><td style="width: 30%; text-align: right;">: Rs. 45,70,284.00</td></tr> <tr> <td>Tax due</td><td style="text-align: right;">: Rs. <u>45,703.00</u></td></tr> <tr> <td>Total</td><td style="text-align: right;">: Rs. 46,15,980.00</td></tr> <tr> <td colspan="2">Tax demanded on previous assessment order dtd. 22-2-14</td></tr> <tr> <td></td><td style="text-align: right;">: Rs. <u>46,64,008.00</u></td></tr> <tr> <td>Short levy</td><td style="text-align: right;">: Rs. 5,51,972.00</td></tr> <tr> <td>Interest due @ 23%</td><td style="text-align: right;">: Rs. 1,26,954.00</td></tr> </table>	Turnover tax payable for the year 2009-10 @ 115% of Rs.30,05,031.00	: Rs. 34,55,786.00	Add Cess due @ 1%	: Rs. <u>34,577.00</u>	Total	: Rs. 34,90,350.00	Tax demanded as per the assessment order dtd. 5-3-14			: Rs. <u>30,72,974.00</u>	Short levy	: Rs. 4,17,376.00	Interest @ 47%	: Rs. 1,96,167.00	Turnover Tax payable for the year 2010-11 @ 115% of 34,55,786.00	: Rs. 39,74,159.00	Add Cess due 1%	: Rs. <u>39,741.00</u>	Total	: Rs. 40,13,900.00	Tax demanded on the previous order dtd. 11-2-14			: Rs. <u>35,33,920.00</u>	Short levy	: Rs. 4,79,980.00	Interest @ 30%	: Rs. 1,43,994.00	Turnover Tax payable for the year 2011-12 @ 115% of 39,74,160.00	: Rs. 45,70,284.00	Tax due	: Rs. <u>45,703.00</u>	Total	: Rs. 46,15,980.00	Tax demanded on previous assessment order dtd. 22-2-14			: Rs. <u>46,64,008.00</u>	Short levy	: Rs. 5,51,972.00	Interest due @ 23%	: Rs. 1,26,954.00
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		<p><b>2012-13</b></p> <p>Turnover Tax payable for the year 2012-13      @ 115% of 45,70,280.00 : Rs. 52,55,822.00      Add Cess payable 1% : Rs. 52,558.00      Total : Rs. 53,08,380.00</p> <p>Tax demanded on previous order dtd. 22-2-14 : Rs. 46,73,610.00      Short levy : Rs. 6,34,770.00      Interest @ 11% : Rs. 69,825.00</p> <p>The dealer has filed appeal before the Deputy Commissioner (Appeals) and stay has been granted to the dealer.</p>
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	Stayed by the Deputy Commissioner (Appeals), Kozhikode.
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	NA



R. Raja Gopal  
 Additional Secretary  
 Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Incorrect computation of compounded tax
	(c)	Paragraph No.	2.15.(1)
	(d)	Report No. and Year	C & AG Report for the year ended 31/03/2015
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	18/05/2015
	(b)	Date of Department's Reply	24/08/2015
III		Gist of Paragraph/Review	M/s. Polakulathu Tourist Home, Vytila was an assessee engaged in the business of running a bar attached hotel. The turnover tax assessment of the assessee for 2009-10 was completed by the assessing authority (December 2012) taking the turnover as 140 per cent of the purchase value of liquor and turnover tax was fixed at Rs.16.01 lakh. Audit found that 115 per cent of the turnover tax payable for 2008-09 amounted to Rs.48.79 lakh which was higher than the turnover tax fixed by the assessing authority. Incorrect computation of turnover tax resulted in short levy of tax, cess and interest of Rs.37.74 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

(a)	Improvement in system and procedures, including internal controls.	As per the audit objection the assessment in respect of M/s.Polakulath Tourist Home, Vytila for the year 2009-10 is reopened under section 19(1) of the KGST Act by fixing a TOT of Rs.33,10,400/- with interest Rs.4,96,560/- vide order dated 02.06.2014. Revenue Recovery Steps have been initiated for recovery of the dues.
b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Short levy
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	-



R. Raja Gopal  
Additional Secretary  
Taxes Dept

ACTION TAKEN NOTES ON C & AG'S REPORT

			COMMERCIAL TAXES
I	(a) Department		COMMERCIAL TAXES
I	(b) Subject / Title of the Review		Incorrect Computation of Compounded Turnover
	(c) Paragraph No.		2.15 (2)
	(d) Report No. & Year		C & AG Report for the year ended 31/3/2015
II	(a) Date of receipt of the Draft Para / Review in the Department		18/05/15
	(b) Date of Department's reply		24/06/15
III	Gist of the Paragraph / Review		M/s. Kalyan Residency, Koyilandy was a bar attached hotel of three star category. The turnover tax assessment of the assessee for 2010-11 was completed by the assessing authority taking the turnover as 180 per cent of the purchase value of liquor during the year and the turnover tax was fixed as ₹ 29.99 lakh. However, Audit found that the turnover tax of the assessee for 2009-10 fixed by the assessing authority was ₹ 16.90 lakh only. Since the assessee started business from October 2009 only, the turnover tax payable for a financial year would be ₹ 33.80 lakh. Hence 125 per cent of the turnover tax payable for 2009-10 amounted to ₹ 42.26 lakh. Incorrect computation of compounded tax resulted in short levy of tax, cess and interest of ₹ 17.47 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?		Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support		NA
V	(a) Does the Department agree with the Audit Conclusions?		Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary		NA

