

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAX, KANNUR
Present : Vineth Krishna.U

Date of Order: 28.02.2020

KVATA Appeal order VATA No. : VATA 158/19
Instituted on : 31.08.2019
From the orders of the : Order no. 32122258885/2014-15
dated.30.03.2019 of State Tax Officer,
Payyannur
Year of assessment : 2014-15
Name of appellant : M/s. FA Associates, Perumba
Turnover assessed :
Tax demanded Income Tax/Super Tax/CST/ST : Section 25(1) of the KVAT Act, 2003
Section /Rule under assessment made
Date of Hearing : 25.02.2020
Present for Appellant : Smt. Mariamma P.A, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. FA Associates, Perumba filed appeal against the assessment order of State Tax Officer, Payyannur passed u/s 25(1) of the Act issued vide proceedings dated 30.03.2019 demanding tax Rs.110746/- for the year 2014-15

The assessment for the year was revised on the basis of purchase suppression detected on scrutiny of returns with KVATIS. Irregular claim of discount was also assessed.

When the appeal was posted for hearing Smt. Mariamma P.A, Sales Tax Practitioner appeared on behalf of the appellant and was heard. The contentions put forth by the appellant are as follows.

- a) *Kindly note that the ASSESSMENT is not maintainable either in law, weight of evidence or probabilities of the case.*
- b) *It may be noted that the assessing authority has no authority to make assessment under KVAT Act after 16.09.2017. The 101 Amendment to the Constitution of India Changes the Taxing authority of the States.*

As per notification no. SO 2986 E issued by the Department of Revenue , Government of India has appointed 16.09.2017 as the date on which the provisions of section 1 to 20 of the 101th Constitutional Amendment Act 2016, except section 12 will come into force . Thus the time granted for completing any assessment under KVAT Act elapsed on 16.9.2017. Any assessment or notice AFTER THE ABOVE DATE IS ILLEGAL AND NOT MAINTAINABLE IN LAW AND IS UNCONSTITUTIONAL.

The Hon High Court of Karnataka, division Bench has even stayed the re-assessment by VAT officer as illegal, on the ground that post 101 st Amendment to the Constitution, there are certain lacunas in not saving Entry 54 of List II in its original form prior to the said amendment. I may pointed out that in similar cases the Hon High Court of Kerala has stayed further proceedings in VAT assessments as per its common order

in WA Nos. 747,767,789,836,851,855,& 857 of 2019 dt 22.3.2019.

- c) *Without prejudice to the above I may submit that the following are the defects pointed out by the assessing officer. But due to my illness I could not file a timely reply.*

1. Unaccounted local purchase worth Rs. 541701.30 –

They all are mismatches. Intex technologies (india) Ltd has billed with document nos. and invoice nos. In tem nos 1,2,3 and 4 we have accounted document nos instead of invoice nos. HENCE OCCURRD THE MISMATCHES. Item nos 5 to 8 were not our purchases. Hence the above may be deleted from the assessment.

2. We have pointed out the difference in Purchases and Sales while making our Audited statements of accounts and we have requested to the officer for revision of the same as per our letter attached to the the same, as done by any prudent businessmen. But instead of allowing the same the officer has made the same as aground to assess me. Which is illegal. Hence there may be a direction to the officer to allow our request to revise the AR in tune with the F13/13A.

3. Receipt of discounts.. we have not received any discounts, but they were replacements of damaged goods by the supplier.

- d) *Without prejudice to the above we may submit that the heavy addition proposed by the officer is at too high rate for no mistake of us.*

- e) *6.5% G P shown is also high.*

The appellant also filed the following argument notes:-

- a) *Kindly note that the ASSESSMENT is not maintainable either in law, weight of evidence or probabilities of the case.*

- b) *It may be noted that the assessing authority has no authority to make assessment under KVAT Act after 16.09.2017.*

As per notification no. SO 2986 E issued by the Department of Revenue , Government of India has appointed 16.09.2017as the date on which the provisions of section 1 to 20 of the 101th Constitutional Amendment Act 2016, except section 12 will come into force . Thus the time granted for completing any assessment under KVAT Act elapsed on 16.9.2017. Any assessment or notice AFTER THE ABOVE DATE IS ILLEGAL AND NOT MAINTAINABLE IN LAW AND IS UNCONSTITUTIONAL.

Hence we may submit that the assessing authority has no authority to make assessment and levy tax. Without prejudice to the above we may submit the following.

The following are the defects pointed out by the assessing authority and our explanations.

1. Discrepancies between Form 13/13A and AR. This we have voluntarily reported and requested for revision of Ar by mail and in black and white, which is not allowed by the officer and is still pending.

