

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	04.02.2020
Appeal no	:-	KVATA(ALPY)170/19
From the order of the	:-	AIT&CTO,Kuthiathode
Year of assessment	:-	2013-14
Name of appellant	:-	M/s.Fresh N Cool, Eramalloor
Instituted on	:-	26.03.2019
Date of hearing	:-	21.01.2020

Present for appellant :- Sri.V.Devananda Narasimham, Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment orders of Agrl. Income Tax & Commercial Tax Officer, Kuthiathode, Order No.32041872404/2013-14 dated.26.03.2019. The assessment completed based on OR file and irregularities found on KVATIS scrutiny. The defects found were purchase suppression and excess IPT claim. The assessing authority estimated the suppressed turnover, added back 10% gross profit for the purchase suppression detected and 50% addition for probable omission and suppression in the case of OR file, also disallowed the IPT claim and levied tax plus interest. Against the order, the dealer defend the case on the following grounds.

1. The appellant is a registered KVAT dealer on the rolls of the Commercial Tax Officer, Kuthiathode with TIN No.32041872404, conducting a bakery, sale of ice creams, cool, hot beverages at Eramalloor, Cherthala. He e-filed annual return for 2013-14 U/s.20 of the KVAT Act on 27.06.2014 conceding total and taxable sale turnover of Rs.68,09,103/- (on different tax rates @ 20%, 14.5%, 5% and 1%). The assessment for 2013-14 re-opened U/s.25(1) of the KVAT Act and completed best judgment assessment on the following reasons:-
 - a) **1st issue:** Value of goods involved in OR case on 06.12.2013 was Rs.12,085/- and Security Deposit converted into penalty U/s.47(6) of the KVAT Act after 4 years, i.e. on 22.12.2017, for which value of goods Rs.12,085/- plus 50% of it Rs.6,043/- has been assessed for probable omissions, which is highly arbitrary and contrary in view of Sec.25AA(1) of the KVAT Act, a new section inserted under the

Kerala Finance Act, 2019, classificatory in nature. Hence, 50% addition may be deleted.

- b) **2nd issue:** On scrutiny of monthly returns after 5 years, authority below detected unaccounted purchases for Rs.7,99,062/-, assessed it by adding Gross Profit 10% by fixing taxable turnover at Rs.8,78,968/-. It is highly arbitrary and contrary in view of Sec.25AA (2) (a) of the KVAT Act, a new Section inserted as per the Kerala Finance Act, 2019, classificatory in nature. Hence, appropriate directions may be given to complete assessment for 2013-14 U/s.25AA (2) (a) of the KVAT Act by adding 20% Gross Profit and by allowing IPT credit on such purchases.
- c) **3rd issue:** The authority below, on scrutiny of purchase statement uploaded, detected a sum of Rs.7,66,988/- as shortage in the annual return for the year 2013-14. The appellant was conceded purchases Rs.67,95,908/- in the annual return and Rs.75,62,896/- in form 52 purchase statement. It was an inadvertent clerical mistake while filing monthly return for May 2013, wherein purchase turnover has been typed in Part-C of the return as Rs.56,711.21/- instead of Rs.8,23,699.20/-, resulted in variation of Rs.7,66,988/-, copy of form 10 & 52 uploaded during the month May, 2013 enclosed for perusal & record. However, it is treated as purchase suppression, assessed by adding 10% Gross Profit thereon by fixing taxable turnover at Rs.8,43,687/-, levied tax @ 14.5% with interest in a mechanical and negligent manner. This is a high handed action, irregular and liable to be deleted. Without prejudice, it is submitted that all the purchases from registered dealers, liability to pay tax arises only on the value added portion U/r.16 of the KVAT Rules, 2005, in other words, there was no any such purchase suppression as alleged by the authority below and if it is treated as a purchase suppression, Section 25AA (2) (a) of the KVAT Act is squarely applicable and liable to pay tax only on the value added portion. It may be allowed.
- d) **Interest Demand :** It is a best judgment assessment U/s.25(1) of the KVAT Act. Interest can be demanded on expiry of time stipulated in the notice of demand. Therefore, demand of interest from the end of the assessment year 2013-14, i.e., from 01.04.2014 is never justified, contrary to Section 31(2) & (5) of the Act and law declared by the Hon'ble High Court in **Hotel Doubloon Vs Asst. Commissioner & Ors (2014) 12 KTR 358 (Ker)** and the Hon'ble SC in **Bhai Jaspal Sing Vs The Asst. Commissioner & Others**

(2011) 19 KTR 255 (SC). Hence, demand of interest on the assessed amount for a period from 01.04.2014 to 31.03.2019 is illegal, unsustainable and liable to be deleted.