## VI

**REMEDIAL ACTION TAKEN**

	(a) Improvement in system and procedures, including internal controls.	Based on the audit objection the assessment for the year 2010-11 was completed u/s.19(1) of the KGST Act vide order No. 32111138226/2010-11 dated 7-3-2015 creating Additional Demand of ₹ 20,10,511/-.
	(b) Recovery of overpayment pointed out by audit	NA
	(c) Recovery of under assessment, short levy or other dues	Short levy
	(d) Modification in the schemes and programmes including financing pattern	—
	(e) Review of similar cases / complete scheme / project in the light of findings of sample check by Audit	—



R. Raja Gopal  
Additional Secretary  
Taxes Dept.

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Short levy in payment of compounded tax
	(c)	Paragraph No.	2.16
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	28.05.2015
	(b)	Date of Department's Reply	12.10.2015
III		Gist of Paragraph/Review	<p>The audit objection in this case is that, the turnover tax assessment of M/s. Palakkunnel Tourist Hotel, Ettumanoor a bar hotel, which opted payment of tax at compounded rate, was finalised accepting the claim of the assessee that their business was transferred as a whole to the new partnership firm with effect from 1 October 2008 and hence a new business. The turnover tax for 2009 – 10 was assessed to Rs. 33.69 lakh being 135 per cent of purchase turnover of liquor. Consequently the turnover tax for 2010 – 11 and 2011 – 12 were also fixed based on the turnover tax fixed for 2009 – 10. Audit found that the business was done in the name and style M/s. Palakkunnel Tourist Home upto 30 September 2008 and the business was continued with effect from 1 October 2008 under the name and style of M/s. Palakkunnel Tourist Hotel. The assessee cannot be considered as a separate entity from the existing one on the fact that if they were new entities, Rule 13 (3) of FL Rules, 1953 ought to have prevented it from grant of bar license as the hotel had no three star status. Hence, the compounded tax to be fixed for the year 2009 – 10 was at Rs. 38.88 lakh being 115 per cent of the tax paid during 2008 – 09 (highest turnover tax paid, of three preceding years). Incorrect fixation of compounded tax for the year 2009 – 10 resulted in consequent short fixation of tax for the years 2010 – 11 and 2011 – 12 also. Total short levy of tax cess and interest amounted to Rs. 22.70 lakh.</p>

IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

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(a)	Improvement in system and procedures, including internal controls.	Based on the Audit the assessment was reopened under Section 19 of the KGST Act, 1963. But the dealer filed Appeal. While deciding the appeal the Deputy Commissioner (Appeals) quashed the assessment finding that, the assessee could only be treated as a separated entity and can be treated as new business. This office has issued necessary direction to the Deputy Commissioner, Kottayam to file 2nd appeal in this case.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	Under assessment
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme / project in the light of findings of sample check by Audit	-



## REMEDIAL MEASURES TAKEN REPORT ON C&amp;AG 2015

## PARAS 2.7 to 2.16

Case No. 448

Para No.	Gist of the case	Present position
2.7.2 (Bullet 1. Sl.No.3)	<p><b>Explanation VII under Section 2(iii) of the KVAT Act, 2003</b></p> <p>stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>Test check of the records of the Commercial Taxes Department, Government of Kerala revealed that seven dealers of cement under four CTOs had done self assessment of the tax in respect of their sales but while doing so they had evaded tax to the tune of 140.63 lakh along with interest by not taking into account the amount of discount received by them subsequent to sale at a price lower than purchase price.</p>	<p><b>M/s. Star Traders, 2009-10 to 2011-12, Special Circle, Tvpn 2009-10</b></p> <p>M/s. Star Traders, Navaikulam, Thiruvananthapuram TIN 32011176925 was an assessee borne on the rolls of erstwhile Commercial Tax Officer, Attingal, the dealer engaged in the business of local sales of cement. The assessment in respect of the dealer for the year 2009-10 was completed by the assessing authority as per order No.32011176925 on 13-01-2016. As per explanation VII Section 2(iii) of KVAT Act, 2003 states that when a dealer sells any goods purchased and subsequently receives any amount so received shall be deemed to be a turnover in respect of such goods. In view of this statutory provision the amount received as discount during the year is taxable and the assessing authority estimated sales turnover by adding the discount received to the tune of Rs. 49,51,256/- thereby completed the assessment and creating demand for Rs. 6,18,907/- as tax and Rs. 4,27,046/- as interest upto 01/2016. Subsequently Revenue recovery proceedings as per RR. No. 155/15-16 dated 28-03-2016 was initiated.</p> <p>Aggrieved by this order the dealer preferred appeal before the Deputy Commissioner (Appeals), Thiruvananthapuram as per order No. K/351/16 dated 28-11-2016. The appellate authority dismissed the appeal filed by the dealer and observed that assessment completed by the assessing authority is legally sustainable and no irregularities were found.</p> <p>Further the dealer preferred appeal before the Hon'ble Sales Tax Appellate Tribunal. The Hon'ble STAT in order No. TA(VAT) No. 61/2017 dated 06-07-2022 allowed the appeal filed by the dealer and directed to modify the assessment with the following observations "<i>verify the certificates and credit notes in original produced or to be produced by the appellant to prove the claim regarding application of fifth proviso to S.11(3) on the amounts received as</i></p>

