

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(Appeals)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	03.01.2020
Appeal no	:-	KVATA(ALPY)116/19
From the order of the	:-	State Tax Officer, Cherthala
Year of assessment	:-	2015-16
Name of appellant	:-	M/s.Hero Paints, Thirunalloor,Cherthala
Instituted on	:-	31.05.2019
Date of hearing	:-	26.11.2019
Present for appellant	:-	Sri.Raman Janardhanan,Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Cherthala, Order No.32040824242/2015-16 dated.31.05.2019. The assessment completed based on irregularities found on KVATIS scrutiny. The defects found were purchase and sales suppression, excess IPT claim and OR file received from Intelligence Wing. The assessing authority estimated the turnover, added back the suppressed turnover and 50% addition added for probable omission and suppression and also disallowed the IPT claim. Against the order, the dealer defend the case on the following grounds.

1. The impugned order of the assessing authority is opposed to law, facts and circumstances of the case. Hence the same is unsustainable and liable to be quashed.
2. The assessing authority went wrong in holding that the appellant effected unaccounted sales to the tune of Rs.4,88,691/- even after furnishing detailed explanations and evidences. The assessing authority could not itemize the alleged unaccounted sales while passing assessment order. Had the assessing authority pointed out the alleged un uploaded sales and granted sufficient the appellant could have traced out and proved the same.
3. The assessing authority went wrong in holding that the appellant effected unaccounted purchases to the tune of Rs.150760/- without

mentioning the name of dealers from whom the appellant effected the same. The assessing authority ought to have summoned the dealers from whom the appellant stated to have purchased and given opportunity to cross examine them to find out the actual purchasers.

4. The observation of the assessing authority that the appellant didn't file explanation regarding imposition of penalty by the Intelligence Officer, Alappuzha for the alleged sales suppression of Rs.184487/- Vide OR.42/15-16 dated.25.05.2018 is wrong. The appellant in its reply specifically stated that the appellant filed appeal against imposition of penalty and the appeal pending disposal and requested to keep in abeyance of utilization of OR file for completion of assessment till disposal of appeal.
5. The assessing authority went wrong in reversing IPT claim of Rs.575021/- on the ground that the selling dealer has not uploaded the transaction and not remitted tax to Government. The Hon'ble Supreme Court of India in the case of Commissioner of Trade and Taxes, Delhi and Others Vs. Arise India Limited and Others (TS-2-SC-2018-VAT) has dismissed the Special Leave Petition filed by the Revenue against the decision of the Hon'ble High Court of Delhi in the case of Arise India Limited and Others Vs. Commissioner of Trade and Taxes, Delhi and Others (TS-314-HC-2017 Delhi-VAT) (Arise India Case). The Hon'ble High Court of Delhi held Section 9(2) (g) of Delhi VAT Act to the extent it disallows Input Tax Credit (ITC) to purchaser due to default of selling dealer in depositing tax, as violative of Article 14 and 19(1) (g) of the Constitution of India. In the light of the above decision the appellant is entitled to ITC.
6. The assessing authority ought not to have made 50% addition to the estimated alleged suppression for probable omission and suppression.
7. Levy of interest is not in accordance with law.

Sri.Raman Janardhanan, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. The authorized representative argued that the alleged purchase and sales suppression are actually does not exists, these are accounted in their books of accounts, hence further opportunity may be allowed to produce the documents before the assessing authority. The argument of the authorized representative is some force. Considering the above, the assessing authority is directed to give further opportunity in this case and cross verify the documents submitted and accept the same on merit and also summarize the addition as result of verification. Second issue is the OR case, in this case the assessing authority shall follow this office Order No.KVATA.156/18 dated.16.09.2019 and Erratum Order dated.03.10.2019 and allow this portion of assessment. Third contention is excess claim of IPT. In this case, the appellant shall produce Form 8 purchase invoices and also the copy of sales list of the supplier dealer, and the supplier has remitted tax on the sales, which disclosed as excess purchases of the appellant dealer. The authority shall ensure that there should not have been any collusion between appellant and supplier dealer in this case and thereby no revenue loss to the Government exchequer, and also contain the decision of the Hon'ble Supreme Court in **Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and Others (TS-2-SC-2018-VAT)**. The assessing authority is directed to modify the order as discussed above. Order accordingly.

Result: Modified

ASSISTANT COMMISSIONER (APPEALS)
ALAPPUZHA

To The Appellant through a/r
Copy submitted to Joint Commissioner(Law)
Copy submitted to Deputy Commissioner,CT,Alappuzha
Copy to State Tax Officer,Cherthala/File