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 159/19
Instituted on	:	31.08.2019
From the orders of the	:	Order no. 32122258885/2015-16 dated.30.03.2019 of State Tax Officer, Payyannur
Year of assessment	:	2015-16
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.97997/- for the year 2015-16

The assessment for the year was revised on the basis of variation in purchase turnover between annual return and audit report and purchase suppression detected on scrutiny of returns. Irregular claim of discount received and irregular claim of input tax on account of purchase return was also disallowed.

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 16.09.2017as 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.

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. 455344.93-Item No.1. Intex.. it was accounted by us but we have uploaded bill no. as 4419008172 instead of 4419008191. More over bill amount was just Rs. 2.00 only. Item no.2 was uploaded by us as bill no 3362 instead of 3362/1516. Item no.3 and 4 were not our purchases. Item nos 5 to 7 were our purchases but omitted to upload ad requested for revising the return on 10.08.2016. But still pending with the officer. 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 note:

We may beg to submit the following for your kind consideration and early favourable orders please.

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 F 13/13A and AR and defects noted in KVATIS Scrutiny – Turnovers involved in these two defects are one and the same. For which we may submit that they were accounted by us. Purchase list is produced herewith. So it may be noted that the additions proposed by the officer is almost one and the same Rs.4,48,676.00 and Rs4,55,345.00. Hence the proposal to make two additions and two equal additions are illegal. Which may be deleted.

2. Discounts received – worth Rs. 5,45,522.00. They are not taxable at our hands. We are herewith producing supporting credit notes in Form 9 (few of them) and the balance will be produced before the assessing officer. May be permitted.

3. We are prejudiced by the above acts of the officer.
4. Equal additions proposed are at too high a rate. May be deleted.
5. GP 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 defect of difference in purchase turnover between annual return and audit report and purchase suppression found in KVATIS is one and the same. They stated that discount received are not taxable at their hands. They stated that they had uploaded purchase in sl.no.1 with bill no. as 4419008172 instead of 4419008191. They further stated that purchase in sl no.2 was uploaded as bill no.3362 instead of 3362/1516. They denied purchase in sl no. 3 & 4. They further stated that purchase in sl no. 5 & 7 are their purchases but left omitted to uploaded for which they had requested for revision of return on 10.08.2016. They further stated that they requested for revision of return for rectifying the defect of variation in purchase turnover between annual return and audit report. They stated that discount received worth Rs.545522/- are not taxable at their hands. They also objected against equal addition made. GP adopted at 6.5% was also objected.

The appellant produced copy of email correspondence made with the assessing authority for revision of returns. They also produced copy of invoices in sl no. 5,6,& 7 to show that they are included in request for revision of returns. They also produced copy of customers credit memo in proof of their arguments against assessment of discount.

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

The letter produced by the appellant in proof of request for revision of return shows that they had requested for revision of return before initiation of pre-assessment notice. As such they are eligible for revision of returns. The assessing authority shall verify this aspect and delete from assessment the purchases to the extent included in request for revision of return and modify the assessment. The assessing authority shall verify the purchase in sl no. 5,6,7 of defect no.2 similarly and delete from assessment if found so included and modify the assessment.

The appellant apart from the argument failed to substantiate the same vis-a-vis purchase in sl no. 1 & 2. As such they failed to prove that the purchases are accounted. Hence assessment made on that basis is upheld. They denied the purchases in Sl No.3& 4. This is not sufficient. The details of the 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 had thus 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 that score is sustainable and is hence upheld.

The appellant produced copy of customer credit memo in proof of their arguments against assessment made on discount received. On verification of the same, there is some force in their arguments. The assessing authority assessed discount received for want of supporting documents. The appellant is directed to produce the aforesaid documents together with credit notes and declaration from the supplier before the assessing authority within three weeks of receipt of copy of this order. The assessing authority shall verify the same and allow to the extent found genuine and modify the assessment.

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 scrutinized 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 accordingly.

The detection of purchase suppression makes it clear that the appellant failed in maintaining books of accounts properly. Hence conceded gross profit need not be adopted for assessment. The appellant also didn't produce any documents in proof of

actual gross profit. The gross profit adopted is also not excessive 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