*discount and if found genuine, accept the self assessed returns submitted by the dealer for the year. In case the claim or any part thereof remains unproved, the assessing authority can resort to denial of proportionate input tax credit instead of adding amount to taxable turnover for assessment".*

On receipt of the Tribunal order, assessing authority had issued notice under section 25(1) of the KVAT Act, 2003 dated 20-10-2022 to following proposal;

Total sales turnover conceded for the year 2009-10 :Rs. 7,76,76,405.00

Add: discount received for the year 2009-10 :Rs. 49,51,256.00

Total sales turnover estimated :

Rs. 8,26,27,661.00

Less: Turnover conceded :

Rs. 7,76,76,405.00

Balance assessable turnover :

Rs. 49,51,256.00

The dealer proved the above turnover on the strength of credit notes. The assessing authority verified and the final assessment for the years 2009-10 had been completed vide order dated 14/06/2023 with NIL demand.

#### 2010-11

The assessment in respect of the dealer for the year 2010-11 was completed by the assessing authority as per order No.32011176925 on 04-05-2016. As per explanation VII to Section 2(iii) of KVAT Act, 2003 states that when a dealer sells any goods purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be deemed to be a turnover in respect of such goods. In view of this statutory provision the amount received as discount during the year is taxable and the assessing authority estimated sales turnover by adding the discount received to the tune of Rs. 74,60,346/- thereby completed the assessment creating demand for Rs. 9,32,544/- as tax and Rs. 4,45,561/- as interest upto 04/2016. Subsequently Revenue recovery proceedings as per RR. No. 39/2016-17 dated 30/07/2016 was

initiated.

Aggrieved by this order the dealer preferred appeal before the Deputy Commissioner (Appeals), Thiruvananthapuram as per order No. K/533/16 dated 28-11-2016. The appellate authority dismissed the appeal filed by the dealer and observed that assessment completed by the assessing authority is legally sustainable and no irregularities were found.

Further the dealer preferred appeal before the Hon'ble Sales Tax Appellate Tribunal. The Hon'ble STAT in order No. TA(VAT) No. 62/2017 dated 06-07-2022 allowed the appeal filed by the dealer and directed to modify the assessment with the following observations "*verify the certificates and credit notes in original produced or to be produced by the appellant to prove the claim regarding application of fifth proviso to S.11(3) on the amounts received as discount and if found genuine, accept the self assessed returns submitted by the dealer for the year. In case the claim or any part thereof remains unapproved, the assessing authority can resort to denial of proportionate input tax credit instead of adding amount to taxable turnover for assessment*".

On receipt of the Tribunal order, assessing authority had issued notice under section 25(1) of the KVAT Act, 2003 dated 20-10-2022 to following proposal;

Total sales turnover conceded for the year 2010-11 :Rs. 8,55,67,399.00

Add discount received for the year 2010-11 :Rs. 74,60,346.00

Total sales turnover estimated :Rs. 9,30,27,745.00

Less Turnover estimated :Rs. 8,55,67,399.00

Balance assessable turnover :Rs. 74,60,346.00

The dealer proved the above turnover on the strength of credit notes. The assessing authority verified and the final assessment for the year 2010-2011 had been completed vide proceeding 32011176925/2010-11 dated 14/06/2023 with NIL demand.

#### **2011-12**

During the year 2011-12 the assessing authority completed the assessment under section 25 of the KVAT Act, 2003, as per order No.32011176925/10-11

dated 22/04/2014 by creating demand to the tune of Rs. 14,63,907/- Aggrieved by this order the assessee had filed appeal before the 1<sup>st</sup> appellate authority and the appellate authority in Order No.KVATA No.80/2014 dated 01/07/2015 was directed to modify the assessment order. Subsequently the assessing authority modified the assessment under section 25(1) of the Act as per order No. 32011176925/11-12 dated 13/01/2016. Against this, the assessee filed WP(C) No.12705/16 before the Hon'ble High Court of Kerala and the Court set aside the impugned order and to consider the matter afresh in the light of the order of Deputy Commissioner (Appeals) dated 01/07/2015.

