

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 16/2020
Instituted on	:	22.01.2020
From the orders of the	:	Order no. 32120496595/2014-15 dated.20.01.2016 of State Tax Officer, Taliparamba
Year of assessment	:	2014-15
Name of appellants	:	M/s. Ragam Footwear, Sreekandapuram
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	:	03.02.2020
Present for Appellant	:	Sri. Mohammed Rafeeqe, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Ragam Footwear, Sreekandapuram filed appeal against the assessment order of State Tax Officer, Taliparamba passed u/s 25(1) of the Act issued vide proceedings dated 20.01.2016 demanding tax Rs.37268/- for the year 2014-15

The assessment for the year was revised on the basis of purchase suppression detected on scrutiny of returns with KVATIS.

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

- 1. The order No. 321204.96595/2014-15, dated 20.01.2016 of the Commercial Tax Officer-III, Commercial Taxes, Taliparamba is against law, facts and circumstances of the case.*
- 2. At the outset, it is submits that no assessment order or the demand notice were received by appellant, where came to know about the demand only when the assessing authority has initiated RR proceedings for the realization of demand. Immediately, appellant approached the assessing authority and obtained certified copies of both assessment order and demand notice based on which this appeal is filed. It is hereby affirms that no appeal has been filed previously using original order or demand notice and also undertake the liability or consequence if any in this behalf, if found other-wise against the above affirmation.*
- 3. The Commercial Tax Officer ought to have found that the total turnover reported for Rs. 4,59,208/- was already covered self assessment and accepted raising no disputes and therefore the turnover so reported should have been excluded from assessment u/s. 25. As such, assessment on Rs. 4,59208/- is not correct,*

hence the demand raised in this respect is highly unsustainable.

- 4. The allegation regarding unaccounted purchase is factually incorrect, where the appellant reported entire purchases actually effected. Any way, it is submits that even if the estimation of sale on unaccounted purchases are sustained, total turnover that estimated by the assessing authority is far below the assessable limit and therefore appellant is eligible for basic exemption of Rs. 10 lakhs. As such, there is illegal generation of tax revenue and therefore assessment is legally unsustainable.*
- 5. Without prejudice to the above, it is submits that the alleged unaccounted purchases may be due to any mismatching or an omission crept on the part of accountant. Any way, it is submits that the entire purchases are tax suffered goods at the first instance evidenced by assessment order itself and therefore even if the allegation is accepts, what has actually escaped from self assessment is only the value added turnover or otherwise input tax involved in corresponding purchases should have been given credit. Assessment is silent on the above facts. Any way, let the appellant invite the guidelines specified in Sec. 25AA inserted in the statute as per Finance Act 2019 which support this. Therefore it is humbly pray to consider this aspect.*
- 6. In view of the above appellant also pray to delete the equal addition made on the ground of probable omission and suppression, as it is nothing but mechanical. Assessing authority has made this addition without any substance, as there is no scope for such an assumption at this far belated stage and that the omissions were unearthed on complete verification with KVATIS which reveals complete without any shadow of doubt. At any rate, it is submits that in view of the new guidelines specified in Sec. 25AA, no additions are warranted. Though Sec. 25AA was not there while finalizing assessment, but being inserted in the Act and this being a continuance of assessment proceedings, it is respectfully pray to delete the equal addition and estimate sale as per the guidelines specified in Sec. 25AA instead of estimation as has been done in the assessment order.*
- 7. Without prejudice to the above, appellant vehemently objects the levy of interest charged upto the date of assessment also being illegal and against the settled principles of law on this point.*

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 argued that total turnover of Rs.459208/- was already covered by self assessment and hence should have been excluded from assessment under section 25. They stated that they are eligible for basic exemption of Rs.10 lakhs. They further stated that they are eligible to the benefit of Section 25AA of the Act. They also objected against equal addition made towards probable omission and suppression. Levy of interest was also challenged.

The assessing authority stated that the appellant had effected inter state purchase during the year and hence they are not eligible for basic exemption. The assessing authority further stated that assessment was completed on 20.01.2016 and hence appellant is not eligible for the benefit of Section 25AA.

The appellant produced copy of annual return in support of their arguments. On verification of the same, the submission made by assessing authority is correct. The appellant having effected inter state purchase during the year is liable to pay tax irrespective of his turnover. Hence argument of appellant is rejected.

The assessment was finalized only after issuing pre- assessment notice and affording opportunity of personal hearing. Hence argument of appellant as to violation of natural justice cannot be accepted.

The appellant apart from the arguments has not produced any evidence vis-a-vis purchase suppression shown to have made. The details of the purchase suppression was placed before the appellant with reasonable certainty. Then it is for the appellant to rebut and prove otherwise. They could have contacted the suppliers and got clarified from that end. They failed to discharge the burden of proof cast upon them by the statute. The purchases can only be considered as effected by the appellant but failed to account and return. Hence assessment made on the basis of purchase suppression detected is sustainable and is accordingly upheld.

The purchase suppression detected spreads over more than one return period. As such a pattern of suppression is clearly established. The assessing authority is hence justified in making assessment towards probable omission and suppression. However considering the fact that the assessing authority scrutinised the data after the close of the financial year and also the facts and circumstances of the case, I am of the view that equal addition made in this case is a bit excessive. Addition @ 25% of suppression detected will be just and reasonable in the facts and circumstances of the case. The assessing authority shall adopt the quantum of addition @ 25% of suppression detected instead of equal times made and modify the assessment

The argument of appellant vis-a-vis eligibility for the benefit of Section 25AA has been verified. As the assessment was finalized prior to 1/4/2019 they are not eligible for the same. Hence argument on that score is rejected.

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 Chicko 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, Taliparamba
Spare/index/file