

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAX, KANNUR

Present : Vineth Krishna.U

Date of Order: 31.01.2020

KVATA Appeal order VATA No.	:	VATA 191/19
Instituted on	:	25.11.2019
From the orders of the	:	Order no. 32120610461/2015-16 dated.31.05.2017 of Commercial Tax Officer,2 nd Circle, Kannur
Year of assessment	:	2015-16(CST)
Name of appellant	:	M/s. Himalaya Plywood, Payangadi, Kannur
Turnover assessed	:	
Tax demanded Income Tax/Super Tax/CST/ST	:	Rule 6(5), CST (Kerala) Rules, 1957
Section /Rule under assessment made	:	
Date of Hearing	:	24.01.2020
Present for Appellant	:	Sri. Manesh Kumar, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Himalaya Plywood, Payangadi, Kannur filed appeal against the assessment order of Commercial Tax Officer, 2nd Circle, Kannur passed u/s rule 6(5) of CST rules issued vide proceedings dated 31.05.2017 demanding tax Rs.168397 /- for the year 2015-16

When the appeal was posted for hearing Sri. Manesh Kumar, 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. 32120610461/2015-16 CST dt.31.05.2017 of the Commercial Tax Officer, II Circle Kannur is against law, facts and circumstances of the case.*
2. *The assessing authority has finalised CST assessment with out affording reasonable opportunity to produce the balance "CST" Form declaration for Rs.2,69,830.95 as the appellant could not submit it before finalising assessment which is not willful or deliberate, but for the reasons beyond to his control. As such, there is violation of the principles of natural justice.*
3. *The assessing authority ought to have found that entire interstate sales conded for which concession rate claimed are effected to registered dealers of other state, hence the claim is perfectly in order, which should not have been denied.*
4. *Hence it is respectfully pray that the appellant may be granted an opportunity to submit it before the assessing authority enabling the appellant to avail concessional rate of tax applicable under the CST Act, as the assessment at local/ higher rate is not at all sustainable.*
5. *The appellant has produced C Form for Rs.89,82,109.05. But the assessing authority has rejeted the following "C Forms".*

No.	CDSC -----	9311626
No.	CE/AP -----	5009930
No.	CDSC -----	9213295

6. *It is also significant to note that the lower authority has not clearly noted the C Forms produced, and passed the order in a mechanical manner which is against the standing instruction of the Commissioner, Commercial Taxes as per Circular issued in this regard which provides that the authority who pass the quasi judicial order shall make a speaking order with regard to all the relevant points based on record.*
7. *As per the assessment order for the yea 2015-16 the assessing authority mentioned the Sales for April to June 2015 for Rs.1,54,036.00 from Balaji Enterprises. But the actual Sales effected was Rs.3,83,031.57 + Tax Rs.7,660.63, Total - 3,90,692.20. The lower authority has taken Rs.1,54,036.*

ie	29.05.2015	----	Rs. 1,68,819.00
	26.06.2015	----	Rs. 2,14,212.57

			Rs. 3,83,031.57
			=====

The lower authority has mentioned the C.Form CE/ AP 5090930 amounting to Rs.3,73273.00. But the actual Sales was Rs.1,54,036.74 + Tax3,080.26, Total 1,57,117.00, from Laxmi Nivas Plywoods and Laminates.

As per C Form CDSC - 9213295 the Sales effected worth Rs.3,73,271.99 + Tax Rs. 7,465.43. Total Rs. 3,80,738.00 instead of Rs. 3,83,031 from Laxmi Nivas Plywoods and Laminates.

	3.7.2015	-----	Rs. 2,15,713.29
	19.09.2015	-----	Rs.1,57,558.70

			Rs. 3,73,271.99
			=====

The lower authority has taken an amount of Rs. 3,83,031.00

All the above three " C Forms are manual C Forms. The lower authority has rejected the above mentioned C Form as they were not genuine. All the Sales were effected to registered dealer and they were clearly stated their Registration numbers and value of goods. All other online C Form have accepted by the lower authority.

The appellant further prayed that the appeal may be allowed on the above grounds.

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

The appellant argued that the assessment was finalized without affording reasonable opportunity to produce balance C- form declarations. They stated that there was some discrepancy vis-a-vis C-form value adopted. They stated that the rejection of manual C-form was not correct as they got the same from registered dealers.

The appellant produced copy of C-Form and ledger in proof of their arguments.

The appellant apart from the argument failed to prove the genuineness of the three C-forms not found in TINXYS by the assessing authority. As such the genuineness of the same is not proved. Hence assessment made in this behalf is in order. On verification of copy of C-form it is seen that the amount adopted by the assessing authority vis-a-vis the three C-form rejected is not correct. The assessing authority shall verify the same, adopt correct figure and modify the assessment. The appellant also produced original C-form for Rs.120965/-. It is a fact that there was delay in submitting C-forms in time before the assessing authority. However considering the fact that the delay was not deliberate and that they produced C-form for Rs.120965/-, I find it only just to afford one more opportunity to the appellant to produce the same before the assessing authority. The appellant is directed to produce the original C-forms declaration before the assessing authority within three weeks of the receipt of copy of the order. The assessing authority shall verify the same and admit it to the extent found admissible and pass modified orders accordingly.

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 Commercial Tax Officer, 2nd Circle, Kannur
Spare/index/file.

