

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

- 1.KVAT Appeal Number : KVATA379/19
- 2.Order Date : 25.01.2020
3. Instituted on : 22.11.2019
4. From the order of the : No.32081324411/2015-16 dtd 21.10.2019 of State
Tax Officer Wadakanchery .
5. Year of assessment : 2015-16
6. Name of Appellant : M/s. Hiba Agency
7. Turnover Assessed : Rs.17,52,704.00
8. Section/Rule under which
assessment made : 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. Hiba Agency TIN 32081324411 filed this appeal against the assessment Order No.3.32081324411/2015-16 dtd 21.10.2019 of State Tax Officer Wadakanchery which was finalized under KVAT Act 2003.

The main grounds of appeal submitted are:-

- 1.The impugned 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.
2. The assessing authority went wrong in completing the assessment for the year 2015-16 in a highly arbitrary manner and without appreciating the specific averments in the reply filed. The cogent explanations furnished in reply to the pre-assessment notice were rejected on untenable grounds.
3. The assessing authority went wrong in making an addition of 5% of the conceded turnover alleging non-filing of P&L account. Though there was delay in filing the P&L account, the appellant has filed the same since then.
4. The assessing authority ought to have noted that non-filing of audit report is not a valid ground for making additions to the turnover as held by the Hon'ble High

Court of Kerala in O.T.Rev.49/2014 dated 28.09.2014 in State of Kerala Vs Nandilath Arcade.

5. As per the Finance Act 2019, the assessment completed with effect from 01.04.2019 is subject to the general disciplines as per 25AA. The addition to turnover is limited to the parameters prescribed under the above section. So much so, the addition of 5% of the conceded turnover is not at all sustainable.

6. Without prejudice to the above, it is submitted that the addition made at 5% of the conceded turnover is highly excessive and arbitrary.

7. Levy of interest is against settled judicial verdicts in the matter. The assessing authority has not pointed out any instance of omission or suppression either in purchase or sales. As there is no escape of turnover involved in this case, levy of interest is illegal and unsustainable.

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

He contended that the assessment was completed as the appellant has not filed his profit and loss account ,thereafter 5% addition on total turnover was added up. He contended that the appellant has already submitted the profit and loss account on 05.11.2019. so the assessment is ultravires and unsustainable.

I find merit on the appellant contention as the appellant has already filed the Profit and loss account , the assessment based on the scrutiny of the same is effective and necessary hence the assessment that is challenged here is herewith Set aside with direction to complete the scrutiny based on the Profit and loss account that was submitted and finalize assessment Afresh.

Result: Set aside

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copsysubmitted1.Joint Commissioner(Law),SGSTDept,Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

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