

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	11.02.2020
Appeal no	:-	KVATA(ALPY)141/19
From the order of the	:-	State Tax Officer, Chengannur
Year of assessment	:-	2014-15
Name of appellant	:-	M/s.Meera Stores, Mannar,Alappuzha
Instituted on	:-	26.04.2019
Date of hearing	:-	15.01.2020

Present for appellant **:-Sri.G. Vijayan,Sales Tax Practitioner**

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Chengannur, Order No.32040279044/2014-15 dated.26.04.2019. The assessment completed based on KVATIS scrutiny and three OR files received from Intelligence Wing, investigation branch Kollam. The irregularities found were purchase suppression (local & interstate) and sales suppression. The assessing authority estimated the suppressed turnover for the above detected offence, added back 2% gross profit for local and interstate purchase suppression, and equal addition added for probable omission and suppression for the above detected offences. Aggrieved by the order, the appellant/dealer defend the case on the following grounds.

1. The impugned assessment order is highly opposed to law, facts and circumstances of the case, and hence the same is liable to be set aside.
2. The assessing authority fell in gross error in discrediting the return for 2014-15 and in proceeding for a wild assessment. She ought not to have resorted to a best judgment without verifying the books of accounts and relevant records kept by the appellant.
3. The assessing authority ought to have seen that the appellant has not practiced any unaccounted purchase or sales or evaded tax which warrants an escaped assessment U/s.25(1) of the act.

4. The subject matter for the impugned assessment is three OR files viz. OR 680L 2014-15 dated.15.03.2018, OR No - 680K/2014-15 dated.15.03.2018 and OR No - 624/2014-15 dated.15.03.2018 wherein collection of security deposit of Rs.9000/-, Rs.22,500/- and Rs.11,880/- respectively were made by the Inspecting Officers attached to Squad No.II, Alappuzha at Chengannur.
5. The appellant has been repeatedly submitting before the Inspecting Officers as well as before the assessing authority with the support of documentary evidences like books of accounts that they have not resorted to any clandestine transactions which lead to collection of security deposit and subsequent conversion of it into penalty by the Intelligence Officer at the adjudicating stage of the case.
6. The assessing authority has stucked on to the illegal findings of the Inspecting Officers and the Intelligence Officer who disposed the case without considering the merits of the case in a judicious manner.
7. In regard to the above action on the part of the authorities below, the appellant has got convincing explanations pointing to the fact that they have not resorted to any clandestine transactions by effecting the impugned transportation of good which are enumerated below:-
 - The allegations raised in the above 3 OR cases are absolutely baseless and against the factual position.
 - The entire purchase effected by the appellant during the year are from genuine VAT dealers both outside and inside the state, supported by valid invoices.
 - The alleged purchases are duly accounted by the appellant and figured in the return filed by them for the respective periods.
 - Actually the impugned movement of goods were effected by the appellant to Karunagapally to keeping them in the warehouse situated there with an intention of subsequent sale of those items to local dealers by issuing sale bills strictly in accordance with the provisions of the KVAT Act and Rules made there under.
 - Both the Intelligence Officer who imposed penalty on the appellant and the assessing authority who relied on the same for assessment

missed to advert to the crucial facts of the case in a judicious manner.

8. The assessing authority ought to have seen that the Intelligence Officer as adjudicating officer in the above OR cases has inferred the allegation based on his own findings without cogent reason, enquiry etc.
9. The assessing authority ought not to have mechanically pressed into service the infirm and illegal findings of the Intelligence Officer without independently evaluating the facts of the case in judicious manner but in a "Cut & Paste manner" as held by the Jurisdictional High Court in Velimparambil Hardwares case reported in 92 STC 98, Yeses International Vs State of Kerala reported in (2009) 23 VST 130 (KER).
10. In regard to the unaccounted purchase turnover of Rs.1,53,712/-, it is submitted that:-
 - The above allegation is absolutely baseless and against the factual position.
 - The entire purchase of goods effected by the appellant during the year are from genuine dealers both from inside and outside the state supported by valid invoices.
 - Tax at the applicable rate collected by the sellers of goods from the appellant and remitted to the state also.
 - The dealers involved in the alleged cases of unaccounted purchases are
 1. M/s.Kulangara Traders
 2. M/s.Nirakkoottu Traders
 3. M/s.S.D. Medicals

