

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

*Date of Order: 30.01.2020*

KVATA Appeal order VATA No.	:	VATA 183/19
Instituted on	:	12.11.2019
From the orders of the	:	Order no.32120999223/2015-16 dated 26.04.2018 of State Tax Officer, 2 <sup>nd</sup> Circle, Thalassery
Year of assessment	:	2015-16
Name of appellant	:	M/s. Cosmos Building Materials, Chirakkara, 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	:	30.01.2020
Present for Appellant	:	Shyju, Advocate

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appellant M/s. Cosmos Building Materials, Chirakkara, Thalassery filed appeal against the assessment order of State Tax Officer, 2<sup>nd</sup> Circle, Thalassery passed u/s 25 (1) of the Act issued vide proceedings dated 26.04.2018 demanding tax Rs.691367/- for the year 2015-16.

The assessment for the year was revised on the basis of variation in import found between return and check post details.

When the appeal was posted for hearing Sri. Shyju, Advocate appeared on behalf of the appellant and was heard. The contentions put forth by the appellant are as follows.

*The appellant is conducting the sale of roof materials by purchasing the same from India and by importing from abroad. The Appellant is a registered dealer of building materials under the Kerala Value Added Taxes Act 2003. On 4.12.2017 the Sales Tax Officer, Thalassery Circle II had been issued a demand notice by which they directed to pay the additional tax of Rs.6,91,367/-against five purchase bills by which the appellant had been imported building materials from china.*

*It is submits that the subject matter of this appeal is the purchase of building materials by the appellant from china by way of import. As per the 5 purchase bills the total value of the purchase is Rs.36,16,268/-. It is also submits that the appellant has been paid the Rs.10,26,693/- as advance tax and Rs.9,11,399/- as customs duty for the said purchase. All the payments as mentioned above are made through online filing.*

*It is also submits that the actual duty and the actual tax to be paid by the appellant for the said purchase would be Rs.9,87,242/-. But this appellant has been paid Rs.10,26,693/- as advance tax which shows that this appellant is a law*

*abiding citizen and he never intends evade from the tax payment. This appellant was under the impression that as because he has been paid the correct tax and even advance tax within time there is no chance of due will come on the part of him. Later on the receipt of the pre-assessment notice dated 14.12.2017 the appellant was wondered as it directed to pay Rs.6,91,367/- as tax and Rs.1,65,928/- as interest and thereby a total of Rs.8,57,295/-.*

*Thereafter this appellant had filed the detailed reply and submitted all the relevant documents with relate to the above said purchase. Thereafter this appellant have been submitted their reply along with relevant documents before the Sale Tax Officer, Circle II Thalassery. After considering the same said officer has been issued the subjected order in which the learned officer partly allowed their contentions of doubling of purchase bill amount but ordered to pay the above said tax by saying the reason of difference of the amount in 8FA Declaration and the return filed with relate to the above said purchase.*

*It is submits that all the payments with relate to the above said purchase has been made through NEFT via State Bank Of India and the appellant has done his entire business within the purview of laws and rules of Indian Tax system. It is submits that the difference in the 8FA Declaration and the actual purchase bill amount was a clerical mistake happened on the part of the officials of the appellant which this appellant has been proved with the relevant documents. Copy of the same shall be produced along with this appeal memorandum also.*

*Though the Learned Sales Tax Officer has been approved the facts verbally but they have been issued the order against the facts and truth. Now the sales tax authority has been referred the matter for Revenue Recovery proceedings and the same is pending against this appellant. It is submits that even if the relevant documents have been submitted before the Sales Tax Officer below was not consider legally. All the purchase bills are produced along with this appeal memorandum. Hence it is prayed that by considering the relevant documents submits herewith this appellate authority may set aside the order of Sales Tax Officer II Circle Thalassery and may direct to withdraw the Revenue Recovery Proceedings against this appellant*

The appellant further prayed that the impugned assessment 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 the subject matter of the appeal is purchase of building material by appellant from China by way of import. They stated that as per 5 purchase bills, the total value of purchase is Rs.3616268/-. They stated that they paid Rs.1026693/- as advance tax and Rs.911399/- as customs duty. They stated that all payments with related to above purchase was made through bank. They stated that difference in 8FA declaration and actual purchase bill amount was a clerical mistake happened on part of the officials of the appellant.

The appellant at the time of hearing produced the following documents in support of their argument.

1. Copy of Commercial invoices
2. Bank payment details

3. Customs assessable value details
4. Bill of entry
5. List of import showing values adopted in 8FA, invoice value, Tax paid, customs duty paid
6. Copy of purchase ledger
7. Final accounts

The appellant argued that the difference in figure pertain to the assessable value adopted by the customs department for arriving customs duty. On verification of the documents produced, their argument has force. The appellant effected 5 imports during the year covered by 5 invoices. The difference in the valuation is seen clearly attributable to the assessable value adopted. They also produced the bank payment details to establish the actual consideration involved. On verification of the advance payment details in annual return also it is seen that there are only 5 import purchases involved. The amount adopted by customs authorities for arriving valuation for levy of customs duty cannot be the base for levy under the VAT Act. The tax exigibility is only on the real price received or receivable by the dealer. So assessment can be made only on the basis of actual consideration which passed to the foreign buyer. The appellant has conceded the customs duty paid in the trading account and has also got reasonable gross profit. The Hon'ble High Court of Kerala in Rafeeqe K P V. State of Kerala (2016) 24 KTR 349(Ker) has opined that the fact to be considered is the actual consideration which moved to the foreign seller. The Hon'ble Court observed that even if the petitioner had paid customs duty on the basis of higher amount arrived by customs authority, the actual valuation made by officer so far as it is in excess of actual amount paid and payable by the petitioner to foreign seller, the difference in valuation cannot be taken into consideration for the purpose of arriving the purchase value under the Act in view of definition of word 'purchase price and sale price'.

The appellant is directed to produce all the aforesaid documents before the assessing authority within three weeks of receipt of copy of this order. The assessing authority shall verify the same in the light of above discussion and adopt the actual consideration which passed to the foreign seller on account of the said purchases and modify the assessment. The assessing authority shall also limit the addition made towards probable omission and suppression @ 25% suppression detected (if any found after modification)

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, 2<sup>nd</sup> Circle, Thalassery  
Spare/index/file