

KVATA 180/19
PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAXES DEPARTMENT, THRISSUR
PRESENT: SMT. SHYLA PRIYA .V LL.B

- 1.KVAT Appeal Number : KVATA 180/19.
2.Order Date : 24.01.2020
3. Instituted on : 08.04.2019
4. From the order of the : No. 32081145355/2016-17 dtd 28.02.2019 of State Tax officer, Chavakkad.
5. Year of assessment : 2016-17
6. Name of Appellant : M/s. Daily Traders
7. Turnover Assessed : 2,11,83,630/-
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. Daily Traders filed this appeal against the assessment Order No. 32081145355/2016-17 dtd 28.02.2019 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 order of the State Tax Officer, Chavakkad for the year 2016-17 is opposed to law, facts and circumstances of the case, and is liable to be set aside.
2. The assessing authority went wrong in resorting to best judgment assessment which is carried out in a highly arbitrary manner and without appreciating the facts in issue and the specific averments raised in the reply of the appellant dated 19.02.2019 to the pre assessment notice. The cogent explanations furnished in reply to the pre assessment notice were rejected on untenable grounds.
3. The assessing authority seriously erred in his finding of suppression in interstate purchase amounting to Rs. 9,45,384/-. The above finding is based on the purchase turnover conceded in the annual return and the audited statements in Form 13A. The difference was treated by the assessing authority as purchase suppression without considering the reply filed to the assessment notice. During the course of the statutory audit u/s 42(2), the Chartered Accountant had detected that there are some omissions in the purchase turnover reported as per the monthly returns and annual return. In the return filed for May, 2016, the appellant had omitted to include the interstate purchase Rs. 7,35,946/- in Form 10 due to oversight. But the appellant had included the above purchases in the purchase list uploaded for May, 2016. So, the appellant had requested permission of the assessing authority by e mail dated 13.01.2017 for revising the monthly return for May, 2016 and letter dated 6.10.2016 for revising the monthly returns and annual return incorporating the omitted purchases. But the assessing authority has not considered the request of the appellant so that the omitted purchases were included in the audit report in form No. 13A. The Chartered Accountant has also submitted a reconciliation statement of purchases along with the audit report.
4. The assessing authority ought to have found that the purchase turnover conceded in the audit report was inclusive of the omitted purchases subsequently detected during audit. The purchase turnover conceded as per audit report was higher than that conceded in the annual return and hence the allegation of suppression in purchase was not sustainable. The Hon'ble Allahabad High Court in Speed Rollers Pvt Ltd v/s Commissioner of Trade Tax, U.P,

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Lucknow (2009) 20 VST 88 (All) held that rejection of books of accounts is not permissible on ground that the turnover disclosed in the books of accounts is higher than the turnover disclosed in the return. The higher turnover disclosed in the books of accounts does not lead to the inference of suppression. The facts and circumstances of the above case are squarely applicable to the appellant's case.

5. Without prejudice to the above, it is submitted that the further addition of equal amount for probable omission and suppression is unsustainable and there is no pattern of suppression involved.
6. For these and such other grounds to be urged or enlarged at the time of hearing, it is prayed that the Hon'ble Asst. Commissioner (Appeals) may be pleased to set aside the impugned order and allow the appeal.

ADDITIONAL GROUNDS OF APPEAL

These additional grounds may be treated as part of the grounds of appeal already urged. 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 against his contention " During the course of the statutory audit u/s 42(2), the Chartered Accountant had detected that there are some omissions in the purchase turnover reported as per the monthly returns and annual return. In the return filed for May, 2016, the appellant had omitted to include the interstate purchase Rs. 7,35,946/- in Form 10 due to oversight. But the appellant had included the above purchases in the purchase list uploaded for May, 2016. So, the appellant had requested permission of the assessing authority by e mail dated 13.01.2017 for revising the monthly return for May, 2016 and letter dated 6.10.2016 for revising the monthly returns and annual return incorporating the omitted purchases."

The appellant had produced the audit report, and returns as proof against this, as I find merit on this contention and as the appellant has put in his additional grounds, this is allowed. The assessing authority is directed to modify the assessment as is specified in section 25AA and issue orders accordingly .

Result: Modified

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, irinjalamuda
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