2. KVATIS Scrutiny - Un accounted local purchases worth Rs. 5,41,701.30. Serial nos.1to 4 are mismatches – original bills are produced herewith. My be deleted. Remaining bills were omitted to account. We have already fled application for revision of the return. But not yet allowed.

3. It may be noted that turnover involved in defect no.1 and 2 are one and the same un accounted purchases but were separately shown as two defects by the officer and twice added and twice equal additions were made in the assessment order. Which is illegal. May be rectified.

4. *Discount received worth Rs.3,45,064.00. They are not taxable at our hand. We are waiting for Form 9 declarations from our suppliers. We undertake to produce them before the assessing officer. May be permitted.*

We are prejudiced by the above acts of the officer.

5. *Equal addition proposed by the officer at too high rate for no mistake of us.*
6. *G P shown is also high.*

Hence it is humbly prayed that there may be a direction to the assessing officer to do the assessment denovo by allowing our claim.

The appellant further prayed that the impugned assessment the order may be set aside on the above grounds.

I have considered the contentions raised by the appellant the records before me and the merits in it.

The issue involved in this case is as to the sustainability of assessment made.

The appellant argued that the assessment made is constitutionally invalid. They stated that unaccounted local purchase worth Rs.541701/- are all mismatches. They stated that Intex Technologies (India) Ltd. has billed with document number & invoice number but they accounted document no. instead of invoice number. They denied purchase in sl no. 5 to 8. They stated that they had requested for revision of return but was not allowed. They further stated they had not received any discount but were replacement of damaged goods. They objected against equal addition made and adoption of GP @ 6.5%. They further stated that turnover involved in defect no.1 and 2 are one and the same but were separately shown as two defects by the officer.

The argument of appellant against constitutionality of assessment made cannot be accepted. The Hon'ble High Court of Kerala in Sheen gold (India) Pvt Ltd Vs. State of Kerala has upheld the validity of VAT assessments made during the GST period. Hence the arguments of appellant is not sustainable and is hence rejected.

The appellant produced copy of uploaded purchase list together with invoices in support of their argument that purchase suppression shown in the case of the invoices (sl n. 1 to 4) are only mismatches. On verification, their argument has force. Except invoice number, all other fields are one and the same. The appellant is directed to produce the aforesaid document before the assessing authority within three weeks of receipt of copy of this order. The assessing authority shall verify the same together with the uploaded sales details of the supplier and delete from assessment if found genuine.

The appellant apart from the arguments failed to show that they had requested for revision of returns. Hence their argument cannot be accepted. Therefore assessment made on the basis of variation in purchase and sales between annual return and audit report is

sustainable. The appellant merely denied other purchases. This is not sufficient. The details of purchases was placed before the appellant with reasonable certainty. Then it is for the appellant to rebut and prove otherwise. They could have contacted the suppliers and got clarified from that end. They failed in discharging the burden of proof. The purchases can only be considered as effected by the appellant but failed to account and return. Hence assessment made on the basis of purchase suppression detected is upheld.

The purchase suppression detected spreads over more than one return period. As such a pattern of suppression is clearly established. Hence the assessing authority is justified in making assessment towards probable omission and suppression. However considering the fact that the assessing authority scrutinised the data after the close of the financial year and also the facts and circumstances of the case, I am of the view that equal addition made in this case is a bit excessive. Addition @ 25% of suppression detected will be just and reasonable in this case. The assessing authority shall adopt the quantum of addition @ 25% of suppression detected instead of equal times made and modify the assessment.

The argument of appellant that the defect shown in sl no. 1 and 2 are one and the same is not proved. Hence their arguments cannot be accepted. Assessment made is hence upheld.

The appellant has not produced any evidence in proof of their arguments, vis-a-vis receipt of discount. Hence their arguments in this behalf cannot be accepted. Therefore assessment made in this behalf is upheld.

The appellant apart from the arguments has not produced any evidence in proof of their actual gross profit. The detection of purchase suppression makes it clear that the appellant failed in maintaining proper books of accounts. Hence conceded gross profit need not be adopted for assessment. The gross profit adopted is also not excessive in the facts of the case and hence warrants no interference.

No other points for consideration. Ordered accordingly.

RESULT : MODIFIED

Assistant Commissioner (Appeals),
Kannur.

To : The appellant through Advocate

Copy submitted to The Joint Commissioner (Law), CCT, Tvpm.
The Deputy Commissioner, Kannur

Copy to :

The Law Officer, Commercial Taxes, Kozhikode

The Inspecting Assistant Commissioner, Kannur
The State Tax Officer, Payyanur
Spare/index/file