

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)**

**COMMERCIAL TAXES,ALAPPUZHA**

**PRESENT: S. PRASANNA**

<b>Date of order</b>	<b>:-</b>	<b>28.01.2020</b>
<b>Appeal no</b>	<b>:-</b>	<b>KVATA(ALPY) 99/19</b>
<b>From the order of the</b>	<b>:-</b>	<b>State Tax Officer, Kayamkulam</b>
<b>Year of assessment</b>	<b>:-</b>	<b>2016-17</b>
<b>Name of appellant</b>	<b>:-</b>	<b>Siva Prakash,M/s.Elco Electricals,Kayamkulam</b>
<b>Instituted on</b>	<b>:-</b>	<b>30.03.2019</b>
<b>Date of hearing</b>	<b>:-</b>	<b>20.01.2020</b>
<b>Present for appellant</b>	<b>:-</b>	<b>Sri.Abdul Lathief.H.,Advocate</b>

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appeal filed against the assessment order of State Tax Officer, Kayamkulam, Order No.32040915412/2016-17 dated.30.03.2019. The assessment completed based on KVATIS scrutiny. The defects found were unaccounted purchases and excess IPT claim. The assessing authority estimated the turnover, added back 10% gross profit on the unaccounted purchases, added equal amount for probable omission and suppression, disallowed the excess IPT claim and levied tax plus interest. Aggrieved by the order, the appellant/dealer defend the case on the following grounds.

1. The order of assessing authority in so far as it estimates and assesses a turnover of Rs.68213/- other than what was conceded for the year 2016-17 is against the law facts and circumstances of the case.

The accounts and the returns filed in support thereof for the year 2016-17 are alleged to be defective for the following reasons:-

- I. It was alleged that certain local purchases as listed in the notice & order as serial No.4&5 for an amount of Rs.34106.33/- are alleged to be found in un-accounted status.
- II. The dealer claimed IPT credit to the tune of Rs.55046.23/- in respect of 41 purchase alleging excess invoice.

2. In respect of the allegation of certain purchases found to have unaccounted, it is submitted that appellant had thoroughly verified the said purchases. It appears that there was no such purchase as far as Serial No.4 is concerned. No such bills are forthcoming in spite of through search made for it and the bills cannot be located at this

distance of time. In respect of purchase vide Serial No.5, the following is the correct statement of purchase.

<b>Sl.No.</b>	<b>Bill No.</b>	<b>Date</b>	<b>Supplier</b>	<b>Amount</b>
01.	77	27.6.2016	Matha Electricals	28395.81

Copy of bill and uploaded list enclosed.

At this juncture it is also pertinent to note the decision rendered in the case of Abdul Nazar Vs. Commercial Tax Officer and ORS (2016) 24 KTR 295(Ker). It was observed by the Honourable High Court of Kerala as under:

“It is trite that when the department seeks to rely on material that has not been put to the petitioner previously, then an opportunity must necessarily be given to the petitioner to counter the same before placing reliance on the said material”

Hence the appellant is entitled to have a reasonable opportunity of cross verification of details in which reliance was made by assessing authority in concluding purchase suppressions. The appellant was not afforded an opportunity of cross verification of details upon which reliance was reposed by assessing authority in concluding purchase suppression. Thus the appellant was denied natural justice and an opportunity of fair trial.

3. In respect of defect No.2 it is submitted that the appellant had thoroughly verified the purchase alleged to be ineligible for IPT credit.

With regard to the allegation of irregular IPT credit, it was reported before the assessing authority that the purchases have been truly effected by the appellant and was duly accounted then and there. If at all assessing authority has any doubt as to the veracity of the said purchase, the assessing authority is at liberty to cross verify the details/data available with the assessing authority in whose jurisdiction the selling dealers pertain once the details of purchases are submitted before the assessing authority, it is for the assessing authority to verify the details of the respective sellers so as to convince the genuineness of the said purchases as per the invoices depicted. So the analogy of having claimed IPT credit irregularly does not hold good in the wake of explanation above.

In the light of decision rendered in the case of ABL Traders Vs. Commercial Tax Officer (2016) 24 KTR 481 (Mad) by Honourable High Court of Madras- Madurai Bench the dis-allowance of IPT credit has to be withdrawn.

In the case of Alwaye Sugar Agency Vs. Assistant Commissioner (Assessment) (2018) 26 KTR 80 (Ker) the following observation of Honourable High Court of Kerala is quite relevant in the present situation.