Based on the above allegations and on enquiry made with the above sellers of goods involved in the alleged cases, it is seen found that certain mistakes/omissions had happened at their end while preparing their sales statement for the months of 07/2014, 8/2014 and 12/2014. In the above 3 cases the sellers, in their uploaded sales lists, have mistakenly mentioned the name of the purchasers as

the appellant in the place of the actually purchasers of goods involved in those cases. Consequently, the KVATIS portal

mismatched the entries in those cases which resulted in the present state of affairs. Declarations to the above effect obtained from the above dealers evidencing the above factual position are submitted for kind perusal by Assistant Commissioner(Appeals).

11.In regard to the allegation of unaccounted interstate purchase of Rs.6,68,900/- it is submitted that:-

- The above allegation is absolutely baseless and against the factual position.
- The entire purchase of goods effected by the appellant during the year are from genuine dealers both from inside and outside the state supported by valid invoices.
- All the alleged cases of purchases involved in the above cases amounting to Rs.6,68,900/- are the appellant's purchase from M/s.Aachi Masala Foods Pvt Ltd. Chennai.
- The appellants have correctly and truly included the above purchases in their books of accounts, returns and uploaded purchase statement for the months of 06/2014, 08/2014 and 11/2014.
- The invoice numbers appeared in the orders of assessment seems to be not correct (copies of invoices submitted).

<u>Invoice Nos. figured in KVATIS/Date</u>	<u>Actual Nos. assigned in the invoices received from the sellers.</u>
4208/16.08.2014 for Rs.1.59	C 51242/16.08.2014 for Rs.1,58,998/-
4207/16.08.2014 for Rs.2.429	C 51243/16.08.2014 for Rs.2,42,875/-
No number/24.06.2014 for Rs.0.142	C 50724, C 5364/24.06.2014 for Rs.1,05,570/- and Rs.2,111/- respectfully
JJ5014&C-52228, C-52253/30.11.2014 for Rs.2.528	C 50723/24.06.2014 for Rs.2,57,216/-

12. In regard to the allegation of unaccounted sales of Rs.10,27,823/- it is submitted that:-

- The above allegation is absolutely baseless and against the factual position.
- The entire sale of goods effected by the appellant during the year are truly and correctly brought to accounts and included in the returns filed for the respective periods.

13. The appellant, with supporting evidences explain the above factual position as enumerated below:-

Sl.No.	Dealer Name	Inv.No./Date	Amount	Explanations
1	Ramco Agencies	51ca/21.04.2014	800.10/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
2	Ramco Agencies	22ca/05.04.2014	5,051.83/-	Capital letters are used by the appellant whereas small letters used by the purchasers.
3	Ramco Agencies	121ca/09.05.2014	5,924.82/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
4	Ramco Agencies	945CA/20.10.2014	6,549.09/-	No difference
5	Ramco Agencies	90CA/26.04.2014	7,439.66/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned as one

				entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%.
6	Ramco Agencies	51ca/21.04.2014	7,475.28/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
7	Ramco Agencies	130ca/12.05.2014	1,560.30/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
8	Ramco Agencies	90CA/26.04.2014	1,560.30/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%.
9	Ramco Agencies	34ca/11.04.2014	9,441.16/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
10	Ramco Agencies	121ca/09.05.2014	2,340.45/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and

