

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 154/19.
2.Order Date : 25.01.2020
3. Instituted on : 26.03.2019
4. From the order of the : 32081119582/16-17dated 31. 01.2019 of State
Tax Officer, Chavakkad.
5. Year of assessment : 2016-17
6. Name of Appellant : M/s. Maliamave Color House
7. Turnover Assessed : 1,18,12,530/-
8. Section/Rule under which0
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 filed this appeal against the assessment Order 32081119582/16-17dated 31. 01.2019 of State Tax Officer, Chavakkad which was finalized U/s. 25(1) of KVAT Act.

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 2016-17 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 2,33,925/- being 2% of the purchase turnover with gross profit.

5.The assessing authority seriously erred in adding the discount received for Rs.49,326/- 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. She ought to have found that the purchases as per SI Nos. 1,2,3 & 5 amounting to Rs. 9,256/- were not related to the appellant.

Without prejudice to the above, it is submitted that the further equal addition for probable omission and suppression is not sustainable as there is no pattern of suppression involved.

For these and such other grounds to be urged at the time of hearing, it is prayed that the Hon'ble Assistant Commissioner (Appeals) may be pleased to set aside the impugned order and allow the appeal.

The appellant also submitted additional grounds as follows :

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

2. Without prejudice to the grounds urged in the grounds of appeal, the addition made on the alleged unaccounted sales may be limited to the actual suppression detected and deleting the lump sum addition of Rs. 10,00,000/- made for probable omission and suppression as provided under section 25AA.

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,
Copysubmitted1.JointCommissioner(Law),SGSTDept,Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

*Copy forwarded to
1. State Tax Officer, Chavakkad
2. Asst Commissioner ,SGST Dept, irinjalamuda
File/ index / spare*