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 160/19
Instituted on	:	31.08.2019
From the orders of the	:	Order no. 32122258885/2016-17 dated.30.03.2019 of State Tax Officer, Payyannur
Year of assessment	:	2016-17
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.44,227/- for the year 2016-17.

The assessment for the year was revised on the basis of finding of irregular claim of discount received by the appellant. Irregular claim of input tax credit 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 – They all are mismatches. Those two purchases were accounted in 2016-17.
2. 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.*

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

The appellant also filed the following argument note:

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. Discount received Rs.7,72,558.00. We are herewith producing supporting Form 9 declarations. Those T.O is not taxable at our hands. May be deleted.

2. KVATIS scrutiny – There two bills . Those purchases were made by us. Bills are with us we are producing. But they were not uploaded by the supplier. Which is beyond our limits. Department may be pleased to take actions against them.

c) *We are prejudiced by the above acts of the officer.*

d) *Equal additions proposed are at too high a rate. May be deleted.*

e) *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 discount received are supported by Form 9 declarations and discount received is not assessable at their hands. They objected against denial of input tax credit.

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 appellant produced copy of customer credit memo in proof of their argument 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 argument of appellant against denial of input tax credit on account of excess invoices cannot be accepted. The Hon'ble High Court of Kerala in OT Rev. 104/15 has observed thus:“ input tax credit is a concession permitted to avoid the cascading effect in a value added tax regime. What is paid as tax at an earlier instance has to be set off in later instance. When selling dealer does not pay the amount to the government, there can be no input tax credit claimed. The State is deprived of the tax to that extent and hence there is no question of input tax credit. Having not received the tax at the first instance of sale, there is no obligation on the State to grant input tax credit”. In the light of the dictum of the Hon’ble Court the argument of appellant is not sustainable. Hence in the interest of justice, the same is rejected.

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