

**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 302/19
2. Order Date	: 30.01.2020
3. Instituted on	: 20.07.2019
4. From the order of the	: No.32080204912/2016-17 dtd 27.02.2019 of State Tax Officer, Kodungalloor.
5. Year of assessment	: 2016-17
6. Name of Appellant	: M/s. Greeshma Flour & Oil Mill.
7. Turnover Assessed	: Rs.6,94,94,800/-
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. Greeshma Flour & Oil Mill, TIN 32080204912, filed this appeal against the assessment Order No.32080204912/2016-17 dtd 27.02.2019 of State Tax Officer, Kodungalloor which was finalized under Section 25 (1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

*The impugned order of the State Tax Officer, Kodungalloor for the year 2016-17 u/s 25 (1) 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 ex parte, in a highly arbitrary manner and without appreciating the facts in issue.*
- 2. The assessing authority erred in making an addition of Rs. 13,16,165/- alleging variation in purchase turnover of Rs. 12,88,431/- between the annual return and audit report. The omission to include certain purchases in the returns filed was detected during the time of statutory audit and the appellant had requested permission of the assessing authority to file revised returns rectifying the omissions. As the permission sought for was not obtained, the omitted purchases were included in the audited financial statements. The assessing authority ought to have noted that the variation in purchase turnover was clarified by the Chartered Accountant in the audit report in Form 13 as 'remarks'. She ought to have noted that the purchase turnover conceded in the audit report was higher than the purchase turnover disclosed in the annual return. As such, the higher turnover reported in audit report ought not to have been inferred as suppression in purchase.*
- 3. The assessing authority went wrong in her finding of suppression in sales amounting to Rs. 13,16,364.99. She ought to have noted that the sales as per Sl. Nos. 12,13,19 and 23 amounting to Rs. 3,83,500/- relates to the year 2015-16 which were accounted in the returns for the months of January and March, 2016. The appellant had accounted all the other sales in the books of accounts though there was omission in uploading the sales along with the monthly returns.*

4. *The assessing authority ought to have noted that the local purchases amounting to Rs. 23,00,278/- covered by 7 bills have been accounted in the books of accounts of the appellant. The omission to upload the purchases along with the monthly returns was purely due to clerical errors.*
5. *The assessing authority seriously erred in making huge addition of 5% of the conceded sales turnover for probable omission and suppression and based on the defects as per the VCR file. She failed to consider that the collection of security deposit and imposition of penalty u/s 47(6) of the Act was without any valid grounds. Security deposit was collected for the reason that the appellant has not filed the returns for the months of October and November, 2016 in time. Due to acute financial problems, there was delay in filing the returns for the above months. But the appellant had filed the returns and remitted the tax due with interest subsequently. The intercepting officer or the Enquiry Officer had no case that the transport of goods was not supported by documents as prescribed u/s 46 (3) of the Act. The goods under transport valued Rs. 9,86,750/- were supported by tax invoices Nos. 688,689,690,691 and 692 dated 06.01.2017 in Form No. 8. The sole reason for collecting security deposit was the delay in filing returns. The assessing authority also had no case that the appellant has not accounted the impugned sales. As such, the huge addition made is quite uncalled for and unsustainable.*
6. *Without prejudice to the above, it is submitted that the addition made at Rs. 74,57,930/- for probable omission and suppression is highly excessive, arbitrary and having no without any nexus to the materials available on records. The total turnover of Rs. 14,91,58,561/- reported for the year 2016-17 was inclusive of the sales covered by 5 bills amounting to Rs. 9,86,750/- for which security deposit was collected. The further estimation of sales turnover at 5% of the conceded turnover is highly unjustified. The principles to be followed in best judgment assessments are well settled in the cases of Commissioner of Sales Tax, M.P v/s **H.M. Esufali ((1973) 32 STC 77) and state of Kerala M/s. Velukutty (1968) 69 ITR 239**. While accepting the position that estimation necessarily involved an amount of guess work, the Hon'ble Supreme Court cautioned that the action of the assessing authority shall not be vindictive and capricious. The estimate should be on a rational basis having reasonable nexus to the available material and circumstances of each case.*
7. *The assessing authority went wrong in disallowing the IPT credit of Rs. 59,755/- on the purchase of packing materials in proportion to exempted sales turnover as per annual return. The finding that the packing materials purchased were used in relation to the exempted sales turnover of Rs. 8,45,16,450/- is factually incorrect. She ought to have found that out of the total exempted turnover of Rs. 8,45,16,450/-, sales amounting to Rs. 6,30,12,256/- relates to the sales of copra. The packing materials purchased were not used for the packing of copra. The sale of copra was in bulk quantity and without using packing materials. The appellant was purchasing coconut oil in bulk quantities and selling the same in small quantities after repacking. The packing materials purchased were used exclusively for the repacking of coconut oil. As such, the disallowing of IPT credit in proportion to the exempted sales which is inclusive of the sales turnover of copra is patently irregular.*
8. *The assessing authority went wrong in making further additions and in not allowing IPT credit on the unaccounted purchases as per Section 25AA of the Act. Though the assessment order is seen passed on 27.02.2019, the assessment order was served on the appellant only on 23.05.2019. From the above fact, it is evidently clear that the assessment order has been*

actually passed on a date subsequently to 01.04.2019. As such, the assessing authority ought to have completed the assessment u/s 25AA of the Act.

