

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR
PRESENT: SMT. SHYLA PRIYA .V LL.B

1. KVAT Appeal Number	: KVATA 212/19
2. Order Date	: 07.03.2020
3. Instituted on	: 25.04.2019
4. From the order of the	: 32534370811/2012-13 dtd 28.02.2019 of State Tax Officer Chavakad.
5. Year of assessment	: 2012-13
6. Name of Appellant	: M/s. Sajana Vasthralayam.
7. Turnover Assessed	: 6,41,421
8. Section/Rule under which assessment made	: U/s. 25(1) of KVAT Act 2003.
9. Date of hearing	: 25.02.2020
10. Authorized Representative	: Adv.V R Padmanabhan

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Sajana Vasthralayam filed this appeal against the assessment Order No 32534370811/2012-13 dtd 28.02.2019 of State Tax Officer Chavakad. which was finalized U/s. 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

1. The impugned assessment order of the State Tax Officer, Chavakkad u/s 25 (1) of the Act for the year 2012-13 is opposed to law, facts and circumstances of the case and, therefore, is liable to be set aside.
2. The best judgment assessment is completed without properly considering the reply filed against the pre assessment notice dated 01.02.2019. The cogent explanations submitted by the appellant were rejected on untenable grounds.
3. The best judgment assessment is proposed u/s 25(1) is solely based on the allegation that the appellant has effected one interstate purchase of readymade garments for Rs 18,244/- during the year 2011-12. The assessing authority failed to consider that the appellant was not a registered dealer during the year 2011-12 while the interstate purchase was effected on 01.09.2011. The appellant had got registration as a presumptive dealer only with effect from 31.03.2012. As such, the estimation of turnover and assessment u/s 6(1) based on an interstate purchase effected during the year 2011-12 when the appellant was an unregistered dealer is unsustainable.
4. Without prejudice to the above, it is submitted that the assessing authority seriously erred in fixing the balance tax due at Rs. 15,783/-. While estimating the tax due, he has not allowed input tax credit on the local purchases as conceded in the returns and accounts which is against the dictum laid down in the judgment of the Hon'ble High Court of Kerala in Shoe Club Vs State of Kerala (24 KTR 160). The Hon'ble High Court held that as per 25 (C) of the Act, if any assessment or other proceedings are initiated by the assessing authority denying the eligibility of a dealer to pay

presumptive tax for the violation of conditions enumerated in sub section (5) of Section 6, such dealer shall be granted input tax credit or special rebate as the case may be. Hence by virtue of the above statutory provisions, the appellant was eligible for IPT credit on their purchase during the year.

When this appeal posted for hearing Adv. V.R Padmanabhan appeared and heard.

As against the contention “ *The assessing authority failed to consider that the appellant was not a registered dealer during the year 2011-12 while the interstate purchase was effected on 01.09.2011. The appellant had got registration as a presumptive dealer only with effect from 31.03.2012. As such, the estimation of turnover and assessment u/s 6(1) is unsustainable.*” **I have verified this matter with KVATIs and it is found that the appellant as per his declaration at the time of registration commenced the business from 01.08.2011. and he has had the registration wef 31.03.2012. it is also substantial to note that the appellant has filed all the quartely returns from july-Sep quarter of 2011-12 and as per his Annual return he has a purchase amounting to Rs 434736/- so the contention placed here is not acceptable.**

As against the contention “ *the assessing authority seriously erred in fixing the balance tax due at Rs. 15,783/-. While estimating the tax due, he has not allowed input tax credit on the local purchases as conceded in the returns and accounts which is against the dictum laid down in the judgment of the Hon'ble High Court of Kerala in Shoe Club Vs State of Kerala (24 KTR 160). The Hon'ble High Court held that as per 25 (C) of the Act, if any assessment or other proceedings are initiated by the assessing authority denying the eligibility of a dealer to pay presumptive tax for the violation of conditions enumerated in sub section (5) of Section 6, such dealer shall be granted input tax credit or special rebate as the case may be. Hence by virtue of the above statutory provisions, the appellant was eligible for IPT credit on their purchase during the year ”* **this is acceptable as per law. During the year the appellant has a declared local purchase of Rs 3,93,887/- of which he is eligible to get the credit of input tax on taxable goods, hence it is directed that the assessing authority shall give credit of the same and modify order accordingly.**

Result: MODIFIED

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copysubmitted1. Joint Commissioner(Law),SGSTDept,Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

- 1. State Tax Officer, Chavakkad*
- 2. Asst Commissioner ,SGST Dept,Irinjalakuda.*

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