

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	21.01.2020
Appeal no	:-	KVATA(ALPY)179/19
From the order of the	:-	State Tax Officer, Kayamkulam
Year of assessment	:-	2015-16
Name of appellant	:-	Sri.Shibabudeen, M/s.National Glass Mart, Cheravally,Kayamkulam
Instituted on	:-	24.03.2019
Date of hearing	:-	12.12.2019
Present for appellant	:-	Sri.Abdul Lathief.H., Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Kayamkulam, Order No.32040936764/2015-16 dated.24.03.2019. The assessment completed based on irregularities found on KVATIS scrutiny and OR file received from Intelligence Wing. The defects found were purchase and sale suppression, exemption of tax claimed and excess IPT claim. The assessing authority estimated the above suppressed turnover, added back 10% gross profit and equal addition for probable omission and suppression for the above detected defects, and also disallowed the excess IPT claim. 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 to the tune of Rs.1896186/- other than what was conceded for the year 2015-16 is against the law facts and circumstances of the case.

The accounts and the returns filed in support thereof for the year 2015-16 are alleged to be defective for the following reasons:-

- I. The dealer has transported certain tools without declaring border check post along with the other consignments transported on the strength of 8F 'e' declaration. The Intelligence Wing of the department physically verified the goods transported and booked an offence as detailed below.

Sl.No. OR.No. & Date	Turnover	Penalty/Tax
1. OR.210/2015-16 dated.08.06.2015	Rs.1,50,000.00	Rs.15,000.00
Total	Rs.1,50,000.00	Rs.15,000.00

The Intelligence Officer, Squad No.II, Chengannur conducted a detailed enquiry U/s.47(5) of KVAT Act, 2003 and established that the dealer has evaded tax and imposed penalty U/s.47(6) of the KVAT Act, 2003. The Intelligence Officer transmitted the OR file to this office for further proceedings. The offence and tax evasion detected by the Intelligence Officer is still persists.

II. During the month of February 2016 the dealer irregularly claimed tax exemption for a turnover of Rs.8,000.00/- in the taxable sales of glass items. The dealer is not effecting any transaction on non taxable goods. The dealer claimed irregular tax exemption for evading tax due to the state exchequer. Hence this turnover of Rs.8,000.00/- will be assessed @ 14.5% and tax amount added to the tax liability of the dealer with interest.

III. The dealer had suppressed local purchases to the tune of Rs.62404/- from 3 purchases as listed in the order Serial No.4,6,9.

Bill No	Date	Name of supplier	Amount (Rs)
396	24/12/2015	Black & White	18393.01
JJ13	05/09/2015	J.J. Tools	2760.00
38	29/12/2015	Well Dekore	41251.42
		Total	62404.43

IV. The dealer has suppressed sales to the tune of Rs.729449/- in respect of 24 purchases as listed in the order Sl.No.1 to 8,11,13,18 to 20,22 to 31,34.

- V. The dealer has claimed irregular IPT credit in respect of certain purchases as detailed in the order for Rs.58,890/-.
2. In respect of 1st allegation it is submitted that the consignment was got released on paying security deposit so as to get the goods released. All the documents as insisted under the KVAT Act was also accompanied along with the consignment.

Under duress the appellant was forced to pay security deposit so as to get the goods released. The purchase has been properly accounted. It appears that the enquiry officer has completed the enquiry in the instant case mechanically and adjusted it towards penalty. The version of the dealer nowhere mentioned in respect of allegation leveled against.

3. In respect of defect No.2, it is submitted that the amount of Rs.8000/- as depicted in the return filed for February 2016 represents interstate sales. Hence the same was shown as exempted in the relevant column of the VAT return being turnover involved of interstate sale.
4. In respect of allegation of following local purchases found unaccounted, it is submitted that on verification it was ascertained that there were no such purchases.

Bill No	Date	Name of supplier	Amount (Rs)
396	24/12/2015	Black & White	18393.01
JJ13	05/09/2015	J.J. Tools	2760.00
38	29/12/2015	Well Dekore	41251.42

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 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 denied natural justice and a fair trial in the instant case.

5. In respect of sales alleged to have suppressed as shown in defect No.4, the following remarks were offered to the assessing authority in response to pre-assessment notice.

Serial No.1 to 8 do not belongs to our sales,

Serial No.13 Not our sale

Serial No.18 to 20 – Not our sale

Serial No.22, 23 duly accounted,

Serial No.24 – duly accounted, mistake in invoice No. noted.

Serial No.25 – No such sale

Serial No.26 pertains to 8B sale duly accounted

Serial No.27,28,29 – No such sale

Serial No.30 – duly accounted

Serial No.31 – No such sale

Serial No.34 duly accounted

It is submitted that the accounts have been maintained as true and correct as insisted U/s.40 of the KVAT Act. Audited statement of accounts was also submitted before assessing authority promptly.

6. In respect of allegation of irregular IPT credit to the tune of RS.58,890/- it is submitted that the entire purchases were truly accounted then and there and hence eligible for availing credit of input tax paid.

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 proposal of dis-allowance of IPT has to be withdrawn.

In the case of *Always Sugar Agency Vs. Assistant Commissioner (Assessment)* (2018) 26 KTR 80 (Ker) the following observation of Hon'ble 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 the appellant is eligible for IPT credit availed.

In the instant case the assessing authority has sustained an equal amount of alleged suppression to the tune of Rs.948093/- to cover up for probability of omission and suppression which is definitely on the higher side and has no nexus to the allegation leveled against. This has a cascading effect as far as appellant is concerned.

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 on account of purchase and sales suppression is quite illegal.

7. 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.

(1) 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 24.07.2019 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, it is also submitted that 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.

8. It is submitted that the interest levied to the tune of Rs.64323/- 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 case and argued based on grounds of appeal.

Heard the case. I have examined the case. The authorized representative argued that the alleged purchases are not their own purchases, no such purchases are effected by the appellant and prayed to re-examine the case. The alleged sales portion are accounted and reflected in their books of accounts. So these two aspects are to be verified, irregularity if any noticed, the addition is to be summarized in accordance with the veracity of quantum of suppression and pass orders accordingly. In the case of disallowance of IPT, the appellant shall produce Form 8 purchase invoices and also the copy of sales list of the supplier dealer, and the supplier has remitted tax on the sales, which disclosed as excess purchases of the appellant dealer. The authority shall ensure that there should not have been any collusion between appellant and supplier dealer in this case and thereby no revenue loss to the Government exchequer, and also contain the decision of the Hon'ble Supreme Court in **Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and Others (TS-2-SC-2018-VAT)** and pass orders according to law. Order accordingly.

Result: Modified

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