

KVATA 389/18
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 389/18
2.Order Date : 05.03.2020
3. Instituted on : 03.12.2018
4. From the order of the : No. 32080802703 /15-16 dtd 16.10.2018 of State Tax Officer, Chalakudy.
5. Year of the assessment : 2015-16
6. Name of Appellant : M/s. Rock Lands
7. Turnover Assessed : Rs. 2,40,000/-
8. Section/Rule under which assessment made : U/s. 8(d) of KVAT Act 2003
9. Date of hearing : 07.11.2019.
10. Authorized Representative : Adv. V.R Padmanabhan.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Rock Lands, TIN 32080802703 filed this appeal against the assessment order No. 32080802703 /15-16 dtd 16.10.2018 of State Tax Officer, Chalakudy which was finalized under U/s. 8(d) of KVAT Act 2003.

The main ground of appeal submitted are:-

1. The impugned order of the State Tax Officer, Chalakudy 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 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 dated 05.01.2018.
3. The appellant had opted for payment of tax for the year 2015-16 u/s 8 (b) of the Act for a single secondary crusher machine of size above 30.48cm X 22.86cm and below 40.64cm X 25.40cm for an amount of Rs. 1,20,000/-. The appellant had also paid compounded tax for the year. The assessing authority has completed the impugned best judgment assessment order on the allegation that the appellant had used two crusher machines of size II during the year for which tax due was fixed at Rs. 4,80,000/-.
4. The assessing authority went wrong in his finding that the appellant had used 2 crusher machines of size II based on the annual return filed for the year 2015-16 in which the category of single crusher was repeatedly shown twice by mistake. Relying merely on the annual return, he has fixed the compounded tax due for a single crusher of size II at Rs. 3,20,000/- and tax for primary crusher at Rs. 1,60,000/- being 50% of the secondary machine.
5. The assessing authority ought to have noted that the number and size of the crusher machine was physically ascertained by the Intelligence Officer, Squad No.I, Thrissur by an inspection dated 21.03.2014. It was recorded in the shop inspection report No. 245241 dt.

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21.3.2014 that 'the crusher unit is having only one secondary machine of jaw size 16" x 9" (i.e., 30.48cm X 22.86cm).

6. The assessing authority had completed the assessment for the year 2014-15 fixing the tax due at Rs. 1,20,000/- for the single crusher machine of the size 30.48 cm X 22.86cm by his order dt. 16.10.2018.

7. The assessing authority ought to have noted that the number and size of the machinery in the crusher unit of the appellant was shown in the annual return as 'single crusher - 1 No. of the size \geq 30.48cm X 22.86cm and \leq 40.64cm X 25.40cm' and compounded tax due was fixed at Rs. 1,20,000/-.

8. As there was no change in the number and size of the crusher machine for the years from 2013-14 to 2016-17 as evidenced from the compounding applications, inspection report and annual returns filed, the assessing authority gravely went wrong in his finding that the appellant has used 2 single crushers during the year 2015-16.

9. The best judgment assessment is completed merely relying on the mistake of repetition of the same crusher machine of the same size in the annual return for the year 2015-16. The assessing authority ought to have noted that the appellant had opted for payment of compounded tax for a single machine of size II. The allegation of the assessing authority regarding the use of additional secondary machine of size II is not based on any material evidence. The assessing authority has not conducted any field enquiry to establish that the appellant had installed and operated the additional secondary machine as alleged in his order. So much so, the impugned assessment is not legally sustainable.

10. The assessing authority failed to take note of the Certificate issued by the KSEB dated 14.11.2015 to the effect that the connected load of the crusher unit of the appellant is 44 HP since the year 2012. He ought to have noted that the connected load is sufficient to operate only one crusher machine of size II.

11. He failed to consider documentary evidences produced in support of the above contention before him. He ought to have noted that as per audited balance sheet and profit and loss account, there was no addition of fixed assets in the schedule of fixed assets for the year 2015-16 and no deletion of fixed assets during the year 2016-17. Furthermore, the appellant had not claimed any amount of depreciation on new machinery during the year 2016-17. From all the above facts, it was evidently clear that the appellant had not installed additional secondary crusher during the year 2015-16 as alleged in the impugned assessment order.

12. The assessing authority ought not to have levied interest to the tune of Rs. 1,11,600/- on the tax arbitrarily assessed in best judgment assessment in total disregard of the settled principles of law laid down by the Apex Court J.K. Synthetics case etc. He should have noted the settled legal position that interest will accrue only if there is real escape of turnover and tax as held in Chandramani Trades Vs. State of Kerala reported (2008) 16 VST 294 (Ker.) and

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State of Kerala Vs. Western India Cosmetics & Health Products reported in (2010) 18 KTR 414 (Ker.). Levy of interest on the tax illegally imposed is unwarranted in the factual situation of the appellant's case.

The appeal was posted for hearing Adv. V.R Padmanabhan appeared for the appellant.

As against the contention "The assessing authority went wrong in his finding that the appellant had used 2 crusher machines of size II based on the annual return filed for the year 2015-16 in which the category of single crusher was repeatedly shown twice by mistake. Relying merely on the annual return, he has fixed the compounded tax due for a single crusher of size II at Rs. 3,20,000/- and tax for primary crusher at Rs. 1,60,000/- being 50% of the secondary machine."

The appellant did not submit any documents other than the returns, audited balance sheet and the supposed letter issued by the senior superintended from the office of Asst Engineer Annamanada. The genuineness of this letter is suspected due to the absence of any official seal. All these are insufficient to assess if the appellant is working 1 machine or 2 machines, hence the appellants contention is disallowed. This appeal is herewith dismissed.

RESULT: Dismissed

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copysubmitted 1. Joint Commissioner(Law),SGST Dept,Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

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