

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)**

**STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR**

**PRESENT: SMT. SHYLA PRIYA .V LL.B**

1.KVAT Appeal Number	: KVATA 153/19.
2.Order Date	: 25.01.2020
3. Instituted on	: 26.03.2019
4. From the order of the	: 32081119582/14-15 dated 31. 01.2019 of State Tax Officer, Chavakkad.
5. Year of assessment	: 2014-15
6. Name of Appellant	: M/s. Maliamave Color House
7. Turnover Assessed	: 74,29,660/-
8. Section/Rule under which assessment made	: U/s. 25(1) of KVAT Act 2003
9. Date of hearing	: 21.01.2020
10. Authorized Representative	: Adv.V R Padmanabhan

**APPELLATE ORDER AND THE GROUNDS OF DECISION**

M/s. Maliamave Color House, TIN 32081119582, filed this appeal against the assessment Order No. 32081119582/14-15 dated 31.01.2019 of State Tax Officer, Chavakkad which was finalized U/s. 25(1) of KVAT Act.2003.

The main grounds of appeal submitted are:-

- 1.The impugned assessment order of the Commercial Tax Officer, Chavakkad u/s 25 (1) of the Act for the year 2014-15 is opposed to law, facts and circumstances of the case and, therefore, is liable to be set aside.
- 2.The best judgment assessment is completed without properly considering the reply filed against the pre assessment notice dated 30.01.2019. The cogent explanations submitted by the appellant were rejected on untenable grounds.
- 3.The finding of the assessing authority that normally the **direct expense** will be 2% to 5% of the purchase turnover is not based on any material evidences, but is based on mere assumptions and presumptions. He has not even quoted a comparable case to substantiate his contention. The estimation of direct expenses in a fixed ratio to the purchase turnover is patently irregular and illegal.

4. The assessing authority ought to have considered the explanation that the supply orders from customers are canvassed in advance and the goods are delivered directly from the godown of the cement companies to the work sites of the customers and as such the appellant is not incurring huge expenses on freight and cooli. As such, the assessing authority went wrong in estimating direct expense at Rs 1,56,326.42 being 2% of the purchase turnover with gross profit.

5. The assessing authority seriously erred in adding the **discount received** for Rs.61,376/- to the conceded turnover. He ought to have noted that discount received is supported by Credit Notes issued by the suppliers and the declaration to the effect that they have not deducted the discount allowed from their total turnover and reversed the OPT already paid. Explanation VII to section 2 (lii) of the Act is attracted only when a dealer sells goods at a price lower than the price at which it was purchased and subsequently receive any amount to compensate the loss. He failed to take note that the trade result of the appellant for the year has ended in gross profit even without considering the discount received which means that the appellant has not sold the goods below the purchase cost.

6. The assessing authority went wrong in **sustaining addition on the alleged unaccounted purchases covered by 4 bills**. The purchase as per SI Nos. 4 and 11 from Shalimar Paints Ltd., for Rs 43367/- and Rs 6733.66 respectively are accounted in the audit report filed. He ought to have considered the explanation that the appellant had filed an application to the assessing authority for revision of return for the month of May, 2014 as per e mail dt. 15.03.2016 to rectify the omission in not uploading 2 purchase bills. As the permission requested for not considered, the appellant has incorporated the purchase turnover covered by the above 2 bills in the audit report filed in form No. 13A. The purchase as per SI No. 12 from Bhima Business Links for Rs. 8,367.10 was also uploaded in the return for the month of March, 2015. The mismatch in this case was due to the mistake in the bill number uploaded. Instead of bill No. 838 the appellant has mistakenly uploaded the bill number as 336 which was purely a clerical error. Purchase as per SI No. 10 for Rs 2,770.16 was accounted in the month of April, 2015.

These additional grounds may be treated as part of the grounds of appeal already urged.

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Without prejudice to the grounds urged in the grounds of appeal, the addition made on the alleged unaccounted purchases may be limited to the actual suppression detected and deleting the equal addition made for probable omission and suppression as provided under section 25AA. IPT credit may also be allowed on the unaccounted local purchases.

When the appeal was posted for hearing Adv. V. R. Padmanabhan appeared and heard.

As the appellant has come up with the contentions against the assessment and as most of these contentions are already consisted as a statutory provision under section 25AA for finalising assessment. The Assessing authority is directed to modify the assessment as per the disciplines given on the above section, modify and issue orders accordingly. Contentions apart from this are rejected.

**Result: Reduced**

**ASSISTANT COMMISSIONER (APPEALS )**

**THRISSUR**

To

*The Appellant through the Authorized Representative,  
Copysubmitted 1. Joint Commissioner(Law),SGST Dept, Thiruvananthapuram,  
2 . Deputy Commissioner ,SGST Dept , Thrissur*

*Copy forwarded to*

- 1. State Tax Officer, Chavakkad Thrissur*
- 2. Asst Commissioner ,SGST Dept, irinjalamura  
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