Meanwhile the Deputy Commissioner Thiruvananthapuram pointed out in order No.B1/2694/17 dated 27/09/2017 that while completing the original assessment the assessing authority had failed to consider the material facts in right perspective with findings that non assessment of discount received in the case is prejudicial to the interest of revenue. By virtue of powers conferred under section 56 of the Act, the Deputy Commissioner, Thiruvananthapuram cancelled the original assessment order dated 22/04/2014 under the Suo-Moto Revision. In the light of the above order the assessing authority had completed the assessment under section 25A of the KVAT Act. Against the Suo-Moto Revision the assessee had filed Revision Petition before the Commissioner of State Tax. The Hon'ble Commissioner dismissed the Revision petition vide reference cited 5<sup>th</sup> and upheld & confirmed the Suo Moto Revision issued by the Deputy Commissioner, Thiruvananthapuram.

Aggrieved by the order of the Commissioner the assessee filed WP(C) No.398/2020 before the Hon'ble High Court of Kerala. The Hon'ble High Court disposed the WP(C) dated 09/01/2020 ordered that in the interest of justice further coercive steps in pursuance to the impugned suo moto revision order dated 27/09/2017 of the Deputy Commissioner, Thiruvananthapuram and Revision order dated 06/11/2019 of the Commissioner, the orders shall be kept in abeyance and will be in force for a period of 2 months.

Subsequently the dealer approached before the

Hon'ble STAT, Tvpm praying for interim stay against the realization of the disputed tax and interest for the year 2011-12. The main dispute in this appeal is taxability of the discount received through cement trading for the year 2011-12 and the dealer is *relying upon the decision of the Hon'ble High Court in Memana Agencies, Cherthala Vs. Commercial Tax Officer, Cherthala and others dated 24/07/2020 in WP(C) No. 5467/17* prayed for an unconditional stay.

The Hon'ble STAT disposed the interim stay application with the observation that "*in the above decision the Division Bench of Hon'ble High Court after discussing various decision on the subject referred the matter to a Full Bench. Since the dispute regarding taxability of discount received is pending before the Full Bench of the Hon'ble High Court, we are inclined to grant interim stay on condition that the petitioner shall execute simple bond for the demanded amount within a period of 30 days from the date of receipt of this order*".

The assessing authority reported that the STAT, Thiruvananthapuram has directed in Order No. TA (VAT) No. 157/2020 dated 31.05.2023 to modify the original assessment for the year 2011-12 after verifying the certificates in original. The discount received is proved on the strength of credit notes. The assessing authority verified and the assessment for the year 2011-12 has been modified vide proceedings dated 21.09.23 by the State Tax Officer, Attingal with NIL demand.

Also reported that the audit objection for the years 2009-10, 2010-11 & 2011-12 is not sustainable. Copy of modified order is enclosed.

Para No.	Gist of the case	Present position
2.8 (Bullet 1)	M/s. Joy Alukkas India Pvt. Ltd., Ernakulam a multi-national company dealing with gold jewellery imported more than 50 per cent of their stock from outside the State or country during 2008-09 and 2009-10. Though their sales turnover for 2008-09 and 2009-10 amounting to Rs. 546.68 crore and 568.02 crore respectively, exceeds rupees five crore per annum and more than 75 per cent of their sales are retail business, they had not paid surcharge at the rate of ten per cent on the output tax payable. This resulted in short payment of surcharge and interest of Rs. 4.30 crore.	<p><b>M/s. Joy Alukkas India Pvt. Ltd., 2008-09 2009-10, Special Circle I, Ernakulam</b></p> <p>In this case, the audit objection is that surcharge leviable under Kerala Surcharge on Taxes (KST) Act, 1957 was not levied. As per judgment of Hon'ble HC in WP(C) No. 19428/2012 and connected cases dated 06-06-2018, the Hon'ble High Court of Kerala has declared the sub section (1A) of section 3 of the Kerala Surcharge on Taxes Act 1957 as discriminatory and violative of Articles 301 and 14 of the Constitution of India. All the proceedings initiated and orders issued based on the said provision will stand quashed. The surcharge if any paid, in terms of the said provisions shall be refunded. The Writ Appeal filed by the State again the above judgment has been dismissed as per WA No. 1923 dated 19.02.2020.</p> <p>In this instant case, based on the Audit objection the assessment for both years 2008-09 &amp; 2009-10 was completed as per the order dtd. 07-09-2016 creating additional demand of Rs. 4,19,88,342/- and Rs. 3,53,73,577/- respectively, including interest were recommended for Revenue Recovery. The dealer filed WP© and the Hon'ble High Court of Kerala stayed the recovery proceedings as per order in WP (C) No. 504/17 dtd. 03.04.2017 and the stay was extended until further orders vide order dtd. 02.08.2017. However in view of the judgment in WP(C) No. 19428/2012 and connected cases dated 06-06-2018 and WA No. 1923 dated 19.02.2020, the audit objection for both the years is not sustainable.</p>

