

**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 212/19
Instituted on	:	21.12.2019
From the orders of the	:	Order no. 32121035605/2015-16 dated.20.02.2018 of State Tax Officer, Kuthuparamba
Year of assessment	:	2015-16
Name of appellants	:	M/s. Fast Track Mobile Park, Iritty
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	:	31.01.2020
Present for Appellant	:	Sri. Mohammed Rafeeqe, Sales Tax Practitioner

**APPELLATE ORDER AND GROUNDS OF DECISION**

The appellant M/s. Fast Track Mobile Park, Iritty filed appeal against the assessment order of State Tax Officer, Kuthuparamba passed u/s 25(1) of the Act issued vide proceedings dated 20.02.2018 demanding tax Rs.146228/- 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. Closing stock for 2014-15 which was not reported in 2015-16 was also assessed to tax.

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. 321210.35605/15-16, dated 20.02.2018 of the State Tax Officer, SGST Department, Kuthuparamba is against law, facts and circumstances of the case.*
- 2. It is submits that in fact, appellant came to know about the demand only when the Village Officer served notice of demand under Revenue Recovery Act. Immediately on getting the demand, appellant filed petition for granting certified copies of both the assessment order and demand notice, which are received on the day stated in col. 5 above, based on which this appeal is filed.*
- 3. Assessment on the ground of unaccounted purchase is not correct, since entire purchases are effected from registered dealers on payment of tax at first instance within the State evidenced by assessment order itself. In fact, entire omissions were due to an innocent mistake crept on the part of clerk. The business itself has been stopped due to heavy financial loss. Any way, it is submits that even if the assessment on unaccounted local purchases are sustained, appellant is eligible for input tax credit and the demand should only be on value addition. Sec. 25AA inserted in the KVAT Act as per Finance Act 2019 support these. Even though this newly inserted provision was not there in the statute*

*while finalizing assessment, where the appeal is in continuation of assessment, hence the appellant pray to consider Sec. 25AA while disposing this appeal.*

4. *Regarding closing stock, it is submits that even though trade results showed huge amount of closing stock, where actually there was no such stock, which are totally lost due to heavy flood water which happened in 2012. It is seen that the accountant who was entrusted to look after the tax matters, has carried forwarded the entire closing stock without deducting the stock lost and this fact was unaware as far as the appellant's side is concerned. Any way, it is submits that the assessing authority has also didn't verified these aspects including closure of business, where the assessment is in a mechanical manner. Therefore it is humbly prays to delete the addition of turnover based on closing stock figure.*
5. *Without prejudice to the above, it is submit that the estimation of turnover based on closing stock value is quite incorrect and therefore at least the estimation of gross profit may be deleted.*
6. *Without prejudice to any other ground, appellant also submits that the assessing authority has just made a desk work by estimating the turnover for the year, where there was no actual sale and that the business itself was closed. At any rate, input tax remained unadjusted as on the end of year should have been deducted from output tax liability, which is totally absent from assessment. Therefore even if the assessment is sustained, input tax remained unadjusted at the end of year may please considered favorably and suitably modify the demand accordingly.*
7. *Without prejudice to any other ground, appellant vehemently objects the levy of interest also charged upto the date of assessment being quite illegal and against the settled principles of law.*

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 the entire purchase are effected from registered dealers and omission was due to innocent mistake crept on the part of the clerk. They stated that business was stopped due to heavy financial loss. They further stated that even if assessment on unaccounted local purchases are sustained, they are eligible for input tax credit. They stated that they are eligible for the benefit of the section 25AA of the Act. They stated that the stock was lost due to heavy floods in 2012, but the stock was not reduced. They stated that estimation on closing stock is incorrect. They stated that input tax remaining unadjusted at the end of the year should have been deducted from output tax liability. They also objected against equal addition made and the levy of interest.

The argument of appellant against assessment made on account of purchase suppression detected is unacceptable. They had not made any request for revision of returns. As such, it is clear that purchases were in fact suppressed by the appellant and hence assessment made in this behalf is sustainable and hence is upheld.

The argument of appellant that they are eligible for the benefit of section 25AA cannot be accepted. It applies only to assessment made with effect from 01/04/2019. As the assessment was made before that period, the provision will not apply. Hence their argument is rejected.

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

The appellant apart from the arguments has not produced any evidence to show that the stock was destroyed on account of floods. Moreover no such intimation was given to the assessing authority in this regard. Hence it is clear that their argument are fallacious and the stock was disposed unaccountedly during the year itself. Therefore assessment made in this behalf is sustainable and is hence upheld.

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, Kuthuparamba  
Spare/index/file

