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

Date of Order: 27.02.2020

KVATA Appeal order VATA No.	:	VATA 215/19 & 216/19
Instituted on	:	28.12.2019
From the orders of the	:	Order no. 32120579294/2015-16 & 2016-17 dated.30.11.2019 of State Tax Officer, 1st Circle, Kannur
Year of assessment	:	2015-16 & 2016-17
Name of appellant	:	M/s. Royal Blins, Thana, Kannur
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	:	11.02.2020
Present for Appellant	:	Sri. K. Mohammed Rafeeque, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Royal Blins, Thana, Kannur filed appeal against the assessment order of State Tax Officer, 1st Circle, Kannur passed u/s 25(1) of the Act issued vide proceedings dated 30.11.2019 demanding tax Rs.54692/- and Rs.41687/-for the years 2015-16 and 2016-17.

As the appellant is same and issues are similar, both the appeals are heard together disposed through a common order.

The assessment for the year was revised on the basis of misclassification of interstate purchases effected by the appellant. Purchase return during 2016-17 not supported with documents was also assessed to tax.

When the appeal was posted for hearing Sri. Mohammed Rafeeque, Sales Tax Practitioner appeared on behalf of the appellant and was heard. The contentions put forth by the appellant are as follows.

2015-16

1. *The order No. 321205.79294/15-16, dated 30.11.2019 of the State Tax Officer, SGST Department, First Circle, Kannur is against law, facts and circumstances of the case.*
2. *It is submits that in reply to the pre-assessment notice, appellant submitted detail of all the purchases effected during the year which prominently indicates rate of tax applicable to each of the commodities. But without considering the reply and detail so filed, assessing authority has finalized assessment alleging some other grounds not directly connected with the facts involved. As such, there is violation of the principles of natural*

justice and therefore assessment is not at all sustainable.

3. *It is submits that total purchase per KVATIS is Rs. 4,89,990/-. Of this, both the items No. 2 and 3 together comes to Rs. 3,06,330/-, which has been assessed at the higher rate of 14.5% after deducting declared purchase value of Rs.4,580/-. This is quite incorrect, since entire purchases was already classified by the appellant under 1% & 5% except Rs.13,740/- and accordingly subjected to self assessment. Therefore even if assessment is sustained, that should be only on differential rate, as against which assessment flatly at 14.5% on differential amount is not correct.*

   Appellant does not have any dealing in Furniture, where there may be error, while generating Form-8F declaration by the person in charge transporting the goods. At any rate, it is submits that the entire goods are transported accompanied with proper purchase invoices which more precisely indicates the name of each commodities, hence assessment merely based on 8F declaration is not correct. It is submits further that the item Interior blinds is textile goods and not an item coming under 14.5% category as assumed by the assessing authority. Further there being no purchase of furniture as is seen in 8F declaration, where the corresponding purchases were duly classified under 1% and 5% as per self assessment, hence treatment of difference as purchase suppression and assessment at 14½% on the differential amount is without considering the classification of items covered under self assessment is nothing but quite irregular warranting inference.

4. *Without prejudice to the above, it is further submits that even if there is any mistake in the classification of rate of tax applicable to the commodities, such mistake should have been dealt with applying the correct or appropriate rate of tax alone and should not have been disturb the turnover, especially because such difference in turnover was already subjected to self assessment at different rate of tax, i.e; at both 1% and 5%.*

5. *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.*

2016-17

1. The order No. 321205.79294/2016-17, dated 30.11.2019 of the State Tax Officer, First Circle, SGST Department, Kannur is against law, facts and circumstances of the case.

2. It is submits that in reply to the pre-assessment notice, appellant submitted detail of all the purchases effected during the year which prominently indicates rate of tax applicable to each of the commodities. But the assessing authority has finalized assessment without properly considering the reply or the detail so filed, hence there is violation of the principles of natural justice.