Para No.	Gist of the case	Present position
2.8 (Bullet 4)	<p>M/s. Monavie India Enterprises Private Limited, Palarivattom, was a multinational company involved in direct marketing of health drinks. As per annual returns for 2011-12 and 2012-13 filed by the assessee, the entire products for sale were stock transferred from outside the state and sales turnover for the years were Rs. 6.70 crore and Rs. 5.40 crore respectively. Though their entire sales were through direct marketing / retail chain the output tax of Rs. 83.70 lakh and Rs. 69.39 lakh were not increased by a surcharge at 10 per cent as per the provisions of the KST Act, 1957. This resulted in short payment of surcharge and interest of Rs. 18.31 lakh.</p> <p>Government stated (July 2015) that assessment of the year 2011-12 had been completed (June 2013) creating additional demand of Rs. 9.54 lakh. The appeal filed by the assessee had been allowed (July 2014) by the AC(Appeal) Ernakulam. Against this order, DC, Ernakulam filed (January 2015) second appeal before Hon'ble Tribunal, Ernakulam. Further report for 2012-13 had not been received (January 2016).</p>	<p><b>M/s. Monavie India Enterprises Pvt. Ltd. 2011-12, 2012-13 II Circle, Kalamassery</b></p> <p>In this case, the audit objection is that surcharge leviable under Kerala Surcharge on Taxes (KST) Act, 1957 was not levied.</p> <p>As per judgment of Hon'ble HC in WP(C) No. 19428/2012 and connected cases dated 06-06-2018, the Hon'ble High Court of Kerala has declared the sub section (1A) of section 3 of the Kerala Surcharge on Taxes Act 1957 as discriminatory and violative of Articles 301 and 14 of the Constitution of India. All the proceedings initiated and orders issued based on the said provision will stand quashed. The surcharge if any paid, in terms of the said provisions shall be refunded. The Writ Appeal filed by the State against the above judgment has been dismissed as per WA No. 1923 dated 19.02.2020.</p> <p>In this case for the year 2011-12, assessment completed and first appeal filed by the assessee was allowed. Against the first appellate order, state filed TA VAT No. 16/2015 and the case was remanded.</p> <p>The matter has been examined by the assessing authority on the basis of the findings of the Hon'ble High Court of Kerala in the Judgment in WA No. 1923/2018 dated 19.02.2020 of Division Bench, that imposing surcharge is discriminatory and as such surcharge is not assessable.</p> <p>For 2012-13, as per the Annual Return statement, 75% sales effected to registered dealer (whole sale dealers). Hence the condition that not less than 75% sales are retail sales, are not fulfilled in this case in order to levy surcharge, there is no scope for assessment in the levy of surcharge.</p> <p>In view of the judgment in WP(C) No. 19428/2012 and connected cases dated 06-06-2018 and WA No. 1923 dated 19.02.2020, the audit objection for both the years is not sustainable.</p>

## ACTION TAKEN NOTES ON C &amp; AG'S REPORTS

I	(a)	Department	STATE GOODS AND SERVICE TAX
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to escape of turnover from assessment
	(c)	Paragraph No.	2.7.2(2)
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Explanation VII under section 2(lii) of the KVAT Act, 2003 stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.</p> <p>M/s. Ramesh Iron and Steel Company India Pvt. Ltd. was a dealer in iron &amp; steel and its products. During 2012-13, the dealer self assessed tax on a sales turnover of Rs. 109.72 crore while its purchase cost was Rs. 111.22 crore. Though the assessee sold goods at a price lower than the purchase price, discount of Rs. 240.19 lakh received subsequently was not reckoned as turnover and assessed to tax. This resulted in short payment of tax and interest of Rs. 10.73</p>

		lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

## REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Ramesh Iron and Steel Company India Private Limited/2012-13</u></p> <p>In the light of audit objection assessment was completed u/s. 25 on 12.05.2015 creating an additional demand of Rs. 14,05,007/- and collected an amount of Rs. 4,21,542/- vide challan No. 846 dated 03.06.2015. Recovery steps had been taken against the assessee to collect the balance amount with interest. Meanwhile the assessee preferred appeal before the Deputy Commissioner(Appeals), Kottayam. The appellate authority granted conditional stay and the assessee complied the direction by remitting Rs. 2,80,481/- vide challan No. 560 dated 30.07.2015 and furnishing security bond for balance amount.</p> <p>As per appellate order KVAT No. 1258/2015 dated 07.06.2016 the Deputy Commissioner(Appeals), Ernakulam, remanded the assessment for fresh disposal with direction to verify the documents regarding transport goods for job works and returns. Accordingly the fresh assessment was completed vide order dated 04.10.2016 by fixing a total turnover of Rs. 1,10,97,60,933/-. While completing the fresh assessment order excess amount at credit of the dealer was not adjusted by over sight. Hence it is rectified u/s. 66(1) of the KVAT Act vide order dated 26.04.2018. The balance amount to be payable by the assessee was Rs. 8,23,235/- and this amount has been adjusted from the excess amount paid by the assessee during the year 2013-14. Hence no dues are pending for collection in this case.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by audit findings of sample check by audit.	

