

**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 230/19
2.Order Date	: 23.01.2020
3. Instituted on	: 07.05.2019
4. From the order of the	: No.32080644055/15-16 dtd 20.03.2018 of State Tax Officer, 2 nd Circle, Thrissur
5. Year of assessment	: 2015-16
6. Name of Appellant	: M/s. Peacock Bags.
7. Turnover Assessed	: Rs.11,25,000/-
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. Peacock Bags, TIN 32080644055 filed this appeal against the assessment Order No..32080644055/15-16 dtd 20.03.2018 of State Tax Officer, 2nd Circle, Thrissur which was finalized under Section 25(1) KVAT Act 2003.

The main grounds of appeal submitted are:-

1. The impugned order of the Commercial Tax Officer, Second Circle, Thrissur for the year 2015-16 u/s 25(1) of the Act is opposed to law, facts and circumstances of the case and, therefore, 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. The cogent explanations furnished in reply to the pre- assessment notice were rejected on untenable grounds.
3. The best judgment assessment was completed solely based on the penalty proceedings of the Intelligence Officer, Thrissur, u/s 47(6) of the Act. The assessing authority seriously erred in embossing his seal of approval on the illegal penalty order of the Intelligence Officer. The proceedings of the Intelligence Officer culminating into penalty were issued ex parte without considering the request of the appellant for a short adjournment. There were no materials with the intercepting officer or Enquiry Officer to allege undervaluation and to estimate turnover. The goods under transport were ladies bags and the estimation of sales price at Rs. 500/- per bag was not based on any valid materials. The intercepting officer or the enquiry officer has not quoted any comparable case to establish undervaluation in sales. Apart from the mere

statement that the value conceded in the document is too low when compared to market price, there is nothing more on record as to why the intercepting officer claim to hold that the value of goods are undervalued in the records produced before him. There is no material on records to show that the appellants have received any amount more than what was shown in the sales invoice. As such estimation of sales value was in violation of the principles laid down by the Hon'ble High Court of Kerala in **C.O.Devassy Vs. State of Kerala (1991) 81 STC 2** and **Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. K.E.Korah (1997) 107 STC 226**. In the above cases, the Hon'ble High Court held that it is for the Revenue to prove that the assessee received ostensible consideration more than that conceded in the books of accounts.

4. Without prejudice to the above, it is submitted that the further lump sum addition of Rs. 10,00,000/- for probable omission and suppression is highly excessive, arbitrary and without having any nexus to the material available on records. The turnover addition made amounts to 8 times of the suppression alleged by the enquiry officer. Apart from the defects pointed out in vehicle checking, the assessing authority has not pointed out any other instance of omission or suppression either in purchase or sales. In the absence of a finding of pattern of suppression, the further addition of Rs.10,00,000/- is unsustainable and liable to be deleted.

5. The assessing authority seriously erred in assessing the estimated turnover at 14.5%. He ought to have noted that out of the total turnover of Rs. 40,92,825/- conceded in the annual return and accounts, sales turnover assessable at 14.5% amounted to Rs. 6,66,382/- only i.e., 16.28% of the total sales turnover . The conceded turnover of 5% sales amounted to Rs. 34,26,443/-. As such, the assessing authority ought to have apportioned the enhanced turnover in the ratio of conceded sales turnover.

For these and such other grounds that may 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. 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 and suppression detected in vehicle checking 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. As the appellant has come up with the contentions against the assessment and as all these contentions are already consisted on assessment guidelines under section 25AA . The Assessing authority is directed to modify the assessment as per the disciplines given on the above section, modify and issue orders accordingly.

Result: Modified

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, 2nd Circle, Thrissur*
 - 2. Asst Commissioner ,SGST Dept, Thrissur.*
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