

**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 273/19
2.Order Date	: 27.01.2020
3. Instituted on	: 28.06.2019.
4. From the order of the	: No. 32081475284/12-13 dtd 19.02.2019 of State Tax Officer, IV Circle, Thrissur
5. Year of assessment	: 2012-13
6. Name of Appellant	: M/s. Kerala State Civil Supplies Corporation
7. Turnover Assessed	: Rs.8,22,80,366/-
8. Section/Rule under which assessment made	: U/s. 25(1) of KVAT Act 2003
9. Date of hearing	: 22.01.2020
10. Authorized Representative	: K.K Francis.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Kerala Civil Supplies Corporation, filed this appeal against the assessment Order No. 32081475284/12-13 dtd 19.02.2019 of State Tax Officer, IV Circle, Thrissur which was finalized U/s. 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

1.The modified assessment order of the State Tax Officer ,State Goods and Services Tax Department Fourth Circle , Thrissur No: 32081475284/2012.13 dated 19.02.2019 in pursuance of the appellate order No:KVATA -566/17 dated 29.12.2017 of the Assistant Commissioner (Appeals), Thrissur determining the balance tax payable at Rs.11.53.056/- for the year 2012.13 is arbitrary, illegal and against facts and circumstances

2.During the material time, the appellant filed annual return disclosing a total turnover of Rs.37,03,81,388.00.This return and supporting books of accounts and other evidences were rejected by the assessing authority as incorrect , incomplete and untrue and determined to the best of judgment the total turnover and tax payable at Rs.45,26,61,753.00 and Rs.11,53,056.00 respectively vide assessment order No: 32081475284/2012.13 dated 20.04.2017

3.The appellant filed first appeal against the original assessment order dated 20.04.2017 challenging the addition of alleged suppression of output tax amounting to Rs.7,36,060.00 to the total tax due determined. In the first appeal , the appellant contented that during the month of August 2012, the appellant declared the output tax collection in the monthly return at Rs.7,02,046.00 as against Rs.14,38,406.35 conceded in the sales statement uploaded for the month of August 2012. It may also be noted that the turnover reported

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during the month of August 2012 was for Rs.3,27,33,612.46 when the output collection was for Rs.7,02,046/-.Hence if the output tax collection of Rs.14,38,106.35 for August 2012 as per the sales statement uploaded is accepted, then the turnover for August 2012 also should have been altered at least to Rs.6,70,53,178.76.But neither in the original assessment order nor in the modified assessment order, the assessing authority did not estimate the sales turnover in par with the alleged suppressed output tax collection.

In spite of the above material facts while disposing of the first appeal, the learned appellate authority directed the assessing authority to verify the claim of the appellant in respect of the illegal addition of output tax amounting to Rs.7,36,060.00 .Accordingly the appellant produced the connected sales statement and ledger account for the months of August 2012 which were enough to confirm the output tax collection. Still without issuing a pre assessment notice, the assessing authority restored the original assessment order. Thus the modified assessment order under dispute is violative of the principles of NATURAL JUSTICE which cannot stand the test of law.

4.Without prejudice to the above, it is submitted that the appellant had collected output tax amounting to Rs.9,31,406.08 during the month August 2012 as shown below:

	Turnover	OPT collected
Turnover of 0% goods in 36 outlets	1,57,68,119.34	0.00
Turnover of 1% goods in 36 outlets	73,94,507.92	73,944.61
Turnover of 5% goods in 36 outlets	51,13,200.00	2,55,660.45
Turnover of 13.5% goods in 36 outlets	44,57,785.21	6,01,801.02
Total	3,27,33,612.47	9,31,406.08

But while filing monthly return for August 2012, the collection of tax under 5% amounting to Rs.2,55,660.45 was inadvertently declared as Rs.25,560.00.As a result the collection of output has come to Rs.7,02,046/- instead of the actual collection of Rs.9,31,406.08.A statement of the sales and tax collected in respect of the 36 outlets of the appellant is attached herewith for kind perusal. In spite of this statement , the assessing authority rejected the same and reckoned the total output tax collection by the 36 outlets at Rs.14,38,106.35.This decision of the assessing authority is absolutely wrong.

In this connection, the appellant submits that they are a public sector under taking run by the Government of Kerala .By concealing the alleged collection of output tax at Rs.14,38,106.35 , no incumbents of the appellant gain anything. Moreover, when the actual collection of output tax was for Rs.9,31,406.08, the appellant

conceded the turnover at Rs.3,27,33,612.46 in the return for August 2012.Hence if the collected tax as alleged by the assessing authority comes to Rs.14,38,106.35, the sales turnover would definitely be Rs.5,05,41,237/-. But the assessing authority who demanded the alleged collected tax of Rs.14,38,106.35, did not enhance the turnover for the month of July 2012 to Rs.5,05,41,237/- as against the reported turnover of Rs.3,27,33,612/-.Thus , it is quite clear that the output tax of Rs.14,38,106.35 alleged to have been collected has no proximity to the turnover of Rs.3,27,33,612/-conceded for the month of August 2012.Hence the learned appellate authority may be pleased to set aside the alleged collection of output tax amounting to Rs.14,38,106.35 and order to accept the actual collection of output tax amounting to Rs.9,31,406.00 for the month of August 2012.

5.Such other grounds that may be raised at the time of hearing of the appeal filed

When the appeal was posted for hearing Sri. Francis .K.K appeared and was heard.

The same kind of issue of the appellant had already come up for hearing in KVATA 566/17 and final order was passed dt 29.12.2017, On which this authority has directed to the Assessing authority to verify the documents and ascertain the output tax collected by the appellant. As per this order the assessing authority has verified the books and documents that was produced before her on 15.02.2019 and as the appellant could not produce all the documents required she had finalised the assessment . Now again the appellant has appeared this office with the same contentions, I find that the appellant was given one good opportunity to substantiate how much Output tax they had collected, and the appellant has failed to prove it. Hence it is evident that the appellant does not have adequate documents and hence , As the fact is settled at the hands of the Assessing officer. I do not find any merit to go into same kind of contentions raised by the appellant. This appeal is hence dismissed.

Result: Dismissed

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, IV Circle, Thrissur
2. Asst Commissioner ,SGST Dept, Thrissur.*

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