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അബ്ദുൾ മജുദ് ബഹാദുർ  
സാഹു എം. എം. സാഹു  
ഗവണ്മെന്റ് കമ്പാക്ട് ഡയറ്റ്  
കോംപാനി എസ്.എസ്.

## ACTION TAKEN NOTES ON C &amp; AG'S REPORTS

I	(a)	Department	STATE GOODS AND SERVICE TAX
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to escape of turnover from assessment
	(c)	Paragraph No.	2.7.3
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Under section 42(2) of KVAT Act, 2003 where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file along with the audit certificate, revised annual return rectifying the mistake or omission and if the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon and twice the interest as penal interest. Under section 91 of the Act, when payment towards tax or any other amount due is made, it shall be appropriated first towards interest accrued, the balance available shall be appropriated towards principal outstanding.</p> <p>Sree Vinayaka Motors, Kottarakkara, a dealer in motor vehicles submitted (May 2012) annual return for 2011-12, after remitting tax of Rs. 6.20 crore. Subsequently, the assessee revised the annual return with total tax liability of</p>

		Rs. 7.20 crore. Audit found that though the assessee had paid differential tax and cess payable as per the revised annual return, they had not remitted the interest and penal interest due thereon. Moreover, payment made by the assessee amounting to rupees one crore was not appropriated first towards interest. Non levy of interest and non appropriation of payment first towards interest resulted in short payment of tax, interest and penal interest of Rs. 33.74 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support
V	(a)	Does the Department agree with the Audit conclusions?
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary

(a)	Improvement in system and procedures, including internal controls.	<b>M/s. Sree Vinayaka Motors, Kottarakkara/2011-12</b>  Based on the audit objection, the assessment in respect of the above dealer for the year 11-12 was completed vide order dated 23.12.2014 creating a demand of Rs. 13,74,229/-. Since the penal interest portion has been omitted from the calculation portion, the assessing authority demanded penal interest Rs. 21,19,420/- vide order dated 17.11.2015. The amount dues are Rs. 10,57,099/- as tax, Rs. 6,97,686/- as interest and Rs. 21,19,420/- as penal interest thereby a total of Rs. 38,74,205/-. Now the dealer opted to pay the arrears under Amnesty Scheme 2020, ie., by paying Rs. 4,22,840/- being 40% of the tax due in lump sum waiving interest and penal interest. The dealer had remitted entire dues Rs. 1,41,33,593/- from 2011-12 to 2016-17 in a single challan No. KL004732875202021E dated 14.07.2020 which is inclusive of the above amount of Rs. 4,22,840/-.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by audit findings of sample check by audit.	

*Sree*  
സി. എ. സുകുർ  
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സി.എ. വച്ച്  
മാന്ത്രികം മാന്ത്രികം  
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## ACTION TAKEN NOTES ON C &amp; AG'S REPORTS

I	(a)	Department	STATE GOODS AND SERVICE TAX
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to escape of turnover from assessment
	(c)	Paragraph No.	2.7.4
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	M/s. Sivasakthi Engineering and Fabrications, Walayar, was a manufacturer of cement products. Audit found that the assessee had entered into agreement with KSEB for supply of electric poles to various electrical circles during the period 2008-09 to 2010-11 and 2012-13. In the agreement with KSEB, it was stipulated that contract was for manufacture and delivery of poles within or outside the concerned electrical circles. As such, the transportation charges received would form part of the turnover. However, the assessee did not assess to tax the above turnover which resulted in short payment of tax and interest of Rs. 17.51 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA

