

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)

STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR

PRESENT: SMT. SHYLA PRIYA .V LL.B

1.KVAT Appeal Number	: KVATA 222/19
2.Order Date	: 27.02.2020
3. Instituted on	: 29.04.2019
4. From the order of the	: No. 32081209446/11-12 dtd 27.03.2019 of State Tax Officer,Kunnamkulam.
5. Year of assessment	: 2011-12
6. Name of Appellant	M/s. Baby Company
7. Turnover Assessed	: Rs.100000/-
8. Section/Rule under which assessment made	: U/s. 25 (1) of KVAT Act 2003
9. Date of hearing	: 25.02.2020
10. Authorized Representative	: Sri. Agin Roy.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Baby company, TIN 32081209446 filed this appeal against the assessment Order No.32081209446/11-12 dtd 27.03.2019 of State Tax Officer,Kunnamkulam which was finalized U/s. 25 (1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

- 1. The order of the Assessing authority is opposed to law facts and circumstances of the case.*
- 2. Here the best Judgement order passed by the assessing authority has violated the basic principles of justice and law by deviating from the proposal and has resorted to a new proposal without affording the dealer a reasonable opportunity to be heard. This is in gross violation of principle of natural justice. Therefor the aforesaid order is bad in law.*
- 3. There were basically two interlinked allegations in the notice which were that the dealer has purchased goods at a higher tax and has sold/reported the same at a lower tax rate by misclassifying the goods while reporting in the return. Here sale/reporting at different tax rate were the First allegation and misclassification was the second. Both these argument were contested by the dealer and had proved wrong by producing evidences and facts. This could be seen from the order clearly.*
- 4. Even though the officer has accepted the objection filed by the dealer and understood that there is no merit in the proposed allegation, she has come with a flimsy allegation that the method used by the dealer while filing return was against the accounting principle. Therefor a lump sum amount was added just to create a demand.*

5. Here the appellate authority must seriously note that the assessing authority has not proved any omission or suppression or any other case which is subject to assessment under sec 25(1) of the KVAT act 2003. Therefor the aforesaid order is void and unlawful.

6. Moreover your kind reading is requested to the key para of the judgement by **Hon. KERALA HIGH COURT in O.T.Rev.No.30 of 2012** explained one of the distinctions of best judgment as "Any suppression detected or rather any file generated on a crime so detected and penalised necessarily gives the assessing authority the power to make estimations to compensate the State against probable omissions and suppressions. Such exercise, as is mandated by the statute, has to be regulated by the best judgment of the individual officer which definitely is subject to the principles of reasonableness, proportionality and of course natural justice. Such estimation on best judgment would definitely have to be done with due notice and after affording a personal hearing. Such estimation should be reasonable and should have a nexus with the gravity and frequency of the commission of offences as also the quantum of loss suffered by the State."

7. Here the officer has simply clinged on to the unexplained or non-speaking term accounting principle in the notice which has no reasonable nexus with any offence or has caused any loss to the state. The officer has very much failed to prove the offence here and has simply made demand just to meet some subjective satisfaction of the officer. Creating an assessment to meet the subjective satisfaction of an officer is clearly bad in law. These estimations are unlawful and a clear violation of several judgements like "[**Supreme Court in Commissioner of Sales Tax, M.P. v. H.M Esufali [(1973) 2 SCC 137]**], [**Kathiresan Yarn Stores v. State of Tamil Nadu [(1978) 42 S.T.C. 121 (F.B.)]**], [**KERALA HIGH COURT O.T.Rev.No.30 of 2012**], [**W.P.No.22066 of 2014, High Court of Judicature at Madras**]"

8. All these judgements clearly imply that additions to turnover reported cannot rest on subjective satisfaction of authority. The order must state reasons and the order shall be a speaking order so that the assessee, higher authorities and judicial forums may know the basis for the best judgment assessment. It is further stated that fair opportunity is to be given to the assessee and judicial consideration given to the representations, evidences and materials furnished by the assessee. The assessment should be based on relevant materials and on evidence available in the record and not on suspicions or surmises. The Assessing Officer should not disregard the materials in the records without valid reasons. Any guess work must be rational and reasonable. Capricious assessment without regard for available material is not permissible under law.

9. In the above circumstances and in light of the legal position, the assessment order issued by the learned assessing officer is unlawful and unsustainable; the officer has resorted to a flimsy estimation in order to implement vicious desires and subjective satisfaction. Generating a demand without valid grounds and ignoring available evidence is a clear violation of natural justice. Even after getting convinced about the objection, imposing a lump sum amount without

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any valid ground is bad in law. This violation of natural justice is a clear pointer that here the officer is not interested to server justice; rather she is focused on creating bogus assessments to meet her subjective satisfaction. This Best judgment assessment has violated every aspects of a judgment. Government has appointed these officers to serve justice and not push a dealer into financial hardship.

10. As a law obeying registered dealer, it is prayed that the learned Appellate Assistant Commissioner may kindly consider the grounds submitted before you and server justice. It is also requested that the learned Assistant Commissioner may allow such other grounds as may be permitted to be raised at the time of hearing.

When the appeal was posted for hearing Sri. Agin Roy, STP appeared and heard.

Lumpsum added as the appellant had entered the sales turnover of 12.5% goods as a single entry, but however the Assessing Authority himself has accepted that the porcelain wares are included to the turnover of 12.5% goods entry.

Even though the assessing officer has agreed that all the appellants turnover of Porceline goods are included on a single entry , based on this finding she has dropped the proposed assessment against this and limited this to the additon of Rs 100000/- I find this is quite reasonable and this does not need an interference either by law or facts ,this appeal is hence dismissed .

Result: Dismissed

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copysubmitted1.Joint Commissioner(Law),SGSTDept,Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

- 1. State Tax Officer, Kunnamkulam*
 - 2. Assistant Commissioner , Thrissur..*
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