

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 332/19
- 2.Order Date : 20.02.2020
3. Instituted on : 18.09.2019
4. From the order of the : No. 32081148292/2013-14 dtd 29.07.2019 of State Tax officer, Chavakkad.
5. Year of assessment : 2013-14
6. Name of Appellant : M/s. Vinu Electronics
7. Turnover Assessed : 2,44,20,120/-
8. Section/Rule under which assessment made : U/s.25(1) of KVAT Act 2003
9. Date of hearing : 07.01.2020
10. Authorized Representative : P. Ramankutty.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Vinu Electronics, TIN 32081148292 filed this appeal against the assessment Order No. 32081148292/2013-14 dtd 29.07.2019 of State Tax officer, Chavakkad which was finalized U/s. 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

1. The appellant is much aggrieved with the assessment orders passed by the State Tax Officer, SGST Department, Chavakkad on 29-07-2019 u/s.25(1) and 25AA of the KVAT Act, 2003 for the year 2013-14. The orders of assessment passed by the assessing authority is arbitrary and opposed to the law and facts.
2. The assessing authority ought to have considered the fact that the appellant dealer has maintained correct and complete accounts for and also submitted correct and complete returns for the year 2013-14.
3. The assessing authority ought to have considered the fact that out of the unaccounted sales for Rs.116,873-05 pointed out in the defect No,2 in the notice and assessment orders, the sales for Rs.9170- (Sl.No.1) have been accounted for and reported by uploading correct sales bill No.116 dated 7-9-2013 instead of sales bill No.114 dated 7-9-2013. And also that the sales as per the serial Nos.2 to 4 have not been issued by the appellant dealer. Though the appellant has pointed out the above fact in the objection reply filed, the assessing authority has not allowed a chance to cross examine the alleged buyer person/dealer from whom the details of the sales bills mentioned in the SL.No.2 to 4 have been gathered in the presence of the assessing authority for proving the appellants claims. So also the assessing authority went wrong by not considering the explanation that the sales mentioned under Sl.No. of defect No,2 have been properly accounted for and reported in the returns by noting correct invoice No.116 instead of 114. The orders passed by the assessing authority by assessing the sales for Rs.116,873- to tax ,is gross injustice and unsustainable.

4. The assessing authority went wrong by estimating and assessing a turnover of Rs.460,197- worked at 2% of the purchase value of goods conceded at Rs.230,09,878-, on a plea that no direct expenses have been conceded as per the Trading Account and Audit report, It is submitted that the entire goods dealt with by the appellant dealer are given door delivery by the suppliers. All the suppliers are giving goods at door step of the appellant buyer by van sales. The unloading work of goods brought by the suppliers are done by the employees engaged in the sales van. In the circumstances no carriage inwards such as transporting charges unloading charges etc. towards direct expenses were incurred. No business place was inspected. No suppression or omission was detected by the assessing authority under direct expenses. Suppression under direct expenses have been estimated without any basis, but merely based on assumption and presumption. The findings made by the assessing authority that in this type of business it is inevitable to incur such expenses and usually conceded 2 to 5% of the purchase value towards direct expenses is not supported. The orders of assessment passed by estimating and assessing direct expenses on the basis of mere assumption and presumption is gross injustice and unsustainable.

5. Interest levied and demanded without communicating workings is unsustainable.

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

He contended against the Direct expenses that was imposed on the appellant. He contended that the appellant has fully door delivery of his products and so assessing his for this is baseless.

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. "**

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. 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, Chavakkad
 2. Asst Commissioner, ,SGST Dept, Irinjalakuda
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