V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

## REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal controls.	<b>M/s. Sivasakthi Engineering and Fabrications, Walayar/2008-09, 2009-10, 2010-11 &amp; 2012-13</b>																				
		<p>In the light of audit objection, the assessment for the year 2008-09 was completed on 05.01.2016 creating a demand of Rs. 2,06,691/- as tax and interest of Rs. 1,69,487/-. Against this order the dealer filed a petition in the Hon'ble High Court of Kerala. The Hon'ble Court in its judgment WPC No. 3116/2016 dated 11.03.2016 quashed the assessment order. The dealer sought for a clarification before the Commissioner of Commerical Taxes and it was clarified that the freight component would attract VAT. Since the clarification issued is against the stand taken by the KSEB, they preferred an appeal before the Hon'ble HC against the clarification which was pending for disposal before the Division Bench as OTA 6/2017. The dealer also preferred writ appeal in this regard and the Hon'ble HC vide order No. WA 715/17 dated 04.07.2017 directed to maintain status quo till the matter pending before the Division Bench is disposed off.</p>																				
		<p>The assessment for the years 2009-10 &amp; 2010-11 were completed u/s. 25(1) vide order dated 13.06.2013 &amp; 17.06.2013 respectively. Not satisfied with the above orders, the assessee filed appeal before the Deputy Commissioner(Appeals), Kottayam against the assessment orders. The Deputy Commissioner(Appeals), Kottayam vide order No. KVATA 2242/2013 dated 03.09.2013 directed to delete the addition made in the assessment with regard to the transportation charge. Subsequently the state had filed second appeal before the Hon'ble STAT, Additional Bench, Palakkad challenging the order of the Deputy Commissioner(Appeals). The Hon'ble STAT, Palakkad vide order TA(VAT) 292/2014 &amp; 293/2014 has allowed the appeal filed by the State, and annulled the orders of the first appellate authority by reviving the original assessment orders. Accordingly the assessee has remitted the entire tax due for the years 2009-10 &amp; 2010-11 as detailed below:</p>																				
		<table border="1" data-bbox="652 1574 1526 1799"> <thead> <tr> <th>Year</th> <th>Tax</th> <th>Interest</th> <th>Total</th> <th>Chalan No.</th> </tr> </thead> <tbody> <tr> <td>2009-10</td> <td>2,47,526</td> <td>1,53,466</td> <td>4,00,992</td> <td>727</td> </tr> <tr> <td>2010-11</td> <td>1,27,707</td> <td>63,854</td> <td>1,91,561</td> <td>16.09.2015</td> </tr> <tr> <td><b>Total</b></td> <td></td> <td></td> <td><b>5,92,553.</b></td> <td></td> </tr> </tbody> </table>	Year	Tax	Interest	Total	Chalan No.	2009-10	2,47,526	1,53,466	4,00,992	727	2010-11	1,27,707	63,854	1,91,561	16.09.2015	<b>Total</b>			<b>5,92,553.</b>	
Year	Tax	Interest	Total	Chalan No.																		
2009-10	2,47,526	1,53,466	4,00,992	727																		
2010-11	1,27,707	63,854	1,91,561	16.09.2015																		
<b>Total</b>			<b>5,92,553.</b>																			

	<p>The assessment for the year 2012-13 was completed on 23.01.2015 and created a demand of Rs. 7,81,983/- and interest of Rs. 1,56,397/- . Not satisfied with this order the dealer filed appeal before the Deputy Commissioner(Appeals), Kottayam and paid Rs. 2,81,514/- vide challan No. 1277/04.04.2015 for obtaining stay. As per order No. KVATA 459/15 dated 08.09.2015, Deputy Commissioner(Appeals), Kottayam had dismissed the appeal and the dealer had paid the entire balance as Rs. 6,36,866/- vide challan No. 532/09-11.2015 &amp; Rs. 59,120/- vide challan No. 398/28.11.2015.</p>
(b)	Recovery of overpayment pointed out by audit
(c)	Recovery of under assessment, short levy or other dues
(d)	Modification in the schemes and programmes including financing pattern
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by audit findings of sample check by audit.

*Sum*  
 സിനി എ. സുമേഷ്  
 കാമ്പിസ്കൂൾ സെക്രട്ടേറി  
 നികുൽ പത്രപ്പ്  
 ട്രാംഗിൾ എക്സ്പ്രസ്  
 തിരുവനന്തപുരം

## ACTION TAKEN NOTES ON C &amp; AG'S REPORTS

		Department	COMMERCIAL TAXES
I	(b)	Subject / Title of the Review	Misclassification of Commodities
	(c)	Paragraph No.	2.9.(4)
	(d)	Report No. & Year	C & AG Report for the year ended 31.03.2015
II	(a)	Date of receipt f the Draft Para / Review in the Department	12.05.2015
	(b)	Date of Department's reply	20.06.2015
III		Gist of the Paragraph / Review	M/s. Sree Vijayalekshmi Traders, Thodupuzha was a dealer in Grocery and Pulses. Audit cross verified the annual return of the assessee for 2012-13 with the check post transaction in KVATIS Module and found that the inter state stock transfer into the state and inter state purchase turnover of items taxable at 5% conceded in the annual return was less than that in the KVATIS check post transaction while the turnover of goods taxable at 1% conceded was more than that in the KVATIS check post transaction. It is evident that the assessee has wrongly classified 5% taxable goods as 1% taxable goods. Aparant misclassification of goods resulted in the short payment of tax and interest of Rs. 7.59 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit Conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

