

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)**  
**STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR**  
**PRESENT: SMT. SHYLA PRIYA .V LL.B**

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| 1.KVAT Appeal Number                           | : KVATA 365/19   |
| 2.Order Date                                   | : 14.02.2020   |
| 3. Instituted on                               | : 07.11.2019   |
| 4. From the order of the                       | : No U/R-H/10/2016-17 dated 31.03.2018 of State<br>Tax Officer, Chalakudy. |
| 5. Year of the assessment                      | : 2016-17  |
| 6. Name of Appellant                           | : Smt. Narayani, Modamplacka house.  |
| 7. Turnover Assessed                           | : Rs.47,25,000/-   |
| 8. Section/Rule under which<br>assessment made | : U/s.25(1) of KVAT Act 2003   |
| 9. Date of hearing                             | : 21.01.2019   |
| 10. Authorized Representative                  | : Sri. A.R. Krishnadas, STP  |

**APPELLATE ORDER AND THE GROUNDS OF DECISION**

Smt. Narayani, Modamplacka House filed this appeal against the assessment order No. U/R-H/10/2016-17 dated 31.03.2018 of State Tax Officer, Chalakudy. which was finalized U/s.25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

*The order of the learned Officer is prejudicial to the appellant. It is against the law facts and circumstances of the case.*

*The assessment for the year 2016-17 under challenge in this appeal was made on the basis of one crime file received from the Intelligence Wing which consist a suppression of Rs. 19,20,000/-*

*The learned assessing authority passed the assessment order without considering her books of accounts, reply and valuable documents furnished by the appellant before proceeding. The appellant is petty farmer in poultry as she doing as his livelihood. During these, the Departmental Officer was inspected and recorded stock of live birds etc, Later, passed an order of penalty by the Departmental Officer who inspected the poultry farm of the appellant treating these physical stock as excess. Aggrieved by these, the appellant preferred in Revision Petition before the Hon'ble KVAT Appellate Tribunal, Ernakulam. The same is in pendency with the above authority for*

*consideration. The appellant prays to make necessary changes in the assessment order according to the Order on the aforesaid Revision Petition.*

*Moreover, the further addition made at 4 times of the Turnover is highly arbitrary and injustice. The Intelligence wing taken the entire physical stock found in the poultry farm and the penalty imposed accordingly on the appellant. So, it is very cruel to the appellant. The appellant prays to delete the further addition made at 4 times of the Turnover. The appellant also prays to allow the basic exemption of Turnover as per rule and protection of 25AA of the Finance Act 2019.*

*Regarding the Addition:- In Jayalakshmi Oil Mills, the Division Bench of Court pointed out that when there is no basis for equal addition for probable omission, the same is unwarranted as it is only based on estimate that too probable suppression, it is only a guess work and no material for making equal amount for probable suppression and accordingly, deleted the equal addition for probable omission. Similar view was taken in the case of Sri Rama Furniture Company, wherein, the Division Bench pointed out the fact that in the subsequent year there was an inspection which revealed suppression, by itself would not be a good ground to sustain the equal addition for the earlier assessment year. In SV Cycle Store, the Division Bench pointed out that addition under the head " equal addition" for probable omission, does not follow as an automatic, concomitant assessment on actual suppression.*

*Such other matters, as may be allowed to be raised and evidence adduced at the time of hearing of this appeal. It is prayed that justice be done to the appellant by allowing the appeal.*

The appeal was posted for hearing Sri. A.R Krishnadas appeared. His contention was that as the appellant is a small farmer rearing chicks, and so he was below registrable limit. It was only out from the said inspection file finalised by the Intelligence wing the best judgement assessment was accorded with. He submitted while finalising the penalty itself he has compounded and remitted the tax and penalty in that case a further assessment is not necessary. Also the assessing authority has not identified any pattern of suppression, the usage of electricity at the farm cannot be based upon as a final piece of evidence as because the farm which is consisting of 3 acres on land which also has agricultural trees like coconut, banana, rubber and pineapple. All these trees and other

plants are irrigated using the same electricity connection, but the assessment was finalised without considering these elemental facts.

He also submitted that in spite of neglecting the above facts and finalising a heavy assessment the eligible basic exemption of Rs 10 lac on the turnover was also not allowed, even after he has no interstate purchase. Officer has also not explained why such an exemption was not given with. He also submitted that he maybe given the benefit of Sec 25AA. Finally he wanted to get the credit of the tax paid by him of 30% .

On considering the merits of the case, it is found that the Assessing authority has not identified any valid case on which the basic exemption was not eligible to the appellant in that case, not allowing the same is unlawful, hence it is directed that this exemption shall be given and ordered shall be modified accordingly.

The next contention is that, if the assessment based on the energy consumption at the farm is valid piece of evidence for assessment?

Electricity bill is a valid proof of evidence to establish what activity has gone with the appellant, but this has to be corroborated with other documents too in order to finalise something. As per his statement he has also used some of electricity for Agriculture purpose, this cannot be overruled with as on a 3 acre land with other trees this is certain. here the appellant has already agreed that he has had 2 purchases dt dt 16.05.2016 and 24.07.2016 of chicks during the year and sale of the same and the corresponding purchase is 2300 nos and 4800 nos of day old chicks , when I analysed the electricity bill the corresponding bill amount is Rs 6099/- and Rs 3547/ rest all bills the amount is much lesser. Means the energy consumption was less. Also it is very opposite kind of information in terms of purchase and rearing ,which self explains that this is not a reliable piece of evidence against the appellant. Also the 2 electricity bill of 25.04.2016 relates to purchase of the previous year 2015-16 all this cannot put a base to the assessment for the year 2016-17, hence I find that the assessment is base less and ,also the mortality rate of the chicks is not seen considered. On the second purchase 4800nos was reduced to 4500 nos on inspection , mortality is certain here. hence I find it would just , in order to finalise the assessment on best judgment the assumption has to be in near relation to the suppression identified and the documents available . As section 25AA prescribes the disciplines on which best judgment assessment has to be completed and as this is herewith allowed, I find that this aspect alone is enough . The claim of the benefits of the section 25AA is also allowed, the Act has already put in its notions about how such assessments has to be finalised hence I find it is lawful for me to allow the same. The Assessing authority is hence

directed to follow the assessment disciplines that are laid down in section 25AA and apply appropriately, and the assessment shall be hence finalised with 50% addition of the accepted purchase of the appellant and while finalising 5% mortality shall also be allowed with.

While Modifying the Tax ,if any, that is already paid by the appellant, shall also be given credit. Modify and issue orders.

**RESULT : Modified**

**ASST. COMMISSIONER (APPEALS)  
STATE GST DEPARTMENT, THRISSUR**

*To*

*The Appellant through the Authorized Representative,*

*Copy submitted 1. Joint Commissioner (Law),*

*SGST Dept , Thiruvananthapuram,*

*2. Deputy Commissioner , SGST Dept , Thrissur*

*Copy forwarded to*

*1. State Tax Officer, Chalakudy.*

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

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