

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	22.02.2020
Appeal no	:-	KVATA(ALPY)186&187/19
From the order of the	:-	State Tax Officer, Harippad
Year of assessment	:-	2014-15&2016-17
Name of appellant	:-	M/s.Master Group of Companies,Kayamkulam
Instituted on	:-	30.06.2019
Date of hearing	:-	20.01.2020
Present for appellant	:-	Sri.Abdul Lathief.H., Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeals are filed against the assessment orders of State Tax Officer Harippad, Order No.32041239039/2014-15 and 2016-17 dated.30.06.2019. The assessment completed based on OR files received from Intelligence Wing and KVATIS scrutiny. The defects found were unaccounted purchases and sales. The assessing authority estimated the turnover, added back unaccounted purchase and sales, and 15% gross profit in the case of unaccounted purchase, and again added suppression detected in the case of OR file, and equal amount added for probable omission and suppression for the above detected offence and levied tax plus interest for the year 2014-15. For the year 2016-17 the assessing authority added back 15% gross profit and two times addition in the case of OR file, also added unaccounted sales and levied tax plus interest. Aggrieved by the orders, the dealer defend the cases on the following grounds.

2014-15

1. The order of assessing authority in so far as it estimates and assesses a turnover of Rs.461286.25/- other than what was conceded for the year 2014-15 is against the law facts and circumstances of the case.

The accounts and the returns filed in support thereof for the year 2014-15 are alleged to be defective for the following reasons:-

- I. The Commercial Tax Inspector, Commercial Tax Check Post, Kumali while conducting vehicle checking at check post at 13.30 Hrs. On 05/02/2015 intercepted and checked Lorry No.KL.294/6348 which was found transporting cement under the cover of documents which appeared to be not genuine and valid on the reason that as per the notice, it is ascertained that the consignee has transported 420 bags of cement from Dhandapani Cements Pvt. Ltd., S. Pudur, Trichy TIN No.33953481384 to M/s.Master Group of Companies, Kayamkulam TIN No.32041239039C. The purchase cost mentioned in the invoice is Rs.200/- per packet. On physical verification, of the load, it is noticed that the maximum retail price emphasized as Rs.390/- per packet. On local enquiry in the nearby markets, it is ascertained that the sale value of Dhandapani Cement per packet varies from 380 to 390.

Hence the differential value of 420 packets were estimated at Rs.63450/- for which a security paid Rs.18,400/-. The enquiry revealed where the dealer had failed to prove the veracity of consignment in question and found that the defect still exists.

- II. Unaccounted sales : It is seen that you had effected un-accounted sales to the tune of Rs.103712/- which is liable to be taxed.
- III. Unaccounted purchases : It is seen that you had effected unaccounted purchases to the tune of Rs.26375/- which is liable to be taxed.
2. In respect of 1st defect it is submitted that the security deposit was paid under duress. The inspection wing has to evidence that the sale value of cement under consignment was below the market price. The value was estimated without any base.
3. In respect of defect No.2 it is submitted that the assessing authority has not supplemented any bill wise details in respect of allegation of

sales suppression to the tune of Rs.103712/-. Hence the appellant was not in a position to file a formal objection in this regard.

At this juncture it is also pertinent to note the decision rendered in the case of Abdul Nazar Vs. Commercial Tax Officer and ORS (2016) 24 KTR 295 (Ker). It was observed by the Honourable High Court of Kerala as under.

“It is trite that when the department seeks to rely on material that has not been put to the petitioner previously, then an opportunity must necessarily be given to the petitioner to counter the same before placing reliance on the said material”

Hence the appellant is entitled to have a reasonable opportunity of cross verification of details in which reliance was reposed by assessing authority in concluding sales suppressions.

4. In respect of defect No.3 it is submitted that the assessing authority has not supplemented any bill wise details in respect of allegation of purchase suppression to the tune of Rs.26375/-. Hence the appellant was not in a position to file a formal objection in this regard.

