

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 161/19
Instituted on	:	31.08.2019
From the orders of the	:	Order no. 32122258885/2013-14 dated.21.03.2019 of State Tax Officer, Payyannur
Year of assessment	:	2013-14
Name of appellant	:	M/s. FA Associates, Perumba, Payyannur
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 21.03.2019 demanding tax Rs.43003/- for the year 2013-14

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 101st 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. 2,50,646.00 –*

They all are 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 Annual return.*

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

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 16.09.2017 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.

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. *Un accounted local purchases worth 25046.84. But we have accounted all these purchases. We have already fled application for revision of the return. But not yet allowed.*

2. *Discount received worth Rs. 3,51,604.00. They are not taxable at our hand We have received supporting Form 9 declaration for some amount and the balance on transit from our suppliers. We undertake to produce them before the assessing officer.*

We are prejudiced by the above acts of the officer.

3. *Equal addition proposed by the officer at too high rate for no mistake of us.*

4. *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. The appellant also argued that the purchases shown as unaccounted are not theirs. They further stated that they had requested for revision of return. They objected against equal addition made as excessive. They also objected against adoption of GP. They stated that discount received are not taxable at their hands. They stated that they are in receipt of Form 9 declaration.

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 argument of appellant is rejected.

The appellant produced copy of ledger account and credit memo of the supplier. On verification of the same there is some force in their arguments. The assessing authority rejected the argument of appellant as they failed to produce any documents in proof thereof. The appellant is directed to produce the aforesaid documents together with the documents in Form NO. 9 and declaration from the supplier 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 appellant failed to prove that they requested for revision of returns. Hence their arguments cannot be accepted. The details of purchase 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 to discharge the burden of proof cast upon them by the statute. 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 sustainable and is upheld.

The purchase suppression detected clearly makes out a pattern of suppression in this case. 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 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 against adoption of gross profit cannot be accepted. The detection of purchase suppression makes it clear that appellant failed in maintaining books of accounts properly. Hence conceded gross profit need not be adopted for assessment. The gross profit adopted is also not excessive in the facts and circumstances of the case. Hence argument of appellant 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, Payyannur
Spare/index/file