2. Assessing authority ought to have found that appellant already reported entire purchases classifying them at appropriate rate of tax of 1%, 2%, 5% & 14.5% based on rate of tax applicable to the commodities. There may error in 8F declarations crept on the part of person in charge of vehicle transporting goods, where all such transportations are accompanied by proper purchase invoices, which prominently indicates names of each commodities involved therein. As such, assessment on differential amount and the treatment of such difference as purchase suppression is not at all correct or sustainable.

3. Without prejudice to the above, it is further submits that even if there is any mistake in the classification of rate of tax applicable to the items, such mistake should dealt with applying correct or appropriate rate of tax alone and should not disturb the declared turnover, especially because such difference was already subjected to self assessment at different rate

of tax, i.e; at both 1% and 5%.

4. 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 both the cases is as to the sustainability of assessment made.

The appellant argued that they submitted details of all purchases effected during the year which prominently indicates rate of tax applicable to each of the commodities. The appellant argued that the assessing authority finalized the assessment without considering the reply and details filed and hence orders are violative of natural justice. The appellant argued that they had classified entire purchases under 1% and 5% except Rs.13740/- during 2015-16 and hence even if assessment is sustained it should be only on differential rate. They further stated that they does not have any dealing in furniture. They stated that entire assessment merely based on 8F declaration is incorrect. They stated that item interior blind is textile goods and not an item covering under 14.5% category. They further stated that even if there is any mistake in classification of rate of tax applicable to the commodities, such mistakes should have been dealt with applying correct or appropriate rate of tax alone and should not have distributed the turnover. They also objected against the levy of interest.

The appellant produced copy of annual return for the year, copy of invoices, 8F declarations, list of purchase mentioning rate of tax in support of their arguments. The assessing authority finalized the assessment after considering the reply filed by the appellant. As such there is no violation of natural justice involved in both cases.

The assessing authority finalized the assessment confirming misclassification in rate of tax on the finding that 8F declaration being prepared by the appellant himself they cannot deny the nature of transaction. Moreover check post seal was not seen in most of the purchase invoices. The documents produced by the appellant has been verified. As rightly found by the assessing authority, in many of the cases there is no check post seal found in the invoices. In such cases, the veracity of the invoices cannot be ascertained. In such cases the arguments of appellant cannot be considered and is hence rejected. On verification of the invoices produced by the appellant itself it is found that the appellant has conceded lesser turnover @ 14.5% in the return during 2015-16. On verification of the invoices, it is seen that the commodity pertain to interior blinds or its components. Interior blinds is taxable at 14.5%. The appellant also failed to prove the entry against which the commodities mentioned in the invoices fall. Moreover 8F declaration is generated on the basis of login credentials confidentially entrusted with the appellant. As such they are responsible for the acts done on that basis. Also the veracity of the statement of appellant cannot be under stood from the invoices also. For eg:- as per Inv. 36/5.6.15 produced, the commodity shown is Zebra blind components with 14.5% tax collected. However as per Commercial tax check post transaction, it is purchase of aluminium products coming under 3rd schedule. In certain other invoices Zebra Channels and Zebra blind components are shown taxable at 5% (Inv. 91,92) dated 30.05.2015. As such veracity of arguments of appellant cannot be

ascertained in the light of documents produced and arguments made. Hence assessment made on this basis is sustainable and hence upheld.

The argument of appellant that there is no suppression in turnover but only misclassifcation has force. As such enhancement in turnover cannot be made. Only differential tax is exigible from appellant. The assessing authority shall verify this aspect and modify the assessments to that extent.

The appellant produced copy of 8F declaration and Journal voucher of inter-state supplier and copy of debit note in proof of purchase return for 2016-17. The assessing authority shall verify this aspect vis-a-vis actual return of the goods through check post. The appellant is directed to produce the 8F declaration together with credit note of the supplier. The assessing authority shall verify the same in the light of above discussion and allow if found genuine and modify the assessment .

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 : VATA 215/19
VATA 216/ 19 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, 1st Circle, Kannur
Spare/index/file