

PROCEEDINGS OF THE ASST. COMMISSIONER (APPEALS)

COMMERCIAL TAXES, ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	03.01.2020
Appeal no	:-	KVATA(ALPY)146/19
From the order of the	:-	State Tax Officer, Harippad
Year of assessment	:-	2011-12
Name of appellant	:-	A.D Prasannan, Regal Agencies, Velanchira, Puthiyavila,Kayamkulam
Instituted on	:-	14.03.2019
Date of hearing	:-	12.12.2019
Present for appellant	:-	Sri.M.N. Mohanan,Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Harippad, Order No.32041204569/2011-12 dated.14.03.2019. The assessment completed based on purchase suppression detected on KVATIS scrutiny. The assessing authority estimated the turnover, added back 15% gross profit for the above suppressed turnover and 50% addition for probable omission and suppression and levied tax, cess plus interest. Against the order, the dealer defend the case on the following grounds.

1. The Appellant is a Registered Dealer borne on the rolls of the Office of the State Tax Officer, State Goods and Service Tax Office, Harippad, Alappuzha with TIN No.32041204569.
2. The self assessed returns filed by the Appellant were rejected by the Assessing Authority, and passed orders arbitrarily fixing the escaped Turnover at Rs.8,12,928.00/- and demanding Tax Rs.1,01,235.00/-, and Interest Rs.84,025.00/- Vide Assessment Order No.32041204569/2011-12 dated.14.03.2019.
3. The order passed by the Learned Assessing Authority is against law, facts and circumstances of the case.

- i. It has been observed on verification of the KVATIS that, the Appellant had not accounted 46 purchases from Registered dealers within the State of Kerala for a total amount of Rs.4,97,435.30/-. The Learned Assessing Authority had estimated the sale value of the same by adding 15% towards Gross Profit and had made addition of 50% of the estimated sale value towards probable omission and suppression. The factual position is that due to System error, the Return filed for the Month of August, 2011 became a NIL Return. A verification of the purchases observed as unaccounted would reveal that out of the 46 purchases observed as unaccounted, the last two purchases relate to the year 2012-13 and all the remaining 44 purchases are related to the Month of August, 2011. This itself would make it clear that the Appellant is not in the habit of abstaining from accounting purchases actually effected by him. Realizing the mistake, the Appellant had filed online Application to grant permission to revise the return for the Month of August, 2011. But the request was in vein and hence the return could not be revised incorporating the purchases relating to the Month of August, 2011 also. Copies of purchase ledger is also submitted. It is also submitted that the Trading Profit and Loss Accounts have been prepared including the purchases omitted to be conceded in the Returns. Hence the assessment on purchase relating to the Month of August, 2011 omitted to be conceded is an unwarranted action.
- ii. Not satisfied with the assessment on the purchases omitted as unaccounted, the Learned Assessing Authority had made a further addition of Rs.2,70,976.00/- being 50% of the estimated sale value of purchases observed as unaccounted by adding Gross Profit @ 15% towards probable omission and suppression. However, kindly see that the entire purchases are properly covered by sale bills issued by the supplying dealers, and the Learned Assessing Authority is not having any case with any purchase not covered by bills. In the circumstances, the factual position that the entire purchases effected by the Appellant are supported by sale bills remain undisputed and unquestioned. Even if certain purchases were actually omitted to be accounted, the pattern of suppression pointed out in the notice is that certain purchases properly covered

by sale bills issued by the selling dealers after paying tax at the appropriate rate and amount were out of the accounts. In earlier periods during which there was no scientific methods to detect the actual quantum of suppression in full, on receipt of a tip o evidence towards purchase suppression or sales suppression, there is a probability towards further omission or suppression, and naturally further addition towards omission and suppression were made in the course of assessment. But now, consequent on the introduction of KVATIS in the Value Added Tax System in the State, the actual suppression in the same pattern can be detected without leaving a probability of further omission or suppression in the same pattern. Even a slight change in uploading of any particular sale by the selling dealer and uploading the same transaction by the purchasing dealer as purchase in the system, the transaction would remain in the “show unaccounted purchases” module of the purchasing dealer. In fact, the entire transactions mismatching in the system would be available in the “show unaccounted purchases” module, leaving no probability of further unaccounted purchase. Kindly see that, had there been any omission or suppression over and above those detected, it is an undisputed fact that the same would also have also be available in the KVATIS. In the circumstances, any addition towards “probable omission and suppression” consequent on detection of unaccounted transactions on verification of the KVATIS is towards seldom possibility and is hence unwarranted and hence it is humbly prayed that the addition towards probable omission and suppression may kindly be dropped in full.

- iii. However, the fact remains that the Appellant had paid tax at the appropriate rate and amount of Rs.58,430.57/- at the time of purchase during the Month of August, 2011 for a total amount of Rs.4,71,263.30/- itself, even as per the details of purchases observed as unaccounted as available in KVATIS, relied upon by the Learned Assessing Authority for assessment on this score. In this connection, kindly see the newly introduced section 25AA (2) (a), to the Kerala Value Added Tax Act, 2003 vide Kerala Finance Bill, 2019, by which on admitting the purchase, on condition of estimation of sale value of the same by adding 20% towards Gross Profit, assessment can be

completed by availing Input Tax Credit and without making any addition towards probable omission and suppression. The Appellant hereby admit that the purchases were actually effected by him and request that the assessment completed may kindly be modified availing the benefit of Section 25AA (2) (a) of the Act.

iv. The Learned Assessing Authority had levied interest Rs.84,025.00/- on the whole amounts assessed from the return period. Interest from the return period under Section 31(6) of the Act is applicable only on detected suppression, if any and tax corresponding to estimation is only applicable from the expiry of the date specified in the demand notice for remittance of the assessed amount. The Honourable Apex Court in Maruthy Wire Industries Pvt. Ltd, Vs. Commercial Tax Officer, First Circle, Mattancherry reported in (2001) 9 KTR 273 (SC) had held that for attracting levy of Interest, either there should be an admission of the liability to tax and abstain from payment or there should be an assessment for the levy of interest. Further, he Honourable High Court of Kerala in State of Kerala Vs. Western India Cosmetics and Health Products Ltd & Ors reported in (2010) 18 KTR 414 (Ker) had confirmed that interest is applicable from the return period on the tax actually payable from the return period, in modification to P.K. Damodaran's case. No justification has been made in the Judgment in this decision on the levy of Interest from the return period on tax corresponding to estimation made.

4. For the above reasons, and that may be argued at the time of hearing of the case, it is most respectfully prayed that the orders of the Learned Assessing Authority in arbitrarily completing the assessment for the year 2011-12 may kindly be limited to the admitted extent.

Sri. M.N. Mohanan, Sales Tax Practitioner, appeared and heard the case and argued based on grounds of appeal.

Heard the case. The authorized representative represented that the alleged bills were quarterly accounted and audited by Chartered Accountant. At the time of hearing, the authorized representative has not

produced any documentary evidences to substantiate the claim, hence I am not interfere with the findings of learned assessing authority. However for meeting the ends of natural justice, the 50% addition adopted in the assessment order is reduced to 25% of the detected suppression. Other issues raised are not considered in the absence of records. 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, Harippad/File