KVATA 297/19

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 297/19
2.Order Date	: 10.02.2020
3. Instituted on	: 15.07.2019
4. From the order of the	: No. 32080828713/12-13 dtd 02.04.2018 of State Tax Officer, Chalakudy.
5. Year of assessment	: 2012-13
6. Name of Appellant	: M/s. Vaikundam Enterprises.
7. Turnover Assessed	: 10,59,16,198/-
8. Section/Rule under which assessment made	: Section 25(1) 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. Vaikundam Enterpries, TIN -32080828713 filed this appeal against the assessment Order No. 32080828713/12-13 dtd 02.04.2018 of State Tax Officer, Chalakudy 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 State Tax Officer, Chalakudy for the year 2012-13 u/s 25 (1) of the Act 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 in a highly arbitrary manner and without appreciating the facts in issue and the specific averments based in the appellant's replies to the pre-assessment notice dated 09.02.2018 & 15.03.2018. The objections raised in the reply to the pre-assessment notice were rejected on untenable grounds.*
3. *The assessing authority seriously erred in the finding of suppression in local purchase amounting to Rs. 5,96,336/-. He ought to have noted that the variation in purchase turnover as per annual return and audit report was due to clerical errors in the returns for September and March which was detected during the statutory audit u/s 42(2) of the Act and the appellant had requested permission of the assessing authority to revise the returns as per letter dated 29.09.2013 rectifying the mistakes and omissions. As the permission sought was not obtained, the appellant could not file the revised annual return.*
4. *The assessing authority erred in his finding of suppression in local purchase amounting to Rs. 10,90,256/- said to have detected in scrutiny through KVATIS covered by 8 bills. He ought to have considered the explanation that the mismatch found in scrutiny relating to the purchase from M/s A.M. Mohammed Usman and Brothers as per invoice No. ASB480*

dated 29.06.2012 for Rs. 9,78,926.15 was due to the mistake on the part of the seller dealer in uploading their return. He ought to have considered the letter dated 27.02.2018 of the seller dealer clarifying the above mistake.

5. *The assessing authority went wrong in disallowing the IPT credit of Rs. 14,027/- on local purchases covered by 12 bills. He ought to have noted that the claim of IPT is supported by tax invoices in Form No. 8. As such, the appellant was legally entitled for the IPT credit on the above purchases. The omission or suppression, if any, on the part of the seller dealers is not a valid ground to deny the IPT credit which the appellant was legally entitled to. This position has been upheld by the Hon'ble High Court of Madras in* ***ABL Traders Vs Commercial Tax Officer (2016) 24 KTR 481 and in Altaf Shoes Pvt Ltd., Vs Asst. Commissioner (CT), Valluvarkottam (22 KTR 520)*** *and by the Hon'ble High Court of Delhi in* ***Arise India Ltd., Vs Commissioner of Trade and Taxes, Delhi and Ors. (2017) Taxcorp (VAT) 24735 (HC-Delhi).*** *The Hon'ble Court held that a purchasing dealer cannot be made liable for the failure on the part of selling dealer to report transaction in its return. The only requirement for availing IPT is that both the seller dealer and purchasing dealer shall be registered dealers and the purchases are supported by tax invoices. The above decision is squarely applicable in the instant case.*
6. *The assessing authority went wrong in sustaining addition of Rs. 1,10,605/- on the alleged unaccounted sales as per 3 invoices. He failed to consider that the sales as per Sl No. 1 and 3 were effected in Form No. 8B sales bills as the purchasers have not furnished their TIN. The impugned sales were accounted in the returns under 'retail sales'. The sale as per Sl. No.2 was not related to the appellant.*
7. *The assessing authority seriously erred in estimating 2% of the conceded sales turnover towards direct expenses. The finding of the assessing authority that the appellant has not conceded any direct expense in the audited statement is untrue and contrary to facts. As per the audit report in Form No.13A and Trading, Profit & Loss Account, the appellant has conceded Direct Expense for Rs.10,53,216.82 which is the actual expenses incurred towards freight, loading and unloading charges. He failed to note that the entire purchase during the year 2012-13 were from local registered dealers. He ought to have considered the explanation of the appellant that in many cases, the goods were received as door delivery for which the appellant has not incurred any freight charges. The estimation of direct expenses in a fixed ratio to the sales turnover is patently irregular.*
8. *Without prejudice to the above averments, it is submitted that the further addition of equal amount to cover up probable omission and suppression is highly excessive and arbitrary.*

