

**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 202/19
Instituted on	:	06.12.2019
From the orders of the	:	Order no.32121079784/2015-16 dated. 15.05.2019 of State Tax Officer, Kuthuparamba
Year of assessment	:	2015-16
Name of appellatant	:	M/s. Daamini Kids Gold and Silver Jewellery, Kuthuparamba
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	:	18.01.2020
Present for Appellant	:	Sri. K. Babu, Adocate

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appellatant M/s. Damini Kids Gold and Silver Jewellery, Kuthuparamba filed appeal against the assessment order of State Tax Officer, Kuthuparamba passed u/s 25(1) of the Act issued vide proceedings dated 15.05.2019 demanding tax Rs.12688/-/- for the year 2015-16

The assessment for the year was revised on the basis of purchase suppression detected on scrutiny of returns with KVATIS. Irregular claim of input tax credit was also disallowed.

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

- 1. The order of the State Tax Officer-1, Goods & Service Taxes, Kuthuparamba, Kannur is opposed to law, facts and circumstances of the case and is highly illegal and unjust.*
- 2. The assessment order is passed in violation of the principles of natural justice and is not sustainable. The appellatant was not given an opportunity of being heard.*
- 3. The appellatant had effected purchase from M/s. S K Silver Jewellery, but the accountant omitted to upload the same in the KVATIS Site. As the assessment order was passed after the introduction of Section 25AA in the Finance Act 2019, the assessing authority have not considered this provision while passing the order. So the Appellate Assistant Commissioner may be pleased to cancel the assessment and grant me permission to complete the proceeding under Section 25AA.*

4. *The appellant has maintained true and correct accounts.*
5. *The appellant is in possession of Form 8 PURCHASE BILLS. Hence the disallowance of IPT alleging that the seller had not uploaded the same is illegal and unjust.*
6. *The addition of Rs 6624/- as direct expense is unjust and without any basis.*
7. *Without prejudice to the above, the equal amount of addition made with 10% GP is highly excessive and arbitrary.*

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 assessment order is passed in violation of principles of natural justice. They stated that they effected purchase from M/s. S K Silver Jewellery but was omitted to be uploaded in KVATIS. They stated that they are eligible for the benefit of Section 25AA of the Act. They stated that they are in possession of Form 8 invoices and hence input tax credit cannot be disallowed. They objected against estimation of direct expense of Rs.6624/-. They also objected against equal addition made.

The assessment was finalized after hearing the objection filed by the appellant. Opportunity of personnel hearing was also afforded. As such there is no violation of natural justice as alleged.

The assessment was finalized after the insertion of Section 25AA of the Act. The appellant has also admitted the purchases shown to have made. Hence appellant is eligible for the benefits of the said section. The assessing authority shall modify the assessment adopting the guidelines stipulated in Section 25AA.

The argument of appellant against denial of input tax credit cannot be accepted. The Hon'ble High Court in OT Rev.104/15 has observed thus:-“ input tax credit is a concession permitted to avoid the cascading effect in a value added tax regime. What is paid as tax at an earlier instance has to be set off in a later instance. When selling dealer does not pay the amount to the government, there can be no input tax credit claimed. The State is deprived of the tax to that extent and hence there is no question of input tax credit. Having not received the tax at the first instance of sale, there is no obligation on the State to grant input tax credit”. In the light of the dictum of the Hon’ble Court the argument of appellant is not sustainable. Hence in the interest of justice, the same is rejected.

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, Kuthuparamba  
Spare/index/file

