

**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 369/19
- 2.Order Date : 14.01.2020
3. Instituted on : 12.11.2019
4. From the order of the : No.32080636899/14-15 dtd 31.01.2019 of State Tax Officer 2nd Circle, Thrissur.
5. Year of assessment : 2014-15
6. Name of Appellant : M/s. Milanos
7. Turnover Assessed : Rs.6,54,655/-
8. Section/Rule under which assessment made :U/s. 25 (1) KVAT Act 2003.
9. Date of hearing : 10.01.2020
10. Authorized Representative : K. F Francis.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Milanos TIN 32080636899 filed this appeal against the assessment Order No.32080636899/14-15 dtd 31.01.2019 of State Tax Officer 2nd Circle, Thrissur which was finalized under Section 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

1. The order of the State Tax Officer, Second Circle, Thrissur determining the total sales turnover of the appellant at Rs.6,54,655.00 for the year 2014.15 as against the conceded turnover of Rs.1,10,565/- is arbitrary, illegal and against facts and circumstances.

2.The main allegation in the assessment order for resorting to best of judgment assessment is that the appellant did not account the purchases for Rs.2,47,314.00 .In fact the alleged purchases had not effected by the appellant and hence not accounted. The normal law relating to the Burden of Proof and its onus is given under the provisions of the Indian Evidence Act, 1872. Under Indian law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or asserting any fact. This concept of burden of proof is defined in Section 101 of Indian Evidence Act,1872.

According to section 101 of Indian Evidence Act, when a person is bound to prove the existence of a fact, the burden to provide evidence for the same lies upon him.

Here, in the instant case, the assessing authority has simply alleged that the appellant did not account 19 purchases for Rs.2,47,314/-. Even though the assessing authority has supplied the details of the related purchase bills, no details of the payment effected by the appellant to the suppliers for the said purchases have been given by the assessing authority. In the absence of materials to prove the payment given by the appellant for the purchases, the assessing authority is barred to allege purchase suppression. More over when the appellant has not effected these 19 purchases, how can he be directed to adduce negative evidence in this case?. Hence the appellant cannot shoulder the responsibility of the alleged suppressed purchases when he has not effected any payment for these purchases and took delivery of the related goods. This being the factual and legal position, the learned appellate authority may be pleased to set aside the addition of turnover amounting to Rs.5,44,090.00 (Rs.2,72,045.00 +Rs.2,72,045.00 =Rs5,44,090.00)

3. In this connection, it is pertinent to note that the appellant has no burden in the instant case under section 9 of KVAT Act to prove that the alleged purchases are not liable to tax, because the appellant never admitted the said purchases as that of the Firm. Had the appellant admitted the said purchases and claimed exemption for the corresponding sales turn over, definitely the burden of proof would have been on the appellant. Hence, it is up to the assessing authority to prove under section 101 of Indian Evidence Act, 1872 that the said 19 purchases had been effected by the appellant. In the absence any documentary evidences to prove the alleged purchases, the learned appellate authority may be pleased to set aside the assessment order on account of this alleged suppressed purchases.

4. Such other grounds that may be raised at the time of filing appeal

When the appeal posted for hearing Sri. K.F Francis, STP appeared and heard.

As the appellant has come up with the contentions against the assessment and as all 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.

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KVATA 369/19

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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