

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	01.02.2020
Appeal no	:-	KVATA(ALPY)77/19
From the order of the	:-	State Tax Officer, 1st Circle, Alappuzha
Year of assessment	:-	2015-16
Name of appellant	:-	Rajavalsam Motors Pvt. Ltd,Alappuzha
Instituted on	:-	07.11.2018
Date of hearing	:-	11.11.2019
Present for appellant	:-	Sri.Sreejith.R.Nair,Advocate

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, 1st Circle, Alappuzha, Order No.32040594314/2015-16 dated.07.11.2018. The assessment completed based on KVATIS scrutiny. The defects found were purchase and sales suppression detected and escaped sales turnover of lubricant consumables. The assessing authority estimated the turnover, added back 11.19% gross profit for the purchase suppression, and added suppressed sales turnover for the above detected offence and equal addition added for probable omission and suppression for the above offence, and levied tax plus interest. Aggrieved by the order, the dealer defend the case on the following grounds.

1. The order under Section 25(1) of the KVAT Act to the extent objected to hereunder be absolutely illegal and arbitrary.
2. The assessing authority completed the assessment as per order dated.30.10.2017 and the appellant had filed an appeal before the first appellate authority challenging the allegations stated in the order. As per Order No.KVATA(ALPY).361/2017 Dated.17.04.2018 the first appellate authority modified the assessment and remitted back to the assessing authority for fresh completion of assessment after verifying the books of accounts, Audited statements of accounts and returns filed by the appellant.
3. In the original assessment the assessing authority estimated sales of lubricants for an amount of Rs.3438466/- and the case of the appellant

was that the same turnover was already included in the return under the head sales of spare parts coming under 14.5%.

4. While completing the modified assessment as per order dated.07.11.2018 the assessing authority has not considered the same aspect and has not verified the documents relating to the same issue. In the above circumstance the appellant is filing the appeal against the assessment order dated.07.11.2018.
5. The appellant is a distributor of two wheelers and the appellant is also running a service center. The appellant had collected service charges and cost of spares parts and lubricants by generating separate invoices. On the turnover of service charges the appellant had collected service taxes and remitted the same accordingly. The appellant objects the above estimated taxable turnover for the following reasons.
6. The assessing authority failed to see that the appellant has included the alleged turnover on the purchase of lubricants and consumables on a turnover of Rs.34,38,446/-under the head of Automobile spares parts and accessories – in part C of the return. The appellant had collected tax on the sale of lubricants based on the invoices. The turnover under the above heads includes the turnover of lubricants hence the estimating the turnover of lubricants is a duplication.
7. The prayer is to issue specific direction to the assessing authority to verify the records relating to the sale of lubricants before completing the assessment by adding further turnover for lubricants.
8. The assessing authority restored the original assessment without verifying the documents as stated in the appellate order. Hence the prayer is to set aside the impugned order of assessment.
9. However, for the reasons stated above the assessment completed are not on any proper ground, further more the entire evidence was also not verified by the assessing authority therefore, it is submitted that the proceedings are liable to be quashed and set aside.
10. For these and other reasons and documents and case laws to be submitted at the time of hearing of the appeal, it is respectfully prayed that the appellate authority be pleased to allow this appeal.

Sri.Sreejith.R.Nair, Advocate, appeared and heard the case and argued based on grounds of appeal.

Heard the case. The authorized representative argued that the sale of lubricants and the service charges are separately billed and accounted, but no valid evidences produced to establish that the tax on lubricant is remitted. So in the absence of evidences before me, I am not in a position to verify whether the goods under question is taxed. In the circumstance I am not interfering with this portion of assessment. However the addition made by the assessing authority is a little high. So the addition is reduced to 50% of the detected suppression for meeting the ends of justice. In the absence of records, I am not interfering with the arguments in other points. Order accordingly.

Result: Reduced

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, 1st Circle, Alappuzha/File