

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	04.02.2020
Appeal no	:-	KVATA(ALPY)105,106& 107/19
From the order of the	:-	State Tax Officer, Mavelikkara
Year of assessment	:-	2014-15, 2015-16& 2016-17
Name of appellant	:-	Smt.Leena P Nair, M/s.C.B. Traders, Nooranad
Instituted on	:-	08.05.2019&21.05.2019
Date of hearing	:-	09.12.2019

Present for appellant :- Sri.D. John Tharakan, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appeals are filed against the assessment orders of State Tax Officer, Mavelikkara, Order No.32041024435/14-15, 2015-16 dated.08.05.2019 and 2016-17 dated.21.05.2019. The above three assessments are completed based on irregularities found on KVATIS scrutiny. The defects found were purchase and sales suppression and excess claim of IPT. The assessing authority estimated the above suppressed turnover, added back 15% gross profit in the case of purchase suppression and added equal amount for probable omission and suppression for the above defects, also disallowed the IPT claim and levied tax plus interest. Aggrieved by the orders, the dealer defend the cases on the following grounds.

2014-15

1. The order of assessment is opposed to law, facts and circumstances of the case.
2. The assessing authority ought to have considered the detailed reply filed in response to the pre-assessment notice in toto.
3. The assessing authority ought to have accepted the fact that the 14 purchases listed out at page 4 of the assessment order were not effected by the appellant. The assessing authority ought to have conducted enquiry with the respective consigners to ascertain the

real consignees examining them in the presence of the appellant after obtaining copies of the relevant sale bills enabling the appellant to prove his burden that the said 14 purchases are not effected by him. The appellate authority may be pleased to direct the assessing authority to examine the respective consigners in the presence of the appellant since KVATIS data used against the appellant are 3rd party.

4. The assessing authority ought to have found that the sales coming under Sl.No.1,5,6,7,8,10,11,12,13,14,15 and 16 are not the sales of the appellant. It is ascertained that these sales were effected by M/s.C.B. Electricals (TIN No.32040214604) and that they have conceded these sales in the respective returns/paying tax. The sales lists uploaded by M/s.C.B. Electricals as obtained from them are enclosed.
5. The assessing authority ought to have found that the sales coming under item has been conceded in the return noting the invoices as A 453 instead of Bill No.453. This ought to have been treated as accounted and conceded in the return of the appellant.
6. The assessing authority ought to have found that the sales coming under Sl.No.2,4,17 and 18 were not effected by the appellant. The appellate authority may be pleased to direct the assessing authority to call for and verify the related sale bills from the respective consignees.
7. The assessing authority ought to have found that there is no enabling provision in section 11 to reject the claim of IPT if the purchase is supported by bill in form No.8 issued by a live registered TIN dealers. In the case of the appellant the IPT claim against purchase bill No.AB 83 dated.27.05.2014 is in order as the invoice in question is in Form No.8 issued by a live registered TIN dealer. The Hon'ble High Court of Madras in the case reported in (2008) 24 KTR 481 Mad (ABL Trader Vs Commercial Tax Officer) held that denying IPT credit just because of the selling dealer has failed to report the same in the return is totally incorrect. Thus the IPT claim disallowed of Rs.1,292/- may be given credit.
8. For the above and other grounds urged at the time of hearing it is prayed that the appeal may be allowed.

