

**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 270/19  
2.Order Date : 01.02.2020  
3. Instituted on : 27.06.2019  
4. From the order of the : No. 32080996124/2016-17 dtd 28.02.2019 of State  
Tax Officer, Irinjalakuda.  
5. Year of assessment : 2016-17  
6. Name of Appellant : M/s. Avaran Associates.  
7. Turnover Assessed : 5,56,31,015  
8. Section/Rule under which  
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. Avaran Associates, TIN 32080996124 filed this appeal against the assessment Order No. 32080996124/2016-17 dtd 28.02.2019 of State Tax Officer, Irinjalakuda. which was finalized U/s. 25(1) of KVAT Act 2003.

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

1. The impugned order of the State Tax Officer, Irinjalakuda u/s 25(1) of the Act for the year 2016-17 is opposed to law, facts and circumstances of the case and, therefore, is liable to be set aside.
2. The best judgment assessment is completed without properly considering the reply filed against the pre assessment notice. The cogent explanations submitted by the appellant in reply to the pre assessment notice were rejected on untenable grounds.
3. The assessing authority seriously erred in assessing the indirect income received amounting to Rs.10,64,839/- conceded in the audited financial statements, without assigning any reasons and without considering the explanations furnished. She ought to have considered the explanation that the appellant is the authorized dealer for Piaggio vehicles. The appellant have received incentive amounting to Rs.10,22,041/- during the year 2016-17. Incentive is received on attaining the various targets fixed by the suppliers. Similarly, incentive is received from various financing companies for

arranging loans to the customers and commission from New India Insurance Co for arranging insurance. The incentive and commission received is not exigible to tax under VAT.

4. The assessing authority went wrong in making an addition of Rs. 49,220/- alleging suppression in sales. She ought to have found that the impugned sales were made by the appellant against form No. 8B bills which have been accounted under 'retail sales' in the returns filed.
5. Without prejudice to the above it is submitted that the further addition of equal amount is unsustainable.
6. Sales return for Rs. 17,751/- is supported by credit/debit notes.
7. The assessing authority ought not to have levied interest to the tune of Rs. 42,804/- on the tax arbitrarily assessed in best judgment assessment in total disregard of the settled principles of law laid down by the Apex Court J.K. Synthetics case etc. He should have noted the settled legal position that interest will accrue only if there is real escape of turnover and tax as held in Chandramani Trades Vs. State of Kerala reported (2008) 16 VST 294 (Ker.) and State of Kerala Vs. Western India Cosmetics & Health Products reported in (2010) 18 KTR 414.
8. For these and such other grounds that may be urged at the time of hearing of the appeal, it is requested that the Hon'ble Assistant Commissioner (Appeals) may be pleased to set aside the impugned order and allow the appeal.

Additional Grounds :-

1. These additional grounds may be treated as part of the grounds of appeal already urged.
2. Without prejudice to the grounds urged in the grounds of appeal, the addition made on the alleged unaccounted purchases and sales may be limited to the actual suppression detected and deleting the equal addition made for probable omission and suppression as provided under section 25AA. Input Tax credit may also be allowed on the unaccounted local purchases.

The appellants authorised Representative Adv Padmanabhan contended that the unaccounted sales and purchase along with its addition, and incentive received that is assessed maybe regarded and reassessed as prescribed by section 25AA. This contention is allowed and Section 25AA, General disciplines related to assessment under this Act.—

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(2) In case of assessments initiated from the scrutiny of electronically filed returns, annexures and other declarations,-

(a) with respect to unaccounted purchases from registered dealers within the State by dealers, notwithstanding anything contained in this Act, input tax credit shall be granted on such purchases, provided the dealer admits such purchases. In such cases, assessment shall be completed by adding 20 percent gross profit on the purchase value.

(c) If sale suppression is detected, the suppressed turnover shall alone be assessed, without any additions.

(3) Discounts, incentives and other income shown in trading, profit and loss account shall be assessed only if, it affects the output tax or input tax credit.”

Assessing authority is directed to Modify and issue orders accordingly .

**Result: Reduced.**

**ASSISTANT COMMISSIONER (APPEALS )**

**THRISSUR**

To

The Appellant through the Authorized Representative,

Copysubmitted1.JointCommissioner(Law),SGSTDept,Thiruvananthapuram,

2 . Deputy Commissioner ,SGST Dept , Thrissur

Copy forwarded to

1. State Tax Officer, Irinjalakuda

2. Asst Commissioner, ,SGST Dept, Irinjalakuda

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