

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)**  
**STATE GOODS AND SERVICES TAX, KANNUR**  
**Present : Vineth Krishna.U**

*Date of Order: 25.02.2020*

KVATA Appeal order VATA No. : VATA 13/2020  
Instituted on : 18.01.2020  
From the orders of the : Order no. 32120803798/2017-18  
dated.15.05.2019 of State Tax Officer,  
1<sup>st</sup> Circle, Thalassery  
Year of assessment : 2017-18  
Name of appellatant : M/s. E-Line Photo Magazine,Thalassery  
Turnover assessed :  
Tax demanded Income Tax/Super Tax/CST/ST : Section 25(1) of the KVAT Act, 2003  
Section /Rule under assessment made  
Date of Hearing : 31.01.2020  
Present for Appellant : Sri. Mohammed Rafeeqe, Sales Tax Practitioner

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appellatant M/s. E-Line Photo Magazine, Thalassery filed appeal against the assessment order of State Tax Officer, 1<sup>st</sup> Circle, Thalassery passed u/s 25(1) of the Act issued vide proceedings dated 15.05.2019 demanding tax Rs.62824/- for the year 2017-18.

The assessment for the year was revised on the basis that appellatant having not migrated to GST has not properly accounted for the closing stock.

When the appeal was posted for hearing Sri. Mohammed Rafeeqe, Sales Tax Practitioner appeared on behalf of the appellatant and was heard. The contentions put forth by the appellatant are as follows.

- 1. The order No.32120803798/2017-18, dated 15.05.2019 of the State Tax Officer, 1st Circle, SGST Department , Thalassery is against law, facts and circumstances of the case.*
- 2. The allegation regarding non-compliance of pre- assessment notice is factually incorrect, where the appellatant directly appeared, but the same is not seen considered, hence there is clear violation of the principles of natural justice. Any way, appellatant prays to consider the following aspects, as the order of assessment is not at all sustainable in any respects.*
- 3. The business was just commenced in 2016-17 and reported turnover of both the sales and purchase as follows:*

	Sales Turnover & OPT		Purchase Turnover & IPT		Excess IPT
	5% Sales	Output Tax	5% (Local)	Input Tax	
November, 2016	1,33,676.00,	6,684.00	1,87,496.00	9,375.00	2,691.00
December, 2016	224,608.00	11,230.00	2,12,416.00	10,621.00	2,082.00

January, 2017	302,270.00	15,113.00		2,70,399.00	13,520.00	489.00
	660,554.00	33,027.00		6,70,311.00	33,516.00	5,262.00

*No other returns were filed due to the stoppage of business and as such entire purchase and sales turnover including estimation of stock as on 31.03.2017 is quite incorrect. Purchase for 2017-18 stated as Rs.2,64,501/- is without any detail and therefore it is not possible for the appellant to verify the veracity of such allegation at this stage.*

*4. The estimation of stock to make an assessment u/s. 25 is totally incorrect resulting exaggeration of tax. Allegation regarding non- migration of registration to GST portal is also irrelevant to make an assessment u/s. 25 of the KVAT Act 2003 for 2017-18. Therefore the tax demanded is quite incorrect to sustain.*

*5. Without prejudice to the above, it is submits that the assessment is without considering the guidelines specified in Sec. 25AA of the Act. Even if the purchase for Rs.2,64,501/- is accepted as correct, then the input tax element should have been deducted or the input tax should have given credit from the assessable turnover, which is quite absent from assessment.*

*6. Without prejudice to any other ground, it is also specifically submits that the entire turnover are taxable at 5%, where the assessment is flatly at the higher rate of 14.5%. The rate of tax applied including the assessment are therefore totally mechanical without due application of mind.*

*7. Without prejudice to any other ground, appellant vehemently objects the levy of interest also charged upto the date of assessment being quite illegal and against the settled principles of law.*

The appellant further prayed that the impugned assessment the order may be set aside on the above grounds.

I have considered the contentions raised by the appellant the records before me and the merits in it.

The issue involved in this case is as to the sustainability of assessment made.

The appellant stated that argument regarding non-compliance of pre- assessment notice is incorrect as they appeared but was not considered. Hence there is violation of principles of natural justice. They stated that they had not filed return since January 2017 due to stoppage of business. They stated that purchase for 2017-18 stated as Rs.264501/- is without any detail and hence they cannot verify the veracity of such allegation. They stated that assessment without considering the guidelines specified in Section 25AA. They stated that entire taxable turnover is at 5% where as assessment was flatly at 14.5%. They also objected against levy of interest.

The assessing authority had given ample opportunity to the appellant before finalizing the assessment order. The appellant apart from the arguments has not produced any evidence in proof of appearance. As such there is no violation of natural justice as alleged by the appellant. Hence their arguments is rejected.

The appellant has not properly accounted for the closing stock at the closure of business. As such assessment on the same is legally sustainable. The argument of the appellant that the details of purchase suppression was not given to the appellant has force especially as the order was passed ex-parte. The assessing authority shall provide the details of the purchases to the appellant and modify the assessment after affording opportunity of personal hearing to them adopting the guidelines under Section 25AA of the Act vis-a-vis the purchase suppression found for 2017-18. The argument of appellant vis-a-vis adoption of rate of tax has force in the light of the copy of monthly returns produced. The assessing authority shall also verify this aspect and adopt correct rate of tax and modify the assessment.

Interest levied under section 31(6) of the Act is in order in the light of decision of Hon'ble

High Court of Kerala in Chickoo Broiler Farm Vs. State of Kerala (OT Rev.101/14)

No other points for consideration. Ordered accordingly.

**RESULT : MODIFIED**

Assistant Commissioner (Appeals),  
Kannur.

To : The appellant through Advocate

Copy submitted to The Joint Commissioner (Law), CCT, Tvpm.  
The Deputy Commissioner, Kannur

Copy to :

The Law Officer, Commercial Taxes, Kozhikode  
The Inspecting Assistant Commissioner, Kannur  
The State Tax Officer, 1<sup>st</sup> Circle, Thalassery  
Spare/index/file

