

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

Date of Order: 31.01.2020

KVATA Appeal order VATA No.	:	VATA 177/19
Instituted on	:	23.10.2019
From the orders of the	:	Order no. 3212223471/2014-15 dated. 16.09.2019 of State Tax Officer, Payyannur
Year of assessment	:	2014-15
Name of appellant	:	M/s. Favourite Agencies, Thayineri, 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	:	24.01.2020
Present for Appellant	:	Sri. Manesh Kumar. M, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s Favourite Agencies, Thayineri, Payyannur filed appeal against the assessment order of State Tax Officer, Payyannur passed u/s 25(1) of the Act issued vide proceedings dated 16.09.2019 demanding tax Rs.19252/- for the year 2014-15

The assessment for the yer was received 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. Manesh Kumar. M, Sales Tax Practitioner appeared on behalf of the appellant and was heard. The contentions put forth by the appellant are as follows.

- 1. The order No.3212223471 dated 16.09.2019 of the State Tax Officer, Payyannur is against law, facts and circumstances of the cases.*
- 2. The pre-assessment notice dated 02.08.2019 and personal hearing notice dated 17.08.2019 has not been issued to the appellant. Hence the appellant has not got the opportunity of filing objections and the learnt assessing officer has unilaterally discarded the objections.*
- 3. The learnt assessing authority has not issued the list of excess claimed input tax for verification. This is against justice.*
- 4. Without prejudice to the above the appellant vehemently objects the estimation of sale by adding 20% gross profit as it has no nexus with the concerned turnover.*

5. *Without prejudice to any other ground, the appellant also vehemently objects the levy of interest charged upto the date of assessment being illegal and against the settled principles of law.*

6. *The appellant admits the non disclosed purchase, due to oversight certain transactions were not disclosed in the monthly return. The assessment order has paused on 16.09.2019. As per the Finance Act-2019 Section 25AA(2)(a) the appellant may assessed by adding 20% gross profit by allowing input tax credit.*

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 pre- assessment notice and personal hearing notice was not issued to appellant. They stated that the list of excess IPT claim was also not issued to them. They stated that they are eligible for the benefit of Section 25AA of the Act.

The assessing authority has issued pre- assessment notice and opportunity of personal hearing was also afforded. As such there is no violation of natural justice involved.

The argument of appellant vis-a-vis application of Section 25AA has been verified. The assessment was finalized after the insertion of Section 25AA of the Act. As such the disciplines of assessment stipulated there in is squarely applicable in this case. The appellant has also admitted the purchase. The assessing authority shall modify the assessment in accordance with the disciplines stipulated in Section 25AA of the Act.

The argument of appellant vis-a-vis denial of input tax credit on the ground that suppliers had not uploaded the sales has been verified. Input tax can be allowed only if the supplier uploads their sale in the returns and pays tax as observed by Hon'ble High Court of Kerala in OT Rev 104/15. On verification of the available records it is seen that the details purchase were not given to the appellant without which appellant cannot be substantiate their case. The assessing authority shall give the details of excess invoices to the appellant and finalize the assessment after giving the appellant opportunity of personal hearing in this matter. The assessing authority shall delete those cases found accounted by supplier and modify the assessment.

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 : 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

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