

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

Date of Order: 22.01.2020

KVATA Appeal order VATA No.	:	VATA 192/19
Instituted on	:	25.11.2019
From the orders of the	:	Order no.32120957147/2016-17 dated.29.05.2019 of State Tax Officer, 2 nd Circle, Thalassery
Year of assessment	:	2016-17
Name of appellants	:	M/s. Shaja Times, 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	:	19.12.2019
Present for Appellant	:	Sri. K. Mohammed Rafeeqe, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Shaja Times, Thalassery filed appeal against the assessment order of State Tax Officer, 2nd Circle, Thalassery. passed u/s 25(1) of the Act issued vide proceedings dated 29.05.2019 demanding tax Rs.350001/- for the year 2016-17

The assessment for the year was revised on the basis of variation in purchase turnover between annual return and audit report.

When the appeal was posted for hearing Sri. K. 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. 321209.57147/2016-17, dated 29.05.2019 of the State Tax Officer, 2nd Circle, SGST Department, Thalassery is against law, facts and circumstances of the case.*
- 2. The assessing authority ought to have found that the difference is only in purchase with reference to the audit report and there being no difference in sales, hence no assessment to invoke the provisions of Sec. 25 is warranted.*
- 3. The assessing authority should also found that, appellant already requested for revision of return as specified in Sec. 42 of the Act, but was denied on the ground that it is not possible for him alleging one circular. Since the revision of return u/s. 42 is a statutory right available under the Act, hence the denial is not at all sustainable being totally illegal. Such statutory right should not have been denied relying on any circular also. At any rate, assessing authority is not right in treating the difference as unaccounted purchase, as the same is voluntarily disclosed and duly covered by audit report, based upon which alone assessment is completed and not on the*

ground of any unaccounted purchase detected from any other source to treat the same as suppressed. As such, estimation of turnover and assessment thereon is nothing but totally incorrect and unsustainable in all respects.

4. *Assessing authority ought to have found that if the annual return is found to be incorrect in view of audit report, accepted method is follow audit report alone and not to proceed with by taking the difference between annual return and audit report to suggest escaped assessment. Sec. 25 does not provide so, where it prescribes to assess turnover which has actually escaped from assessment, where there is nothing before the assessing authority to do so. As such, there being no clinching evidence showing any turnover which has escaped from self assessment, hence the entire turnover made as addition to the conceded turnover is only to be deleted, appellant prays to do so.*
5. *The assessing authority should also found that entire sales corresponding to difference in purchase were already subjected to self assessment. Total turnover already declared is more than the purchase already reported, hence if the difference in purchase is not considered, trading account will not match. From the trading account itself, it is amply clear that the sales turnover declared will cover corresponding to the entire purchase already reported including the purchase not declared but covered by accounts, and as such, no effect to the sale turnover consequent to such difference. The assessing authority has simply and quite mechanically done the assessment, as there is absence of application of mind or the statutory audit report submitted.*
6. *Without prejudice to the above, the estimation of turnover adding G.P. at 10% is incorrect in view of the trade result.*
7. *Without prejudice to any other ground, appellant submit that the entire purchases are from registered dealers within the State, hence already suffered tax at the first instance for which there is no dispute at all. As such, even if the assessment is sustained, that should have been only on value addition and not on the entire turnover.*
8. *Without prejudice to the above appellant also submit that even if the difference in purchase are treated as unaccounted purchase, the same may be considered in view of Sec. 25AA inserted in the statute as per the Finance Act, 2019.*
9. *Without prejudice to the above, appellant also disputes the levy of interest charged upto the date of assessment being illegal and against the settled principles of law on this point.*

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 they had already requested for revision of return under Section 42(3) of the Act. They stated that assessing authority is not right in treating the difference as unaccounted purchase as same is voluntarily disclosed and duly covered by audit report and not on the ground of any unaccounted purchases detected from any other source to treat the same as suppressed. They stated that entire sales corresponding to difference in purchase was already subjected to self assessment. They stated that estimation

of GP is incorrect. They further stated that the purchase suppression shown may be considered in view of section 25AA of the Act. They also objected against the levy of interest.

The appellant apart from the argument failed to show that they requested for revision of return under section 42 of the Act. The assessing authority has stated in the assessment order that appellant has not revised the return as provided in section 42(2) of the Act. As such appellant has failed to comply with the requirement of the statute. They also failed to show that the variation in purchase is reflected in either sales or stock. Hence assessment made on the basis of variation in purchase turnover is sustainable and hence upheld.

The argument of appellant for considering provision of section 25AA of the Act has been verified and found to have force. The assessment is completed after the insertion of the Section and hence appellant is eligible for the benefit. The assessing authority is directed to apply the provisions of Section 25AA of the Act and modify the assessment accordingly.

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, 2nd Circle, Thalassery
Spare/index/file