2For these and such other grounds that may be urged 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.

1. These additional grounds may be treated as part of the grounds of appeal already urged.
2. 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 addition of 5% of the conceded turnover for probable omission and suppression is not sustainable as per section 25AA (1) of the Act.
3. 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.

As against the contention " The assessing authority erred in making an addition of Rs. 13,16,165/- alleging variation in purchase turnover of Rs. 12,88,431/- between the annual return and audit report. The omission to include certain purchases in the returns filed was detected during the time of statutory audit and the appellant had requested permission of the assessing authority to file revised returns rectifying the omissions. As the permission sought for was not obtained, the omitted purchases were included in the audited financial statements. The assessing authority ought to have noted that the variation in purchase turnover was clarified by the Chartered Accountant in the audit report in Form 13 as 'remarks'. She ought to have noted that the purchase turnover conceded in the audit report was higher than the purchase turnover disclosed in the annual return. As such, the higher turnover reported in audit report ought not to have been inferred as suppression in purchase." **As there is a variation in the purchase turnover reported the Assessment of the variation is inevitable and it is lawful hence this is upheld. The appellants contention is disallowed.**

As against the contention " The assessing authority went wrong in her finding of suppression in sales amounting to Rs. 13,16,364.99. She ought to have noted that the sales as per Sl. Nos. 12,13,19 and 23 amounting to Rs. 3,83,500/- relates to the year 2015-16 which were accounted in the returns for the months of January and March, 2016. The appellant had accounted all the other sales in the books of accounts though there was omission in uploading the sales along with the monthly returns." **Assessment of transactions related to the year 2015-16 on the assessment of 2016-17 is not proper hence it is directed to delete the same from the ambit of assessment and modify accordingly.**

As against the contention "The assessing authority ought to have noted that the local purchases amounting to Rs. 23,00,278/- covered by 7 bills have been accounted in the books of accounts of the appellant. The omission to upload the purchases along with the monthly returns was purely due to clerical errors." **As there is a omission to report the local purchase turnover the Assessment of the suppression is inevitable and it is lawful hence this is upheld. The appellants contention is disallowed.**

As against the contention "The assessing authority seriously erred in making huge addition of 5% of the conceded sales turnover for probable omission and suppression and based on the defects as per the

VCR file. She failed to consider that the collection of security deposit and imposition of penalty u/s 47(6) of the Act was without any valid grounds. Security deposit was collected for the reason that the appellant has not filed the returns for the months of October and November, 2016 in time. Due to acute financial problems, there was delay in filing the returns for the above months. But the appellant had filed the returns and remitted the tax due with interest subsequently. The intercepting officer or the Enquiry Officer had no case that the transport of goods was not supported by documents as prescribed u/s 46 (3) of the Act. The goods under transport valued Rs. 9,86,750/- were supported by tax invoices Nos. 688,689,690,691 and 692 dated 06.01.2017 in Form No. 8. The sole reason for collecting security deposit was the delay in filing returns. " As against the non filing of return for the period alone is not a base to fix a higher turnover on best judgement. Non filing of returns warrants a penalty only and assessment can be routed out only if an pattern of suppression is proved, But here as against the appellants contention he has transported the goods without any documents, so there is evident pattern of suppression , so it is ordered to limit the addition to the actual turnover with 50% addition of the same to cover up omissions and suppressions.

As against the contention " The assessing authority went wrong in disallowing the IPT credit of Rs. 59,755/- on the purchase of packing materials in proportion to exempted sales turnover as per annual return. The finding that the packing materials purchased were used in relation to the exempted sales turnover of Rs. 8,45,16,450/- is factually incorrect. She ought to have found that out of the total exempted turnover of Rs. 8,45,16,450/-, sales amounting to Rs. 6,30,12,256/- relates to the sales of copra. The packing materials purchased were not used for the packing of copra. The sale of copra was in bulk quantity and without using packing materials. The appellant was purchasing coconut oil in bulk quantities and selling the same in small quantities after repacking. The packing materials purchased were used exclusively for the repacking of coconut oil. As such, the disallowing of IPT credit in proportion to the exempted sales which is inclusive of the sales turnover of copra is patently irregular." I find merit on this contention ,it is directed to verify the appellants purchase and sales of copre and Inputtax shall be disallowed in that proportion .

As against the contention "The assessing authority went wrong in making further additions and in not allowing IPT credit on the unaccounted purchases as per Section 25AA of the Act. Though the assessment order is seen passed on 27.02.2019, the assessment order was served on the appellant only on 23.05.2019. From the above fact, it is evidently clear that the assessment order has been actually passed on a date subsequently to 01.04.2019. As such, the assessing authority ought to have completed the assessment u/s 25AA of the Act." As per section 25AA the appellant is eligible to get the credit of Input tax paid on suppressed purchases that is accepted by him. Hence it is directed to modify accordingly and issue orders.

**Result: Modified**

**ASSISTANT COMMISSIONER (APPEALS )**

**THRISSUR**

To

The Appellant through the Authorized Representative,  
Copy submitted.Joint Commissioner(Law),SGSTDept,Thiruvananthapuram,

2 . Deputy Commissioner ,SGST Dept , Thrissur

Copy forwarded to

1. State Tax Officer,Kodungalloor

2. Asst Commissioner ,SGST Dept, Irinjalakuda, File/ index / spare