- e) **Excess IPT Credit:** It is submitted that original purchase bills are available with the appellant. It is not possible to a small dealer to find out veracity of each purchase bill whether the selling dealer had uploaded his sales in KVATIS or remitted tax due to the department etc. The **Hon'ble Supreme Court in the Commissioner of Trade & Taxes, Delhi Vs Arise India Limited (SLP 36750/2017)** on 10.01.2018 held that purchasing dealer is not liable for non-submission of returns and remittance of tax. Therefore, disallowing of IPT credit on purchases, in the absence of uploading of returns by the seller in KVATIS, is not a reason to demand tax again from bonafide purchaser or this appellant, contrary to the law declared by the Apex Court, binding to all the authorities functioning under a statute in India under Article 141 of the Constitution of India. Appropriate directions may be given to the authority below.
2. While passing assessment for 2013-14 U/s.25(1) of the KVAT Act, estimated turnover was apportioned @ 14.5% and 20% without applying 5% and 1% rates. Therefore, apportionment of taxable turnover may be directed to re-fix in an equitable manner in the interest of equity and justice.
 3. On presentation of the Kerala Finance Bill, 2019 on 09.02.2019, it is clear that the Government is intending to provide disciplines to regulate assessment proceedings in an equitable manner to settle all pending cases under KVAT Act to facilitate KSGST Act in its force. The appellant filed an application dated.20.02.2019 requesting to allow such benefits as provided U/s.25AA of the KVAT Act or to keep in abeyance assessment proceedings for the time being. Even though the assessing authority has received such request on 25.02.2019, the assessment was completed in an arbitrary & capricious manner demanding huge amount as tax and interest with a malafide intention or vengeance to punish appellant for unknown reasons by taking adamant stand on 26.03.2019 and **served the assessment order along with demand notice on Sunday, 31.03.2019** itself in person. From such an action, mental attitude, abuse of statutory power and cruel nature of the assessing authority is revealed. This is a clear case of flagrant violation of procedures or denial of statutory benefits declared by the Government to dealers. **Thus, the assessing authority intentionally created discrimination,**

treating un-equals equally, violating principles of Article 14 of the Constitution of India, equality before law. It is prayed that the benefits declared U/s.25AA of the KVAT Act may be directed to allow to the appellants also in the interest of equity and justice.

For these and such other reasons those may be raised at the time of hearing, it is prayed that appeal for the year 2013-14 may be allowed in view of provisions contained in Section 25AA of the KVAT Act in order to settle my tax liability if any by opting the Amnesty Scheme declared by the Government in the Kerala Finance Act, 2019 or issue appropriate orders or directions to the assessing authority just and equitable to do justice in the interest of equity and justice.

Sri.V. Devananda Narasimham, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. The authorized representative argued that clerical mistake had happened by the appellants while filing of return and Form 52 purchase statement. At the time of hearing, the appellants/authorized representative produced the ledger account and copies of returns for my perusal and are randomly checked. Second contention is the rate of tax adopted, in the assessment the authorized representative argued that the assessing authority adopted 14.5% and 20% tax rate. The appellants/dealer engaged in the business of Bakery products having different rates, hence tax in the business is apportioned in the schedule rate, he prayed that further opportunity to produce the documents before the assessing authority. In the above facts and circumstances of the case, it is better to verify the relevant records and ascertain the actual turnover and complete the assessment according to law. In the case of IPT, the appellants shall produce Form 8 purchase invoices and also the copy of sales list of the supplier dealer, and the supplier has remitted tax on the sales, which disclosed as excess purchases of the appellants dealer. The authority shall ensure that there should not have been any collusion between appellants and supplier dealer in this case and thereby no revenue loss to the Government exchequer, and also contain the decision of the Hon'ble Supreme Court in **Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and Others (TS-2-SC-2018-VAT)**. The assessing authority is directed to cross verify the records in the case of purchase, and

ascertain the actual turnover and apportion the tax rate at schedule rate and revise the order accordingly.

In the result the order modified as discussed above.

Result: 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 AIT&CTO,Kuthiathode/File