The decision cited above is also squarely applicable in the instant situation.

5. It is also submitted that the books of accounts have been maintained as true and correct as insisted U/s.40 of the KVAT Act during the relevant period. The addition sustained to the tune of Rs.230643/- on the presumption of purchase and sales suppression to the tune of Rs.230643/- is without any base. The addition is sustained on mere presumption. There is no justification for such a huge addition based on mere presumption. It has a cascading effect as far as appellant is concerned. The addition is quite illegal.

In the case of Vettukuzhy Traders Vs. State of Kerala (2010) 18 KTR 227 (Ker), it was observed by the Hon'ble High Court that “It is on a rational basis that a best judgment assessment could be made. The best judgment assessment passes by the assessing authority cannot

replaced by this court by yet another best judgment assessment, unless the assessment is wholly arbitrary and whimsical”

Hence the turnover estimated and addition sustained on account of purchase and sales suppression is quite illegal.

6. At this juncture kind attention is also invited to the provision contained in the Finance Bill 2019 with respect to general disciplines related to assessment as provided U/s.25AA.
 - I. In case of assessments initiated from the scrutiny of electronically filed returns, annexures and other declarations:-
 - a) With respect of unaccounted purchases from registered dealers within the State by dealers, notwithstanding anything contained in this Act, input tax credit shall be granted on such purchases, provided the dealers admits such purchases. In such cases assessment shall be completed by adding 20 per cent gross profit on the purchase value.
 - b) In case of detection of suppression or variation in inter-state purchases, inter-state stock transfers, import and purchases from unregistered dealers, 25 per cent gross profit shall be added to such purchases for arriving at the sale value and assessed to tax.

If sales suppression is detected, only the differential turnover between the suppressed turnover and the turnover conceded shall alone be assessed.

It is also pertinent to note that the appellant was in receipt of the assessment order on 19.08.2019 in the circumstances while the provision contained U/s.25AA was in effect. Moreover the assessment order appears to have passed on 30.06.2019. hence the assessment order is unsustainable in the wake of introduction of Section 25AA through the Kerala Finance Bill 2019 and the provision is in operation with effect from 01.04.2019.

Alternatively, the appellant is also desirous of completion of assessment as envisaged under the above provision. Hence it is

prayed that an opportunity may also be afforded to the appellant to have completed the assessment afresh under the scheme envisaged in the provision contained in Section 25AA.

7. It is submitted that the interest levied to the tune of Rs.34781/- is unsustainable since there is no failure on the part of the appellant either to pay the tax admitted/due other than the demand now illegally created. Hence interest has to be waived.

In these circumstances the appellant has no other efficacious remedy other than preferring this appeal. It is therefore prayed that the impugned order may be set aside or suitably modified.

2016-17

1. The order of assessing authority in so far as it estimates and assesses a turnover of Rs.277359/- other than what was conceded for the year 2016-17 is against the law facts and circumstances of the case.

The accounts and the returns filed in support thereof for the year 2016-17 are alleged to be defective for the following reasons:-

- I. The Commercial Tax Inspector Commercial Tax Check Post, Kumily while conducting checking of goods vehicles on 27.10.2016 (23.12 hrs) at the Check Post intercepted a goods vehicle bearing registration No.KL-29H/6348 loaded with 'cement' and after physical verification the Commercial Tax Inspector found that the consignment was transported with undeclared excess stock.

The goods were detained suspecting evasion of tax and later allowed to be transported on furnishing security deposit amounting to Rs.4880/- vide receipt No.220846 dated.28.10.2016.

The enquiry conducted by the Intelligence Officer revealed that an attempt has been made by the dealer to evade payment of tax. Hence orders were passed converting security deposit towards penalty vide Order No.OR.549/2016-17 dated.18.05.2018.

