

**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 227/19
2.Order Date : 27.01.2020
3. Instituted on : 02.05.2019
4. From the order of the : No.32081337549/2015-16 dtd 24.07.2018 of State
Tax Officer, Wadakkanchery
5. Year of assessment : 2015-16
6. Name of Appellant : M/s. Sivani Enterprises.
7. Turnover Assessed : Rs.2,39,30,428.41/-
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. Sivani Enterprises TIN 32081337549 filed this appeal against the assessment Order No.32081337549/2015-16 dtd 24.07.2018 of State Tax Officer, Wadakkanchery which was finalized under Section 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

The impugned assessment order of the State Tax Officer, Wadakkanchery u/s 25 (1) of the Act for the year 2015-16 is opposed to law, facts and circumstances of the case and, therefore, is liable to be set aside.

1. 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 in the reply filed. The cogent explanations furnished in reply to the pre-assessment notice dated 22.12.2017 were rejected on untenable grounds.
2. The assessing authority went wrong in merely embossing his seal of approval on the illegal penalty orders of the Intelligence Officer without independently apprising the factual matrix of the case. He failed to note that the reason for collection of security deposit was purely technical in nature. The appellant has properly

accounted the impugned transaction in the books of accounts. As such, addition of turnover in this regard is not sustainable.

3. The assessing authority seriously erred in making the addition of Rs.7,17,482/- being 75% of the labour charges received amounting to Rs. 9,56,643/- He failed to consider that the receipt in this regard was towards stitching charges which was purely towards labour charges which are not exigible to tax. The appellant is manufacturer and dealer in mattresses and textiles. Apart from the manufacturing of mattresses, they have also undertaken job work of stitching for other similar dealers. The job work charges of Rs. 9,56,643/- shown in the accounts is towards the stitching charges received. The material required for the stitching such as cloth and thread are supplied by customers. As there is no transfer of property involved in this job work, the income received on the stitching work which is purely a labour work will not form part of the turnover and is not assessable to tax. The assessing authority ought to have verified the labour bills produced for verification. He ought to have noted that the labour charges received cannot be treated as contract receipt under Rule 10 (2) (b) of the KVAT Rules, 2005 as the income received is not from works contract. The above rule is applicable only for works contracts where the transfer of goods is not in the form of goods but in some other form.
4. The assessing authority went wrong in sustaining the addition on the alleged suppression in sales amounting to Rs.2,67,363/- said to have detected in scrutiny without considering the reply filed to the pre-assessment notice. The assessing authority has not pointed out any reasons for rejecting the explanations furnished in reply to the pre-assessment notice. He ought to have found that the above transactions are not sales as alleged. As per the Trading, Profit & Loss account, the appellant has received an amount of Rs.9,56,643/- from job work. The bills referred to in the assessment order are the labour bills issued to various parties. He ought to have noted that no tax has been collected in the above bills. From the above facts itself, he ought to have noted that the above bills are not relating to any sales.
5. The assessing authority went wrong in assessing an amount of Rs.2,67,363.20 alleging sales suppression covered by 41 bills. He failed to consider that the transactions were not sales as alleged. As per the Trading, Profit & Loss account, the appellant had received an amount of Rs.9,56,643/- from job work of stitching. The bills referred to in the order are the labour bills issued to various parties. He

failed to note that tax has not been collected in the bills. The assessing authority ought to have verified the job work bills produced for verification.

6. The assessing authority erred in assessing a turnover of Rs. 47,888/- @ 0% and Rs. 9,14,655/- @ 1% instead of the conceded turnover of Rs. 8,02,205/- and Rs.12,44,305/-.
7. Without prejudice to the above, it is submitted that the further equal addition made for probable omission and suppression is highly excessive, arbitrary and without any nexus to the materials available on records.

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.

ADDITIONAL GROUNDS OF APPEAL

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

The assessing authority has completed assessment based on the penalty proceedings u/s 47(6) of the Act. Apart from the alleged suppression detected by the Intelligence Officer, no other instance of suppression is pointed out by the assessing authority. Hence in the absence of a pattern of suppression, the further equal addition for probable omission and suppression is not sustainable as per section 25AA (1) of the Act.

Without prejudice to the grounds urged in the grounds of appeal, the addition made on the alleged unaccounted purchases and sales 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 posted for hearing Adv. V.R Padmanabhan appeared and heard.

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

As the appellants have come up with the contentions against the assessment and as most of these contentions are already provided 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,
Copsubmitted 1. Joint Commissioner (Law), SGST Dept, Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

- 1. State Tax Officer, Wadakkanchery*
 - 2. Asst Commissioner ,SGST Dept, Irinjalakuda.*
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