## VI

## REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	M/s. Sree Vijayalekshmi Traders, Thodupuzha.
		Based on the audit objection, assessment was completed as per order dated 21.02.2015 with a tax effect of Rs. 6.32 lakh. Aggrieved by the order, the dealer filed appeal before the Deputy Commissioner(Appeals) II, Kottayam. The appellate authority vide order KVATA 270/15 dated 18.08.2016 directed the assessing authority to modify the assessment orders by issuing proper notice to the appellant and verifying the books of accounts with relevant documents produced by the appellant in support of their claim. The assessing authority modified the assessment vide order dated 13.12.2016 and there is an excess of Rs. 2.75 lakh being the tax paid by the dealer.
(b)	Recovery of overpayment pointed out by Audit	NA
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the scheme and programmes including financing pattern	-
(e)	Review of similar cases / complete scheme/ project in the light of findings of sample check by Audit	-

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അഡിഷൻ സെക്രട്ടറി  
നികുതി വകുപ്പ്  
ഗവൺമെന്റ് സെക്രട്ടറിയേറ്റ്  
തിരുവനന്തപുരം

## ACTION TAKEN NOTES ON C &amp; AG'S REPORTS

I	(a)	Department	STATE GOODS AND SERVICE TAX
	(b)	Subject/Title of the Review Paragraph	Short payment of tax due to incorrect claim of input tax credit / special rebate allowed
	(c)	Paragraph No.	2.12.3
	(d)	Report No. and Year	C & AG Report for the year ended 31.03.2015
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Under Section 12(2) of KVAT Act, 2003 dealer paying compounded tax under section 8 shall not be eligible for rebate under section 12(1).</p> <p>M/s. Institute of Indian Therapies, Annamanada was a dealer in medicine paying tax under section 8(e) of the Act. Audit found that during 2010-11, the assessee availed special rebate of Rs. 5.69 lakh corresponding to the purchase turnover of Rs. 119.06 lakh. Incorrect availing of special rebate resulted in short payment of tax, cess and interest of Rs. 6.44 lakh.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes

	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA
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VI

## REMEDIAL ACTION TAKEN

(a)	<p>Improvement in system and procedures, including internal controls.</p>	<p>M/s. Institute of Indian Therapies, Annamanada/2010-11</p> <p>The assessing authority completed the assessment of the dealer for the year 2010-11 vide order dated 05.10.2013 by disallowing the claim of special rebate by the assessee on purchase u/s. 6(2). Compounded dealers u/s. 8 are not entitled to claim the special rebate. Since it has been proved that 93.80% of the total local sales turnover are from the sale of cosmetic and other ayurvedic preparations and these items are not treated as medicine and the special rebate claimed by the assessee to the extent of 93.8% on Rs. 5,18,558/- has to be disallowed i.e., Rs. 4,86,407/- (93.8% of 5,18,558/-). Balance special rebate of Rs. 32,151/- has been allowed, since the dealer has not compounded certain items such as Arishtam, Asavam, Choornam and Kuzhambu. Subsequently, the dealer has preferred an appeal before the Appellate Authority. The Assistant Commissioner(Appeals), Thrissur vide order Nos. KVATA 420/13, 421/13 and 422/13 dated 04.09.2014 modified the assessment order with the direction to verify and pass appropriate order in the light of genuineness of documents in respect of sales return and special rebate. Accordingly, the dealer has been given an opportunity on 12.12.2014 for producing the documents as directed by the appellate authority but the dealer did not produce any evidence in connection with the claim of special rebate. The original assessment thus modified vide order dated 16.01.2015 as per the direction of the appellate authroity by disallowing the special rebate. While revising the assessment order certain calculation mistake have been crept. Hence a rectification order dated 21.03.2015 was issued to the dealer. Subsequently the dealer filed appeal before the appellate authority. It is argued that the dealer is eligible for special rebate u/s. 12(2). The Assistant Commissioner(Appeals) has modified the assessment vide order KVATA 426/16 (VAT) and 402/16(CST) dated 22.06.2017 considering the contention of the dealer regarding special rebate as per the provisions of Kerala Finance Act 2012 which is as under. "Provided that notwithstanding anything contained in this Act a manufacturer of medicines who have opted for payment of compounded tax under clause (c) section 8 shall be eligible for special rebate of tax paid under subsection (2) of section 6 of this Act on purchase of raw materials w.e.f. 01.04.2005."</p> <p>Hence the assessment order modified vide order dated 04.04.2018 with an excess of Rs. 6,69,886/-,</p>
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(b)	Recovery of overpayment pointed out by audit
(c)	Recovery of under assessment, short levy or other dues
(d)	Modification in the schemes and programmes including financing pattern
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by audit findings of sample check by audit.

  
 സിനി എ.എസ്സുരുക്ക്  
 അധികാരിയാണ് സെക്രട്ടറി  
 നികുതി വകുപ്പ്  
 ശ്രവണം മുൻസിപ്പൽ കോർപ്പറേഷൻ  
 തിരുവനന്തപുരം