

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

Date of Order: 25.01.2020

KVATA Appeal order VATA No.	:	VATA 175/19
Instituted on	:	22.10.2019
From the orders of the	:	Order no.32120456872/2015-16 dated. 06.09.2019 of State Tax Officer, Taliparamaba
Year of assessment	:	2015-16
Name of appellant	:	Sri. Sajid. K P M/s. Tharangam Stationery, Payyavoor
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	:	09.01.2020
Present for Appellant	:	Sri. U Mohanan, FCA

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant Sri. Sajid. K P M/s. Tharangam Stationery, Payyavoor filed appeal against the assessment order of State Tax Officer, Taliparamba passed u/s 25(1) of the Act issued vide proceedings dated 06.09.2019 demanding tax Rs.21175/- for the year 2015-16

The assessment for the year was revised on the basis of purchase suppression detected on scrutiny of returns with KVATIS. Irregular claim of input tax credit was also disallowed.

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

- 1. The order of assessment passed by the State Tax Officer, Taliparamba, Kannur District is against the facts and circumstance of the appellant's case and hence opposed to the provisions of the the KVAT Act.*
- 2. The learned Officer grossly erred in rejecting the returns filed and resorting to best of judgment assessment.*
- 3. The appellant submit that the input tax credit granted on the purchases, which are stated to be not disclosed in the return filed is not correct and is not in accordance with the provisions contained in section 25AA of the KVAT Act.*
- 4. The appellant having proved all the purchases by valid documents, as specified under the KVAT Act, they are eligible for the input tax claimed and the non-disclosure of the same by the suppliers, if any, is no reason to reject the claim. There being no claim of excess input tax, as stated by the learned officer, the disallowance of the same, is against the provisions of the Act and rules.*
- 5. The appellant humbly submit that case law cited by the learned officer, disallowing the claim for input tax as excess input tax, is not applicable to the facts and circumstances of the appellant's case and hence have no relevance to the case on hand. It is also submitted that the case of the appellant is covered by the decision contained in (1) Faively Transport Rail Vs. The Asst. Commissioner (W.P.27107 to 27111 of 2016) Madras High Court (2) Infiniti wholesale Ltd,*

Vs. The Assistant Commissioner (W.P. No: 9265 of 2014-Madras High Court) and hence the input tax credit should have been allowed in full.

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 input tax credit granted on purchase which are stated to be not disclosed in return is not correct and is not in accordance with provision of Section 25AA of the Act. They stated that they had proved all purchases by valid documents as specified under the Act and hence are eligible for input tax credit claimed and non-disclosure of same by suppliers is no reason to reject the claim.

The argument of appellant against denial of input tax credit 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 a 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 : 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, Taliparamba
Spare/index/file