

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

1.KVAT Appeal Number	: KVATA 427/18
2.Order Date	: 11.02.2020
3. Instituted on	: 27.12.2018
4. From the order of the	: No. 32081358532/13-14 dtd 29.11.2018 of State Tax Officer, Wadakkanchery.
5. Year of assessment	: 2013-14
6. Name of Appellant	: M/s. Reshma Distributors
7. Turnover Assessed	: Rs.2,79,29,739/-
8. Section/Rule under which assessment made	: U/s. 25(1) of KVAT Act 2003.
9. Date of hearing	: 07.01.2020
10. Authorized Representative	: Adv. Mohan George.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Reshma Distributors , TIN 32081358532 filed this appeal against the assessment Order No. 32081358532/13-14 dtd 29.11.2018 of State Tax Officer, Wadakkanchery which was finalized U/s. 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

- 1. The order of the commercial tax officer, Wadakkanchery is against facts and circumstances of the case.*
- 2. I am a registered dealer on the files of commercial tax Officer, Wadakkanchery with TIN 32081358532 For the year 2013- 14 the officer has assessed a turnover amounting to Rs.11,38,080/- and demanded tax amounting to Rs.92766/. and interest Rs.51949/-*
- 3. The assessment has completed in hasty and further time has not been granted to file the detailed reply even though requested time to file reply*
- 4. The officer has disallowed a sum of Rs.7,17,316/= being the sales return . The debit credit notes were duly filed before the authorities along with the return . The same might have been misplaced from that office .Anyhow a copy of the same is enclosed herewith for your kind verification .Hence the claim may be allowed after verifying the debit/ credit notes .The IPT disallowed in this regard amounting to Rs.35,862/ may be allowed.*
- 5. The officer has disallowed a sum of Rs.6,19,576 /= being the purchase return . The debit credit notes were duly filed before the authorities along with the return. The same might have been misplaced from that office .Anyhow a copy of the same is enclosed herewith for your kind verification, Hence the claim may be allowed after verifying the debit/ credit notes . The trading profit and loss account and balance sheet along with 13&13 A has been duly filed by us . The freight and cooly assessed amounting to Rs.4,73,572/will not form the part of the turnover since it is freight outwards and it is expense of the sales turnover and this can be proved by verifying*

the freight receipts received from the parcel office. Hence this is not a expense of purchase this has been not included as turnover of purchase .

6. *Hence the assessment made on the turnover by adding 10% gross profit may be deleted. The High court of Kerala in the case of Monu timbers V/s State of Kerala 2012(3) KHC iii Ker. has clearly directed that the authorities like Officer have no authority to estimate gross profit . Hence the reported gross profit may be taken for the purpose of assessment.*
7. *The levy of interest of Rs.51,949 /- may be re examined since the levy of interest should be from the date of the order only.*
8. *Since I am in lack of fund to remit the entire amount the amount of Rs92766/ and interest of Rs. 51949/- may be stayed till the disposal of the appeal.*
9. *For this and other grounds that shall be urged at the time of hearing the order passed by the commercial tax officer,Wadakkancherry may be stayed and I may be exonerated from the levy of tax .*

When the appeal was posted for hearing Adv. Mohan George appeared. He had various contentions, against the defect no 2 he contended that the appellant had in his receipt the debit and credit notes but this was not verified with, the H form that was produced before the Officer was not considered with, finally and importantly it was contended that the assessment is completed without hearing the appellant thereby violating the principles of natural justice.

I find merit on the appellants contention because from the assessment order it is evident that the appellant was not heard before finalizing the assessment, order issued in violation of natural justice is not sustainable in law. Hence this appeal is allowed and the case is Setaside and remanded back to the assessing officer for fresh disposal.

Result: Set aside.

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copysubmitted1.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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