

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	13.02.2020
Appeal no	:-	KVATA(ALPY)217/19
From the order of the	:-	State Tax Officer, Kayamkulam
Year of assessment	:-	2013-14
Name of appellant	:-	M/s.Modern Agencies, Kayamkulam
Instituted on	:-	27.07.2019
Date of hearing	:-	20.01.2020
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Present for appellant	:-	Sri.Abdul Lathief.H., Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Kayamkulam, Order No.32040921982/2013-14 dated.27.07.2019. The assessment completed based on irregularities found on KVATIS scrutiny and OR file received from Intelligence Wing. The defect found was purchase suppression (local and Interstate) and excess IPT claim. The assessing authority estimated the turnover, added back 20% and 25% gross profit on unaccounted local and interstate purchase suppression respectively, added 25% gross profit in the case of OR file, again added 50% addition for probable omission and suppression for the above defects, also disallowed the IPT claim and levied tax plus interest. Aggrieved by the order, the dealer defend the case on the following grounds.

1. The order of assessing authority in so far as it estimates and assesses a turnover of Rs.1294260/- other than what was conceded for the year 2013-14 is against the law facts and circumstances of the case.

The accounts and the returns filed in support thereof for the year 2013-14 are alleged to be defective for the following reasons:-

- I. The Intelligence Inspector, Squad No.VII, Palakkad, while conducting vehicle checking at Palakkad the Vehicle No.TN52 Z 1670 checked and detained the consignment transported which was transporting Novelties without accompanying documents prescribed U/s.46(3) of the KVAT Act 2003 for the following reasons.

“The consignment contains other goods also in addition to the goods declared vide the invoice. Hence the value of the goods estimated at Rs.5500/- and Security Deposit demanded for the differential value”

However the goods were released after collecting security deposit for Rs.975/-. Later the Intelligence Officer, Squad No.II, Alappuzha at Chengannur after conducting necessary enquiries, converted the security deposit collected into penalty and the related OR file was forwarded to this office for further proceedings.

On verification of the OR file, it is revealed the dealer transported excess quantity goods with an intention to evade the payment of tax due.

- II. Alleged Unaccounted local purchases as listed in the notice from serial No.1 to 10. Total purchase value Rs.91302.32/-.
 - III. Alleged Unaccounted interstate purchases as detailed in the notice for a total amount of Rs.5.936 lakhs.
 - IV. Irregular IPT Credit of Rs.27,852/- in respect of 59 purchases as listed in the notice from Serial No.1 to 59.
2. In respect of first allegation it is submitted that this security deposit was paid under duress so as to get the goods released. There was no major allegation of having suppressed the turnover. It is also submitted that the corresponding purchase was duly accounted.
 3. In respect of second and third allegation, the appellant had reiterated the provisions contained under Section 25AA of the KVAT Act introduced through Kerala Finance Bill 2019 which is reproduced as under.

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 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.

4. In respect of interstate purchases alleged to have suppressed (value Rs.593600/-), the assessing authority had assessed the turnover at Rs.7,42,000/- adding 25% Gross Profit (as provided U/s.25AA) inspite of the fact that following purchases actually pertain to the year 2014-15 which were duly accounted then and there. Copies of uploaded list also submitted herewith.

Invoice No	Date	Supplier	Amount (In lakhs)	Remarks
40	21/3/14	Bhimsain	0.242	Duly accounted during 2014-15
269	22/3/14	Brothers Fancy	0.034	-do-
3063	22/3/14	Famous Sales	0.016	-do-

		Corporation		
2434	27/3/14	Friends Bangles	0.032	-do-
2433	25/3/14	Friends Bangles	0.046	-do-
D11	21/1/14	Kerala Stores	0.03	Duly accounted during 2013-14
53	9/3/14	M.S. Plastic	0.063	Duly accounted during 2014-15
3592	19/3/14	Maa Bhagavathi	0.057	-do-
743	25/3/14	Maruthi Blastics	0.036	-do-
1968	27/2/14	Meenakshi Sports	0.284	-do-
96	22/3/14	Mohan & Company	0.51	-do-
TSAA2660 7054	15/3/14	Mukesh Traders	0.53	-do-
2656	18/3/14	Prem Praksh	0.048	-do-
1677	13/3/14	Prime	0.044	-do-
12323	19/3/14	RK GUPTACO	0.032	-do-
5365	11/3/14	Ruby Plastic	0.507	-do-
5379	14/3/14	Ruby Plastic	0.442	-do-
5430	27/3/14	RUBY PLASTIC	0.292	-do-
3	10/3/14	RUPMIRAL	0.019	-do-
3517	22/3/14	Sharupchand	0.145	-do-

		Sureshkumar & Co.		
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10592	4/3/	Shee Mahalaxmi	0.021	-do-
5313	20/3/14	Sheravan Stationery Supplies	0.024	-do-
5334	25/3/14	-Do-	0.024	-do-
293	1/3/14	Shreeji P L	0.032	-do-
309	14/3/14	-do-	0.04	-do-
296	4/3/14	-do-	0.077	-do-
1927	10/3/14	SOBAN	0.085	-do-
689	22/2/14	SONAL PLASTICS	0.269	-do-
1807	10/3/14	SREE BALAJI SALES CENTRE	0.044	-do-
1413	12/3/14	SRI SAI TRADING CO.	0.03	-do-
1425	19/3/14	SRI SAI TRADING	0.051	-do-
1429	20/3/14	SRI SAI TRADING CO.	0.039	-do-
222	21/3/14	Swagath Enterprises	0.32	-do-
T5AA26607047	15/3/14	United Plastic	0.061	-do-
3327	10/3/14	V.B. Industries	0.35	-do-

3329	10/3/14	V.B. Industries	0.475	-do-
846	8/3/14	Veer Industries	0.228	-do-
848	8/3/14	-do-	0.135	-do-
870	14/3/14	-do-	0.057	-do-

Assessing authority has not cared to verify these aspects while completing assessment inspite of the request of the appellant. Hence proportionate reduction has to be allowed on addition made based on alleged purchase suppression (interstate) which was already accounted during subsequent year. Moreover.

5. It is submitted that the interest levied to the tune of Rs.65877/- 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 not 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 case and argued based on grounds of appeal.

Heard the case. On going through the impugned order passed by the assessing authority, it is understood that sufficient opportunity had given and cross verification of the case was done in detail. At the time of hearing, the authorized representative argued that certain interstate purchases are accounted mistakenly during the year 2014-15. So it is not considered by the assessing authority. In the circumstances the authorized representative prayed that the above mistake is considered and allowed and also requested that they are ready to follow the Finance Act 2019 U/s.25AA, because they couldn't produce the alleged transactions, hence it is allowed

to disposing of the case. Considering the facts and circumstances of the case, the assessing authority is directed to cross verify the accounted interstate transaction subject to verification of the records for the year 2014-15 and allow on merit. For the remaining defects stated in the order, the assessing authority shall follow the Finance Act 2019 U/s.25AA of the Act and pass order according to law. 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, Kayamkulam/File