				the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
11	Ramco Agencies	34ca/11.04.2014	2,400.30/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
12	Ramco Agencies	245ca/22.05.2014	14,324.33/-	No difference, capital letters are used by the appellant whereas small letters used by the purchasers.
13	Ramco Agencies	847CA/04.09.2014	3,120.60/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%.
14	Ramco Agencies	935CA/13.10.2014	3,346.35/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%.
15	Ramco Agencies	935CA/13.10.2014	16,474.22/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%.
16	Meera Stores	A24/04.04.2014	16,615/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the

				appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
17	Ramco Agencies	130ca/12.05.2014	17,392.64/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%. so also capital letters are used by the appellant whereas small letters used by the purchasers.
18	Ramco Agencies	101ca/29.04.2014	17,600.77/-	No difference, capital letters are used by the appellant whereas small letters used by the purchasers.
22	Ramco Agencies	915CA/04.10.2014	18,899.63/-	No difference.
23	Meera Stores	A1046/22.01.2015	27,508.25/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
24	Ramco Agencies	847CA/04.09.2014	30,248.49/-	Different tax rated goods. In the uploaded purchase list appellant mentioned as one entry whereas the sellers mentioned the entries twice i.e. one for 5% and the other for 14.5%.
25	Meera Stores	A65/14.04.2014 <u>Finance Act 2019</u> <u>u/s.25AA.</u>	1,81,672/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the

				appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
26	Meera Stores	A997/10.01.2015 <u>Finance Act 2019</u> <u>u/s.25AA.</u>	75,548/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
28	Meera Stores	A1151/14.02.2015	91,514/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
29	Meera Stores	A665/14.10.2014	99,620/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
30	Meera Stores	A784/12.11.2014	1,05,387.94/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.

31	Meera Stores	A1238/12.03.2015	1,48,590/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.
32	Meera Stores	A26/05.04.2014 <u>Finance Act 2019</u> <u>u/s.25AA.</u>	1,66,674/-	This is actually the appellant's purchase from M/s.Anu Agencies, Kayamkulam (32040978344). The sellers mistakenly happened to mention this sale of theirs to the appellant as purchase to them. Resultantly, KVATIS mismatched the entries.

14. Without prejudice to the above, it is submitted that the estimation of sales turnover by adding equal amount of the alleged estimated unaccounted sales turnover is shockingly arbitrary bearing no reasonable nexus to the actual alleged suppression, that the alleged suppression is entire and total for the whole year and hence the turnover estimated over and above the alleged suppression towards probable omission and suppression has no nexus with the actual and is against the rulings of the Hon'ble High Court of Kerala in Roy Jacob Vs State of Kerala reported in (2002) 128 STC 256 (Ker).

15. The assessing authority ought not to have levied interest on the tax for the period prior to service of demand notice. Levy of interest is against the settled legal position that interest will accrue only if there is real escape of turnover and tax as held in Chandramani Traders Vs State of Kerala reported in (2008) 16 BST 294 (Ker) and State of Kerala Vs Western India Cosmetics and Health Products reported in (2010) 18 KTR 414 (KER).

Sri.G. Vijayan, Sales Tax Practitioner, appeared and heard the cases and argued based on grounds of appeal and submitted the documents in connection with the case.

Heard the case. I have gone through the arguments and records submitted at the time of hearing. It is noted that the alleged purchase transactions are not effected by the appellant, the declarations obtained from the seller are submitted to prove the case except Rs.41850/- (Kulangara Traders). This part is to be accepted on merit. Secondly the interstate purchase transactions, it is argued that these are accounted. Invoice copies and ledger copies are submitted for my perusal. Third contention is alleged sales. The sales are accounted in their books of accounts, these are entered as single entry. Hence the assessing authority has to cross verify the same and allow on merit. Another contention is equal addition added for probable omission and suppression for the detected offence. The addition adopted in the case of OR files is a little high, hence it is reduced to 50% of the same. The assessing authority is directed to scrutinize the above offences detected and accept and allow on merit and also summarized the addition adopted in the case of alleged transactions. If not traced out/accepted, the assessing authority has to follow the Finance Act 2019 u/s.25AA. In the result the assessment is 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, Chengannur/File