II. On scrutiny in KVATIS it has come to the notice that the following invoice was not seen accounted.

Invoice No.	Date	Dealer Name	Amount
489	28/3/2016	M/s.Mulberry Tiles Sanitary Hardwares	Rs.46899/-

2. In respect of 1st defect it is submitted that the security deposit was paid under duress. The inspection wing has no evidence of having excess stock. The value was estimated without any base.
3. In respect of defect No.2 it is submitted that the sale has been duly accounted then and there and is verifiable.
4. It is also submitted that the books of accounts have been maintained as true and correct as insisted U/s.40 of the KVAT Act during the relevant period. The addition sustained to the tune of Rs.277359/- on the presumption of suppression of turnover is without any base. The addition is sustained on mere presumption. There is no justification for such a huge addition based on mere presumption. It has a cascading effect as far as appellant is concerned. The addition is quite illegal.

In the case of Vettukuzhy Traders Vs. State of Kerala (2010) 18 KTR 227 (Ker), it was observed by the Hon'ble High Court that "It is on a rational basis that a best judgment assessment could be made. The best judgment assessment passes by the assessing authority cannot be replaced by this court by yet another best judgment assessment, unless the assessment is wholly arbitrary and whimsical"

Hence the turnover estimated and addition sustained on alleged suppression of turnover is quite illegal.

- I. At this juncture kind attention is also invited to the provision contained in the Finance Bill 2019 with respect to general disciplines related to assessment as provided U/s.25AA.

1. In case of assessments initiated from the scrutiny of electronically filed returns, annexures and other declarations:-
 - a) With respect of unaccounted purchases from registered dealers within the State by dealers, notwithstanding anything contained in this Act, input tax credit shall be granted on such purchases, provided the dealers admit such purchases. In such cases assessment shall be completed by adding 20 per cent gross profit on the purchase value.
 - b) In case of detection of suppression or variation in inter-state purchases, inter-state stock transfers, import and purchases from unregistered dealers, 25 per cent gross profit shall be added to such purchases for arriving at the sale value and assessed to tax.

If sales suppression is detected, only the differential turnover between the suppressed turnover and the turnover conceded shall alone be assessed.

It is also pertinent to note that the appellant was in receipt of the assessment order on 19.08.2019 in the circumstances while the provision contained U/s.25AA was in effect. Moreover the assessment order appears to have passed on 30.06.2019. Hence the assessment order is unsustainable in the wake of introduction of Section 25AA through the Kerala Finance Bill 2019 and the provision is in operation with effect from 01.04.2019.

Alternatively, the appellant is also desirous of completion of assessment as envisaged under the above provision. Hence it is prayed that an opportunity may also be afforded to the appellant to have completed the assessment afresh under the scheme envisaged in the provision contained in Section 25AA.

5. It is submitted that the interest levied to the tune of Rs.11261/- is unsustainable since there is no failure on the part of the appellant either to pay the tax admitted/due other than the demand now illegally created. Hence interest has to be waived.

In these circumstances the appellant has no other efficacious remedy other than preferring this appeal. It is therefore prayed that the impugned order may be set aside or suitably modified.

Sri.Abdul Lathief. H., Advocate, appeared and heard the cases and argued based on grounds of appeal.

The subject matter of these two appeal cases are same. Hence disposed in a common order.

Heard the cases. I have gone through the arguments and records along with the appeal files. In the case of alleged purchase and sales transactions, the appellant has not produced any documentary evidences to substantiate the alleged transactions at the time of hearing. The appellant/dealer prayed that they are willing to follow the Finance Act U/s.25AA of KVAT Act, hence allow the same on merit and reduce the addition in the case of OR file. Considering the arguments of the authorized representative I am of view that the addition adopted in the case of offence detected by the Intelligence Wing is in excessive. Hence it is reduced to 50% of the same for the year 2014-15 and equal addition for the year 2016-17. In the case of alleged purchase and sales suppression detected, the assessing authority is directed to follow the provision contained in the Finance Act 2019 U/s.25AA of the Act and pass orders 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