

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 315/19
- 2.Order Date : 03.02.2020
3. Instituted on : 13.08.2019
4. From the order of the : No. 32081304892/2014-15 dtd 27.01.2018 of State
Tax Officer, Wadakkanchery.
5. Year of assessment : 2014-15
6. Name of Appellant : M/s. Elamkulam Farm
7. Turnover Assessed : 19,13,347/-
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. Elamkulam Farm , TIN 32081304892 filed this appeal against the assessment Order No. 32081304892/2014-15 dtd 27.01.2018 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 State Tax Officer, Wadakkanchery u/s 25 (1) of the Act for the year 2014-15 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 ex parte, in a highly arbitrary manner without affording the appellant an opportunity of being heard. The pre-assessment notice was not served on the appellant. Best judgment assessment without giving the appellant an opportunity to file objections and of being heard is against the principles of natural justice.
3. The assessing authority seriously erred in making an equal addition of the alleged suppression detected by the intelligence Officer for probable omission and suppression. He ought to have found that suppression was estimated by the Intelligence Officer by treating the stock of live chicken found at the time of inspection as excess stock stating that no books of accounts were available. Apart from the alleged suppression detected by the Intelligence Officer, the assessing authority has not pointed out any further instance of omission and suppression. As such, the further addition of equal amount is quite uncalled for .

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4. The best judgment assessment was completed fixing a total and taxable turnover of Rs. 19,13,347.50 and the tax due @ 14.5% was fixed at Rs. 2,77,435.31. As per the returns filed, the appellant has a total IPT credit of Rs. 60,900/- and has paid tax amounting to Rs. 1,40,015/-. But in the assessment order, the IPT on local purchases as per the monthly returns and tax paid along with the monthly returns were not given credit.
5. The assessing authority failed to note that the turnover enhanced in best judgment assessment is Rs. 6,27,000/- only and the tax due on the above comes to Rs. 90,915/- only whereas he has assessed the entire turnover of Rs. 19,13,347.50 estimated in best judgment assessment and the tax due worked out at Rs. 2,77,435.31 without giving credit for the IPT and the tax payment. When the input credit and tax payment are given credit the balance tax payable will only be Rs. 76,520/- only as against Rs.2,77,435/-fixed in the assessment order.
6. The assessing authority seriously erred in not considering the application of the appellant u/s 66 of the Act for rectification of the errors in the assessment order.
7. For these and such other grounds to be urged at the time of hearing , it is prayed that the Hon'ble Deputy 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 equal amount made for probable omission and suppression may be limited to 50% of the suppression detected as provided under section 25AA (1) of the Act.

When the appeal was posted for hearing Adv. V.R Padmanabhan appeared.

The appellant contended that the suppression was estimated by intelligence officer be treating the stock of live chicken that was found at the time of inspection as excess stock for the reason that no books were available in the premises, apart from this he has not pointed out any other instance of omission and suppression, so addition of equal amount unlawful. He also contended that the input tax credit of Rs 60,900/- and the Tax paid amount of Rupees 140015/- was not given credit while finalizing the assessment.

He also added that he maybe allowed to finalized the assessment as prescribed in section 25AA.

I find merit on the above contentions because section 25 AA, prescribe only 50% addition (1) In cases where tax evasion has been detected and the offense has been compounded or penalty has been imposed under this Act, the assessment under the provisions of this Act shall be done only on the suppressed turnover detected:Provided that in cases where pattern of suppression has been established, the assessment shall be completed by adding fifty percent of the suppressed turnover.

hence the same is reduced herewith. Also it is directed to give Input tax credit that is due to the appellant, along with the credit of Tax that is already paid by the appellant . The assessing authority is directed to modify and issue orders accordingly.

Result: MODIFIED

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, Wadakkanchery.
2. Asst Commissioner, ,SGST Dept, Thrissur.

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