

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES, ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	01.02.2020
Appeal no	:-	KVATA(ALPY)143/19
From the order of the	:-	State Tax Officer, Harippad
Year of assessment	:-	2014-15
Name of appellant	:-	M/s.Kerala State Civil Supplies Corporation, Taluk Depot, Harippad
Instituted on	:-	26.03.2019
Date of hearing	:-	11.12.2019
Present for appellant	:-	Sri.Alan Priyadarshi Dev, Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Harippad, Order No.32041230041/2014-15 dated.26.03.2019. The assessment completed based on KVATIS scrutiny. The irregularities found were purchase and sales suppression and absence of records in commission received. The assessing authority estimated the above suppressed turnover, added back 0.25% gross profit for suppressed purchase, also added the sales suppression and in the absence of records in commission received and levied tax plus interest. Aggrieved by the order, the dealer defend the case on the following grounds.

1. The order passed by the learned Assessing Officer (AO), U/s.25(1) of the KVAT Act, 2003 is opposed to law, facts and circumstances of the case and hence it is illegal and liable to be set aside. The order, if allowed to stand, would occasion a travesty of justice and cause irreparable loss and hardship to the appellant.
2. At the outset, it is respectfully submitted that, after the 101st constitutional amendment, the erstwhile KVAT Act, 2003 is no more legally valid and it is inoperative as on the date of the disputed assessment order and hence the same is passed without legal sanction an void abinitio. The impugned assessment order dated.26.03.2019 is, in fact, unconstitutional since GST officers have no power to proceed under the KVAT Act post 15.09.2017.

3. The appellant is a limited company and a public sector undertaking functioning under the Government of Kerala and was a registered dealer under the erstwhile Kerala Value Added Tax Act, 2003, engaged in trading of essential items for the general public at controlled prices.
4. It is respectfully submitted that, the disputed proceedings of assessment is based on the allegations such as that **(a)** there is difference in purchase turnover to the tune of Rs.1,79,83,663.00/- between annual return [Rs.37,84,33,541.55/-] and the books of accounts (P&L) filed for the year (Rs.39,64,17,204.14/-) **(b)** there is difference in sales turnover to the tune of Rs.70,63,108,85.00/- between annual return (Rs.39,08,87,740.37/-) and the books of accounts (P&L) filed for the year (Rs.39,79,50,850.00/- and **(c)** the miscellaneous income received for Rs.1,66,885.00/- in the depot is assessable to tax.
5. The appellant has filed returns promptly and paid tax accordingly. Copies of the annual return & Profit and Loss accounts filed for the year are produced herewith and marked as **Annexure-A & A1** respectively.
6. Regarding alleged difference in purchases (For Rs.1,79,83,662.59/-) it is explained in a tabular form as below;

Sl.No.	Particulars	Differential Amount
1	In July/2014 while monthly return filed, the actual purchase turnover for 0% items was entered wrongly as Rs.14,50,688.44/- instead of the correct turnover of Rs.1,45,06,883.44/- having a difference of Rs.1,30,56,195.00/-	1,30,56,195.00
2	Medicine transfer in short return (Exempted item since paid tax on MRP by the sellers)	5,94,322.00
3	PDS Atta in short return	8,55,000.00
	0% taxable purchase of vegetables, pappadam, Jiggery, aval, unbranded rice products etc	34,78,145.59
	Total	1,79,83,662.59

7. Here, it is very pertinent to note that the items included in the above list are exempt from tax and as such there is no taxable consequence in this connection.
8. Regarding alleged difference in sales (For Rs.70,63,108,85.00/-) it is also explained in a tabular form as below;

Sl.No.	Particulars	Differential Amount
1	PDS exempted sales	18,82,950.00
2	Onam Special Market Sales	28,95,210.00
3	0% taxable sales of vegetables, pappadam, Jiggery, aval, unbranded rice products etc	22,84,948.85
	Total	70,63,108.85

9. Thus, the differential sales turnover also represents exempted turnover and as such the assessment in this regard is also unwarranted and untenable.
10. The miscellaneous income received for Rs.1,66,885.00/- is in no way would form part of the sales turnover and therefore not assessable to tax.
11. Levy of interest is also illegal and unsustainable since the assessment itself has no legs to stand.
12. In the circumstances narrated above it is most respectfully prayed that this Learned Deputy Commissioner (Appeals) may be pleased to: **(a) Set aside the impugned order dated.26.03.2019 and demand notice issued by the respondent for the year 2014-15 (b) Grant a personal hearing and (c) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.**

Sri.Alan Priyadarshi Dev, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. The appellant argued that a major portion of difference seen between annual return with 13&13A are 0% taxable goods. So a detailed verification of allegation levelled against the appellant is unnatural. The assessing authority was in wrong assessment for

commission received on the sale of medicine which is reflected in accounts. The assessing officer shall verify, quantity of 0% goods, and also the commission received based on such goods, re-examination and delete from assessment from the result of verification. The assessing authority is directed to cross verify the offence stated in the assessment order and redo the assessment according to rule 38 of the KVAT Act & Rule. In the result the appeal stands modified as discussed above. Order accordingly.

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 State Tax Officer, Harippad/File