

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	09.01.2020
Appeal no	:-	KVATA(ALPY)215/19
From the order of the	:-	State Tax Officer, 2nd Circle,Alappuzha
Year of assessment	:-	2015-16
Name of appellant	:-	M/s.Ocean Agencies, Market Road,Alappuzha
Instituted on	:-	23.03.2019
Date of hearing	:-	11.12.2019
Present for appellant	:-	Sri.Jacob Joseph,Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, 2nd Circle, Alappuzha, Order No.32040655165/2015-16 dated.23.03.2019. The assessment completed based on irregularities found on KVATIS scrutiny and OR file received from Intelligence Wing. The defects noticed were purchase suppression, irregular claim of IPT and the OR case. The assessing authority estimated to added back 5% Gross Profit for the above suppressed turnover in the case of purchase suppression and equal addition added for probable omission and suppression for the above defects and also disallowed the IPT claim. Aggrieved by the order, the dealer defend the case on the following grounds.

1. Appellant is a dealer in General items and the assessment related to the year 2015-2016. Appellant is a dealer on the rolls of State Tax Officer, Second Circle, Alappuzha. The assessing authority on scrutiny of the KVATIS found that appellant has not accounted certain purchases and proceeded to complete assessment. The assessing authority also disallowed input tax. Appellant had entrusted the notice to the accountant who did not file reply due o his other engagements. The assessment is completed ex-party. Aggrieved by the assessment this appeal is filed.
2. The alleged unaccounted purchases are accounted and uploaded in KVATIS. The assessing authority even though has stated they made scrutiny of records, it seems that no verification of records has been effected. Appellant produce here with copies of the uploaded list as

evidence of recording the purchases. Therefore the assessment alleging unaccounted purchases along with equal addition is unjustified and illegal.

3. The assessing authority illegally disallowed input tax. The input tax is disallowed on the pretext that the seller dealer has not accounted the alleged transactions. Hon'ble Supreme Court of India by ratifying the judgment of Hon'ble High Court of Delhi in the case of Commissioner of Trade & Taxes, Delhi and Others Vs Arise India Pvt Ltd and another (TS-314-HC-2017 (Del)-VAT) have decided that the disallowance of input tax credit to the purchaser due to default of selling dealer in depositing tax, is violative of Articles 14 and 19(1) (g) of the constitution of India. Therefore the disallowance of input proposed is against the constitutional provision and hence illegal.
4. Non filing of the reply was not on account of any willful act on the part of the appellant but due to the unfortunate on filing of the reply by the Accountant. Instead of completing assessment in haste the assessing authority should have given one more opportunity to the appellant. The assessment is completed disregarding the accounted transactions, and also not properly understanding the provisions of Section 11 of the KVAT Act, 2003, therefore against facts and law.
5. In the light of facts stated above the assessment completed is bad in law and fact and hence pray that the assessment completed be set aside.

Sri.Jacob Joseph, Sales Tax Practitioner, appeared and heard the case and argued based on the grounds of appeal.

Heard the case and arguments. The impugned assessment order is an ex-parte order. The authorized representative argued that the alleged purchases stated in the order are accounted, hence this portion of IPT claim disallowed by the assessing authority is not justified and in the remaining claim of IPT, the original bills are ready to produce before the assessing authority, hence he prayed for an opportunity in this case. The arguments have some force. Considering the facts and circumstances of the case, the assessing authority is directed to give further opportunity in this case and cross verify the transactions and accept on merit and summarized

the addition in the result of verification. In the case of OR, the equal addition adopted is justified. Hence this portion of assessment is upheld. Another contention is the disallowance of IPT case, seller has not accounted the alleged transactions in this case. In this case, 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)**. The assessing authority is directed to modify the order as discussed above. 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, 2nd Circle, Alappuzha/File