

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	01.01.2020
Appeal no	:-	KVATA(ALPY)177&178/19
From the order of the	:-	State Tax Officer, 2nd Circle, Alappuzha
Year of assessment	:-	2015-16&2016-17
Name of appellant	:-	M/s.Morning Star English Medium School,Alappuzha
Instituted on	:-	23.07.2019&25.08.2019
Date of hearing	:-	20.11.2019

Present for appellant :- Sri.Antony Mathew.M,Chartered Accountant,
M/s.Antony Malayil& Co.,Chartered
Accountant's

APPELLATE ORDER AND GROUNDS OF DECISION

The appeals are filed against the assessment orders u/s.25(1) of the KVAT Act of State Tax Officer, 2nd Circle, Alappuzha, Order No.CR.10/2017-18 (Assessment Year 2015-16) dated.23.07.2019 and a Rectification Order No.A1.2117/17/2016-17 dated.25.08.2019. The assessments completed based on CR file received from Intelligence Wing. The assessing authority estimated the turnover, added back the purchase turnover of taxable goods detected by the Intelligence Wing and also added 10% gross profit for the above and 50% addition for probable omission and suppression. Aggrieved by the orders, the dealer defend the cases, on the following grounds.

2015-16

1. The order of the learned Commercial Tax Officer is arbitrary, against facts, laws and justice and is illegal and is without understanding the real facts.
2. The learned State Tax Officer acted against natural justice in passing the assessment order without describing the reason for rejecting the contentions raised by the appellant in the reply submitted to the Notice U/s.25(1) of the KVAT Act.
3. The learned Officer is wrong in considering the appellant as a causal trader.

4. The learned State Tax Officer not considered the fact that the appellant is a school where the articles are issued only to the students of the school for uniformity and there is no sale to outside public. The sale of articles is not the object of the school.
5. The learned Officer ought to have considered the fact that the appellant has not suppressed any of the material facts and had no intention to suppress the actual facts and have not willfully evaded any tax.
6. The learned Officer ought to have consider the fact that the order passed and demand raised by the Intelligence Wing of the Commercial Tax Department is after verifying the accounts and not while transporting or at check post or by tracking on movement.
7. The learned Officer is wrong and not justified in again adding in the assessment order, the taxable turnover of the year determined by the Intelligence Department Rs.263758/-.
8. The learned Officer is wrong in adding Rs.131879/- being 50% of the above Rs.263758/- saying "pattern of suppress has been established".
9. The learned Officer not deducted the VAT remitted with the Intelligence Wing Rs.14175/- on 30.08.2017.

it is prayed that the additions made by the learned Commercial Tax Officer may be cancelled and the appeal may be allowed.

2016-17

1. The order of the learned Commercial Tax Officer is arbitrary, against facts, laws and justice and is illegal and is without understanding the real facts.
2. The learned State Tax Officer acted against natural justice in passing the assessment order without describing the reason for rejecting the contentions raised by the appellant in the reply submitted to the Notice U/s.25(1) of the KVAT Act.
3. The learned Officer is wrong in considering the appellant as a causal trader.

4. The learned State Tax Officer not considered the fact that the appellant is a school where the articles are issued only to the students of the school for uniformity and there is no sale to outside public. The sale of articles is not the object of the school.
5. The learned Officer ought to have considered the fact that the appellant has not suppressed any of the material facts and had no intention to suppress the actual facts and have not willfully evaded any tax.
6. The learned Officer ought to have consider the fact that the order passed and demand raised by the Intelligence Wing of the Commercial Tax Department is after verifying the accounts and not while transporting or at check post or by tracking on movement.
7. The learned Officer is wrong and not justified in again adding in the assessment order, the taxable turnover of the year determined by the Intelligence Department Rs.535830/-.
8. The learned Officer is wrong in adding Rs.267915/- being 50% of the above Rs.535830/- saying "pattern of suppress has been established".
9. The learned Officer not deducted the VAT remitted with the Intelligence Wing Rs.27985/- on 30.08.2017.

It is prayed that the additions made by the learned Commercial Tax Officer may be cancelled and the appeal may be allowed.

Sri.Antony Mathew.M, Chartered Accountant, M/s.Antony Malayil & Co., Chartered Accountant's, appeared and heard the case and argued based on the grounds of appeal.

The subject matter of the appeal cases are common in nature. Hence disposed in a common order.

Heard the appeal cases. The assessing authority passed the impugned orders based on CR file received from Intelligence Wing. The authorized representative of the firm argued at the time of hearing that the appellant is a school, but not a registered dealer. He also stated that, the Intelligence Wing detected the suppressed turnover of Rs.263758/- and Rs.535830/- during the years 2015-2016 and 2016-2017 added with 50%

addition for probable omission and suppression, and also added 10% gross profit for the whole purchase turnover effected during the year. The objection was filed against the order and the assessing authority simply rejected the same stated that the contentions raised by the dealer cannot be acceptable. Hence authorized representative prayed that the addition made by the assessing authority may be deleted and allow appropriate relief in this case. I have gone through arguments and evidences submitted at the time of hearing. It is noted that the appellant dealer compounded the offence and paid compounding fee and VAT before the Intelligence Officer. The appellant is not intentionally evade the tax in this case and it is a technical mistake from their part. Hence no evasion of tax in this case. On perusal of the documents found that the transactions are properly accounted. On verification of the records, it is found that the assessing authority has no tool of evidence of suppression except the suppression detected by the Intelligence Wing and thereafter the findings of the Intelligence Officer. Considering these aspects, further assessment is illegal in the eye of law. In the facts and circumstances above, the assessment is against natural justice. However in the interest of Government revenue, I am of view that the compounding fee and VAT paid by the appellant is forfeited to Government. Hence the appeal stands allowed. Order accordingly.

Result: Allowed

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, 2nd Circle, Alappuzha/File