2015-16

1. The order of assessment is opposed to law, facts and circumstance of the case.
2. The assessing authority ought to have considered the detailed reply failed in response to the pre-assessment notice in toto.
3. The assessing authority ought to have accepted the fact that the purchase from Vaidayanparampil Colour World as per bill No.751 dated.17.12.2015 was not effected by the appellant. The assessing authority ought to have examined the consignor in the presence of the appellant, after obtaining copy of the sale bill issued by him since KVATIS data used against the appellant is a 3rd party evidence. Not only that such an enquiry is warranted to prove the burden for the appellant that the purchase was not effected by him.
4. As regards the 6 sales alleged to have been effected by the appellant as listed out at page 4 of the assessment order (listed as Sl.Nos.1,2,3, 4,5 and 27) the assessing authority ought to have found that the sales coming out under Sl.No.2,3,4 and 5 were effected by M/s.C.B. Electricals TIN No.32040214604 (Necessary evidences enclosed). The remaining 2 sales were not effected by the appellant. It is prayed that the assessing authority may be directed to call for the copies of sale bills from the respective consignee and to take decision in the matter.
5. The assessing authority ought to have found that there is no enabling provision in Sec.11 to reject the claim of IPT credits if the purchase is supported by bill in form No.8 issued by a live registered TIN dealer. In the case of the appellant the IPT claim in respect of purchase Bill No.65 dated.06.05.2015 and 525 dated.23.12.2015 is in order as the purchases are supported by bill in Form No.8 issued by registered TIN dealers. The Hon'ble High of Madras in the case reported in (2008) 24 KTR 481 Mad (ABL Traders Vs Commercial Tax Officer) held that denying IPT credit just because of the selling dealer has failed to report the same in the return is totally incorrect. Thus the IPT credit disallowed of Rs.930.78/- may be given credit.
6. For the above and other grounds canvassed at the time of hearing, it is prayed that the appeal may be allowed.

2016-17

1. The order of assessment is opposed to law, facts and circumstance of the case.

2. As regards the 10 purchases stated to be unaccounted as listed out at page 5 of the assessment order, none of the purchases except item No.8 was effected by the appellant. The assessing authority ought to have examined the concerned consignees in the presence of the appellant after obtaining the related sale bills issued by them since KVATIS data used against the appellant is 3rd party evidence. Not only that such an enquiry is warranted to prove the burden for the appellant that the purchases were not effected by him.

In the case of purchase against Sl.No.8 (Bill No.CA 200 dated.02.07.2016) the goods are not meant for resale. This has been accounted under the head "expense".

3. The assessing authority ought to have found that the listed out 4 sales (at page 5 of the assessment order) were not effected by the appellant. The bill Nos. mentioned therein are not related to the appellant. It is prayed that the assessing authority may be directed to call for the copies of sale bills from the respective consignees and to take decision in the matter.
4. The assessing authority ought to have found that there is no enabling provision in sec.11 to reject the claim of IPT credit if the purchases are supported by bills in Form No.8 issued by live registered TIN dealers. In the case of the appellant the entire purchases are from registered TIN dealers on the strength of Form No.8 bills.

The Hon'ble High court of Madras in the case reported in (2008) 24 KTR 481 Mad (ABL Traders Vs Commercial Tax Officer) held that denying IPT credit just because of the selling dealer has failed to report the same in the return is totally incorrect. Thus the IPT credit disallowed of Rs.3,055/- may be given credit.

5. For the above and other grounds urged at the time of hearing it is prayed that the appeal may be allowed.

Sri.D. John Tharakan, Sales Tax Practitioner, appeared and heard the case and argued based on grounds of appeal.

The subject matter of the appeal cases filed are common in nature, hence these are disposed in a common order.

Heard the cases. On going through the arguments of the authorized representative and assessment order and the documents produced at the time of hearing, it is noted that out of the the alleged transactions

mentioned in the assessment order most of them are allowed by the assessing authority, but the appellant/dealer was not satisfied with the same, hence he prayed that the case may be set-aside. Considering the arguments and facts of the case, I am of view that a cross verification is needful in this case, because the authorized representative has produced the documents and randomly checked the same and found that they have two firms engaged in the business named C.B. Electricals and C.B. Traders. They have accounted the transactions by mistake and are basically reflected in the books of accounts, hence a detailed verification is needful in this case. Hence the assessing authority is directed to cross verify the records and pass orders on merit. The appellant shall produce the records before the assessing authority within 30 days of receipt of this order. Order accordingly.

Result: 2014-15, 2015-16 & 2016-17 (Modified)

ASSISTANT COMMISSIONER (APPEALS)
ALAPPUZHA

To The Appellant through a/r

Copy submitted to Joint Commissioner(Law)

Copy submitted to Deputy Commissioner,CT,Alappuzha

Copy to State Tax Officer, Mavelikkara/File