

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)**  
**STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR**  
**PRESENT: SMT. SHYLA PRIYA .V LL.B**

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| 1.KVAT Appeal Number                           | : KVATA 265/19   |
| 2.Order Date                                   | : 12.02.2020   |
| 3. Instituted on                               | : 17.06..2019  |
| 4. From the order of the                       | : No. 32081309605/2015-16 dtd 27.04.2018 of State<br>Tax Officer, Wadakkanchery. |
| 5. Year of assessment                          | : 2015-16  |
| 6. Name of Appellant                           | : M/s. P.V Ramaswamy & Company.  |
| 7. Turnover Assessed                           | : 20,20,86,668.00  |
| 8. Section/Rule under which<br>assessment made | : U/s. 25(1) of KVAT Act 2003.   |
| 9. Date of hearing                             | : 21.01.2020   |
| 10. Authorized Representative                  | : Adv. V.R Padmanabhan.  |

**APPELLATE ORDER AND THE GROUNDS OF DECISION**

M/s. Ramaswamy & Company TIN 32081309605 filed this appeal against the assessment Order No. 32081309605/2015-16 dtd 27.04.2018 of State Tax Officer, Wadakkanchery which was finalized U/s. 25(1) of KVAT Act 2003.

**The main grounds of appeal submitted are:-**

1. The impugned assessment order of the Commercial Tax Officer, Wadakkanchery u/s 25 (1) of the Act for the year 2015-16 is opposed to law, facts and circumstances of the case and, therefore, is liable to be set aside.
2. The assessing authority went wrong in resorting to best judgment assessment which is carried out ex parte and in a highly arbitrary manner. The short adjournment requested for in person was not considered by the assessing authority.
3. The assessing authority went wrong in merely embossing his seal of approval on the illegal penalty orders of the Intelligence Officer without independently appraising the factual matrix of the case. He failed to note that the reason for collection of security deposit was purely technical in nature and that the enquiry was conducted ex parte, without giving the appellant an effective opportunity of being heard.
4. Without prejudice to the above, it is submitted that the further addition of 2% of the total sales turnover conceded which amounts to Rs. 39,61,503/- is highly excessive, arbitrary and without any nexus to the materials available on records. The alleged turnover suppression detected in vehicle checking is Rs. 50,000/- only for which security deposit of Rs. 1000/- was collected. The addition made comes to nearly 80 times of the alleged sales suppression involved in vehicle checking. The addition made is against the settled position as laid down in the cases of Commissioner of Sales Tax, M.P v/s **H.M. Esufali ((1973) 32 STC 77) and State of Kerala M/s. Velukutty (1968) 69 ITR 239**. While accepting the position that estimation necessarily involved an amount of guess work, the Hon'ble Supreme Court cautioned that the action of the assessing authority shall not be vindictive and capricious. The estimate should be on a

rational basis having reasonable nexus to the available material and circumstances of each case.

5. The assessing authority went wrong in disallowing the IPT credit of Rs. 42,850/- on the sales return of Rs. 42,85,021/- conceded in the annual return and accounts. He ought to have found that sales return was supported by credit/debit notes.
6. For these and such other grounds to be urged at the time of hearing, it is prayed that the Hon'ble Assistant Commissioner (Appeals) may be pleased to set aside the impugned order and allow the appeal.

Additional Grounds :-

These additional grounds may be treated as part of the grounds of appeal already urged.

Without prejudice to the grounds urged in the grounds of appeal, the further addition of Rs. 39,61,503/- being 2% of the sales turnover for probable omission and suppression may be deleted as provided under sub section (1) of section 25AA of the Act.

Sri VR Padmanabhan appeared for the appellant ,his contention is that the appellant he maybe given the eligible sanction of assessment as is prescribed in Section 25AA . And as I do not find anything of which this has to be declined, the same is allowed.

The Assessing Authority is directed to modify the assessment based on the disciplines discussed in Section 25AA of KVAT Act 2003 and issue modified orders.

**Result: MODIFIED**

**ASSISTANT COMMISSIONER (APPEALS )**

**THRISSUR**

To

*The Appellant through the Authorized Representative,  
Copysubmitted 1. Joint Commissioner(Law),SGSTDept,Thiruvananthapuram,  
2 . Deputy Commissioner ,SGST Dept , Thrissur*

*Copy forwarded to*

- 1. State Tax Officer, Wadakkanchery.*
- 2. Asst Commissioner, ,SGST Dept, Thrissur.*

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