9. *For these and such other grounds to be urged at the time of hearing, it is prayed that the Hon'ble Asst. 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. IPT credit may also be allowed on the unaccounted local purchases.

I find merit on both the contentions as against the Direct Expenses *in Moriroku UT India (P) Ltd. v. State of U.P. & Ors Appeal (civil) 1709 of 2008 the following has been observed by the Apex court in UP trade tax act 1946 ,which is applicable in cases of such estimations without any proof. " In case of sales-tax, tax is eligible on real price received or receivable by the dealer in respect of a sale.* ***A dealer is entitled to frame his price-structure in a manner conducive to the type of his business or with a view to withstand the competition.*** *In a given case, cost may be more than the price. The dealer may base his price-structure to give an incentive to his clients, agents, distributors etc., particularly if he is a manufacturer. In such cases, his price- structure has to be scrutinized by the Department under the sales-tax law to find out the real sale-price receivable by him. There may be cases where he is required to give a* ***discount on account of defect in quality or delay.*** *The important thing to be noted is that "****price" is the amount of consideration which a seller charges the buyer for parting with the title to the goods.*** *It comprises of the amount which the dealer himself has to pay for the purchase of the goods, the expenditure, which he is to incur for transporting the goods from the place of purchase to the place of sale, the duties, if any, levied on the particular goods bought by him, the octroi duty, which he may have had to pay and his own margin of profit after meeting handling charges including interest on the capital invested. The cost price of the goods actually paid by him under various heads of accounts would no doubt constitute the consideration for which he would part with his title to the goods. The entire amount of consideration, including the sales tax component, which the purchaser pays, would constitute the price of goods. To this extent, there is no difficulty.* ***The difficulty comes in when by law or by legal fiction the Department seeks to introduce a notional concept as an element of the "real price". This is particularly important when there is no rule to that effect in the sales-tax law.*** *Even under the definition of turnover in Section 2(i) one has to take into account only the aggregate amount for which goods are*

bought or sold. It is this aggregate amount which is taxable under Section 3 read with Section 2(i) of the 1948 Act. ....

......Therefore, for sales-tax purposes, what has to be taken into account is the consideration for transfer of property in goods from the seller to the buyer. For this purpose, tax is to be levied on the agreed consideration for transfer of property in the goods and in such a case cost of manufacture is irrelevant. As compared to the sales-tax law, the scheme of levy of excise duty is totally different. For excise duty purposes, transfer of property in goods or ownership is irrelevant. As stated, excise duty is a duty on manufacture. The provisions relating to measure (Section 4 of 1944 Act read with Excise Valuation Rules, 2000) aim at taking into consideration all items of costs of manufacture and all expenses which lead to value addition to be taken into account and for that purpose Rule 6 makes a deeming provision by providing for notional additions. ***Such deeming fictions and notional additions in excise law are totally irrelevant for sales-tax purposes.*** *Therefore, in any event, these notional additions cannot be read into clause 5.1 and clause 5.2 of the General Agreement for Purchase of Parts dated 31.7.1997. ''*

Based on the above finding of the Apex court the Direct Expenses estimated by the Assessing authority is not backed with a legal standing, hence that portion of Direct Expense estimated is herewith deleted.

As against the purchase and sales suppression as the appellant could not prove anything positively against the alleged purchase suppression , and as he has admitted the purchases in order to avail the benefit of Section 25AA, he is herewith allowed the benefit of Section 25AA. The assessing authority is directed to apply this and modify order accordingly.

Result: Modified. **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, Chalakudy
2. Asst Commissioner, ,SGST Dept, Chalakudy
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