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

Date of Order: 21.01.2020

KVATA Appeal order VATA No.	:	VATA 163/19
Instituted on	:	21.08.2019
From the orders of the	:	Order no.32120930182/2005-06 dated 10.06.2019 of State Tax Officer, 2nd Circle, Thalassery
Year of assessment	:	2005-06
Name of appellant	:	M/s. Malabar Agencies, Thalassery
Turnover assessed	:	
Tax demanded Income Tax/Super Tax/CST/ST	:	Section 25 A of the KVAT Act, 2003
Section /Rule under assessment made		
Date of Hearing	:	09.01.2020
Present for Appellant	:	Advocate. N. Vijayan

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Malabar Agencies, Thalassery filed appeal against the assessment order of State Tax Officer, Kuthuparamba. passed u/s 25 A of the Act issued vide proceedings dated 10.06.2019 demanding tax Rs.298695/- for the year 2005-06

The assessment for the year was revised on the basis that incentive reveived during the year is forming part of turnover as defined in explanation VII to section (2lii) to KVAT Act,2003.

When the appeal was posted for hearing Sri. N. Vijayan, Advocate appeared on behalf of the appellant and was heard. The contentions put forth by the appellant are as follows.

1. *The order of the assessing authority is against law, facts and circumstances of the case. There is violation of the principles of natural justice in the case as the order is not a speaking one as various contentions raised has not been examined.*
2. *The assessment u/s 25 or section 25(A) of the KVAT Act is hopelessly barred by limitation as more than 13 years has been elapsed. The Honorable High Court of Kerala in Philips India Ltd Vs. Assistant Commissioner (Assessment) Aluva (2017) 26 KTR 209 (ker) has held that the assessment u/s 25(1) or 25(A) of the KVAT Act must be done within 5 years; hence the assessment made is illegal and untenable.*
3. *The assessment u/s 25A is untenable in the case as this particular provision has come into effect from 01-04-2012 only whereas the time limit for assessment u/s 25 was lapsed on 31-03-2011.*
4. *The assessment made on the amount of incentive received is illegal and untenable as the sales turnover is more than the purchase price. As per the Trading Account while the purchase turnover for the year is Rs. 4,49,76,618/- the sale sales turnover is Rs. 4,52,60,057/- thus the sales turnover is more by Rs. 2,83,439/- than the purchase price on which IPT is paid.*

5. *The assessing authority failed to consider that the appellant had paid a reasonable amount as tax after setting off the IPT Credit. That shows that the sale was made at higher price than the purchase price.*

6. *The levy of tax on discount/incentive received through Credit Notes is against the provisions of law. As per the 5th proviso to section 11(3) of the KVAT discount or other amount received that do not affect the input tax credit already availed shall not be reckoned for assessment.*

7. *The Explanation VII to section 2(lii) of the KVAT Act applies only where the sales are made at a price lower than the purchase price. Hence having earned reasonable gross profit over the purchase price it is clear that the IPT Credit claimed is not disturbed. The Explanation VII to section 2(lii) of the KVAT Act "sells any goods purchased by him at a price lower than that at which it was purchased" means not lower than the "purchase price" as per the Invoice for which the freight etc paid is irrelevant.*

8. *The assessment made overriding the provisions in section 25AA of the KVAT Act is illegal and unwarranted. Sub-section 3 of section 25AA of the Finance Bill stipulates that "Discounts, incentive and other income shown in Trading, profit and loss account shall be assessed only if, it affects the output tax or input tax credit".*

9. *The authorities below failed to note that the amount of discount allowed by the supplier is an expense for them. The discount is allowed by the suppliers to the dealers from the amount on which tax has already been charged in the bill. As tax has already been levied on the entire amount at the first instance itself the levy of tax again is unwarranted and also against the spirit of value added system of taxation. Being indirect tax the consideration received from the consumers alone is liable to tax.*

10. *The authorities below failed to note that under the KVAT Act the tax can be levied only on the sale price at the point of sale. Being indirect tax the consideration received from the consumers alone is liable to tax. As per the Trading account the appellant has sold the goods at a price more than the purchase price and has paid tax on the amount of value addition as contemplated under the scheme of value added system of taxation.*

11. *The Honorable Supreme Court of India in Southern Motors Vs. State of Karnataka (2017) 25 KTR 349(SC) and in Maya Appliances (P) Ltd Vs. Additional Commissioner of Commercial taxes & Ors (2018) 26 KTR 248(SC) (Judgment dated 06-02-18) it is held "that on an overall review of the scheme of the Act and the Rules, this court is of the view that the requirement of the reference of the discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the final sale purchase price and not limited to the original sale sans the trade discount.*

12. *The Honorable Supreme Court has held in Andhra Agencies Vs. State of Andhra Pradesh (2009) 17 KTR 476 (SC) that "that the basis issue can be better appreciated by way of an illustration. Hypothetically taking the sale price to be Rs. 100/, the tax to be paid by the selling dealers (manufacturers) has to be on Rs. 100/- He may collect Rs. 90/- after giving discount. If the sale price of the immediate seller (assessee) is Rs. 110 his liability to pay tax shall on i.e. 110-100. The Department stand is that it should be Rs. 20/- i.e. 110-90. This stand of the Department will not be correct if the first seller had paid tax on Rs. 100/-. This dictum clearly state that there is no tax liability on the amount of discount received by the 2nd seller in the state.*

13. *The levy of interest is untenable as interest would accrue in a best judgment assessment only after the date of service of the Demand Notice.*

The appellant further prayed that the impugned assessment 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 assessment made on amount of incentive received is illegal and untenable as sales turnover is more than purchase price. They stated that as per 5th proviso to Section 11(3) of KVAT Act, discount or other amount received that do not affect input tax credit already availed shall not be reckoned for assessment. They further stated that as per sub-section 3 of section 25AA of Finance Act, discounts, incentive and other income shown in Trading, Profit and loss account shall be assessed only if it affects the output tax or input tax. They further argued that as tax has already been levied on the entire amount at first instance itself, levy of tax again is unwarranted.

The assessing authority stated that the argument of appellant against levy of tax on discount/ incentive received is not acceptable by virtue of explanation VII of Section 2(lii) of KVAT Act.

The assessing authority finalised the assessment on the finding that the incentive received falls within the definition of turnover under explanation VII of section 2(lii) of KVAT Act. The assessing authority found that the business of appellant is in gross loss if the discount received is not considered. The appellant also did not produce the credit notes and declaration from the supplier as stipulated in Circular 41/07 of the Act. The appellant apart from the arguments failed to produce any document in support of their arguments also at the appellate stage. As such it is clear that explanation VII of Section 2(lii) is squarely attracted in this case and the amount will fall with the definition of turnover. The Hon'ble High Court of Kerala in a catena of judgments has upheld the validity of assessments made in this line. Hence assessment made in this behalf is sustainable and is hence upheld.

Interest levied under section 31(6) of the Act is in order in the light of decision of Hon’ble High Court of Kerala in Chickoo Broiler Farm Vs. State of Kerala (OT Rev.101/14)

No other points for consideration. Ordered accordingly.

RESULT : DISMISSED

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, 2nd Circle, Thalassery
Spare/index/file