“It has to be borne in mind that, under the KVAT Act and Rules, the grant of input tax credit removed the cascading effect of a tax on tax, in the chain of transactions leading up to the sale to the ultimate consumer. Thus, the grant of the said concession to a dealer is ultimately with the object of benefiting a consumer, who ought not to be saddled with the liability more than the price of the product together with the applicable taxes thereon. When there is a proper payment of tax by a dealer, after due compliance with the statutory provisions, the concession that is granted to him by the statute matures into a right to claim the concession, since he establishes himself as a person who has satisfied the necessary pre-conditions for the same. Thus, in cases where there is no dispute with regard to payment of tax by a dealer, his claim for input tax credit, of the tax paid in the immediate preceding transaction, cannot ordinarily be denied, and the limitation provisions in the statute, that provide for taking of the credit or for revising returns so as to avail such credit, have to be construed liberally so as to enable the dealer to effectively comply with the provisions of the taxing statute, and legitimately claim the benefits that he is entitled to”.

Hence he appellant is eligible for IPT credit availed. The uploaded lists of purchases are also submitted herewith for ready reference.

4. It is also submitted that while calculating the tax in respect of 5% item corresponding to a turnover of Rs.33080/- the tax appears to have erroneously calculated a Rs.16454/- instead of correct amount of Rs.1654/-. This make has also to be rectified.

It is needless to say that the current estimation of turnover and assessment has a cascading effect as far as the appellant is concerned. The assessing authority has not only estimated the escaped turnover as Rs.34106.33/- but also added again a turnover of Rs.34106.33/- purporting to be on account of covering up for probability of omission/ suppression. Moreover IPT credit to the tune of Rs.55046/- was also disallowed.

In the case of Vettukuzhy Traders Vs. State of Kerala (2010) 18 KTR 227 (Ker), it was observed by the Hon'ble High Court that "It is on a rational basis that a best judgment assessment could be made. The best judgment assessment passes by the assessing authority cannot be replaced by this court by yet another best judgment assessment, unless the assessment is wholly arbitrary and whimsical".

Hence the turnover estimated and addition sustained is quite illegal and has no nexus to the alleged defects.

5. At this juncture kind attention is also invited to the provision contained in the finance bill 2019 with respect to general disciplines related to assessment as provided U/s.25AA.
  - I. In case of assessments initiated from the scrutiny of electronically filed returns, annexures and other declarations,-
    - a) With respect of unaccounted purchases from registered dealers within the state by dealers, notwithstanding anything contained in this Act, input tax credit shall be granted on such purchases, provided the dealers admits such purchases. In such cases assessment shall be completed by adding 20 per cent gross profit on the purchase value.
    - b) In case of detection of suppression or variation in inter-state purchases, inter-state stock transfers, import and purchases from unregistered dealers, 25 per cent gross profit shall be added to such purchases for arriving at the sale value and assessed to tax.

If sales suppression is detected, only the differential turnover between the suppressed turnover and the turnover conceded shall alone be assessed.

It is also pertinent to note that the appellant was in receipt of the assessment order on 23.05.2019 in the circumstances while the provision contained U/s.25AA was operative. Hence the assessment order is unsustainable in the wake of introduction of Section 25AA through the Kerala Finance Bill 2019 and the provision is in operation with effect from 01.04.2019.

Alternatively, the appellant is also desirous of completion of assessment as envisaged under the above provision. Hence it is prayed that an opportunity may also be afforded to the appellant to have completed the assessment afresh under the scheme envisaged in the provision contained in Section 25AA.

6. It is submitted that the interest levied to the tune of Rs.15792/- is unsustainable since there is no failure on the part of the appellant either to pay the tax admitted/due other than the demand now illegally created. Hence interest has to be waived.

In these circumstances the appellant has no other efficacious remedy other than preferring this appeal. It is therefore prayed that the impugned order may be set aside or suitably modified.

Sri.Abdul Lathief.H., Advocate, appeared and heard the cases and argued based on grounds of appeal.

Heard the case. In the case of unaccounted purchases the authorized representative argued that there were no such purchases as far as serial No.4 is concerned and no such bills are forthcoming in spite of thorough search made for it and the bills cannot be located at this distance of time. In the case of excess IPT, it is submitted that the purchases have been truly effected by the appellant and was duly accounted. But at the time of hearing, no documentary evidences are produced to substantiate the relief claimed in appeal. So I turn to uphold the findings of the assessing authority. But the estimation of equal amount for probable omission and suppression is a little high. So for meeting the ends of natural justice it is reduced to 50% of the same. The assessing authority is directed to modify the order as stated above. Order accordingly.

Result: Reduced

ASSISTANT COMMISSIONER (APPEALS)  
ALAPPUZHA

To The Appellant through a/r

Copy submitted to Joint Commissioner(Law)

Copy submitted to Deputy Commissioner,CT,Alappuzha

Copy to State Tax Officer, Kayamkulam/File