

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

Date of Order: 14.01.2020

KVATA Appeal order VATA No.	:	VATA 184/19
Instituted on	:	18.11.2019
From the orders of the	:	Order no.32121012609/2011-12 dated. 16.10.2019 of State Tax Officer, Kuthuparamba
Year of assessment	:	2011-12
Name of appellant	:	Sri. Padmanabhan M/s. Modern Steel Tech Kuthuparamba
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	:	24.12.2019
Present for Appellant	:	Advocate. N. Vijayan

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant Sri. Padmanabhan M/s. Modern Steel Tech Kuthuparamba filed appeal against the assessment order of State Tax Officer, Kuthuparamba. passed u/s 25(1) of the Act issued vide proceedings dated 15.10.2019 demanding tax Rs.115230/- for the year 2011-12

The assessment originally completed vide order dated 12.02.2018 of the assessing authority was directed to be modified in VATA 178/2018 dated 22/07/2019. The appeal is preferred against the modified order on the basis that the assessing authority has not complied with the direction in the appellate order.

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.*
- 2. The State Tax Officer, who has made the assessment has no jurisdiction to make an assessment under KVAT Act as there is no such designated officer in the said Act.*
- 3. The appellant being a petty manufacturer and retail dealer in steel almirahs, table etc. the maintenance of manufacturing account etc is quite impossible. However the turnover reported is commensurate with the purchases reported.*
- 4. The assessment made without giving the basic exemption of Rs.10lakhs in spite of the specific and mandatory direction given by the appellate authority is against the provisions in section 3(4) of the KVAT Act which will amount to insubordination. The first appellate authority has directed the assessing authority*

" to verify the aspect and allow the basic exemption if eligible as per Act and Rules".

5. *The assessing authority rejected the claim of the appellant disregarding the provisions of law and also in spite of the direction of the appellate authority in this regard. As per the 3rd proviso to section 6(1) of the KVAT Act it is specified that the liability of a dealer shall arise only when his total turnover exceeds Rs.10 Lakhs and when it exceeds for the first time such dealer shall be liable to pay tax in excess of Rs. 10 lakhs only. Hence the appellant is liable to pay tax on the turnover of Rs.1,33,898/- only.*
6. *Having known well as per the records for the previous years that 2011--12 is the first year in which the turnover has been exceeded Rs.10 lakhs the assessing authority ought not to have disallowed the basic exemption on extraneous reasons and unfounded assumptions.*
7. *The levy of interest in a best judgment assessment can be for the period after service of the Demand Notice especially on the amount of additions made.*

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 whether the appeal filed is maintainable or not and whether the assessing authority has complied with the directions in the appellate order.

The appellant argued that being a petty manufacturer and retail dealer in Steel almirahs, table etc, maintenance of manufacturing account is impossible. They stated that assessment made without giving basic exemption of Rs. 10lakhs inspite of specific and mandatory direction given by appellate authority is against the provisions in section 3(4) of the KVAT Act. They stated that as per 3rd proviso to section 6(1) of the KVAT Act, it is specified that the liability of a dealer shall arise only when his total turnover exceeds Rs.10 lakhs and when it exceeds for the first time, such dealer shall be liable to pay tax in excess of Rs.10lakhs only. They stated that the assessing authority being aware of the fact that year 2011-12 is the first year in which turnover exceeded Rs.10 lakhs, their claim of basic exemption ought not have been disallowed on extraneous reason and unfounded assumptions.

The direction given in the appellate order was 'to verify the aspect and to allow basic exemption to the appellant if eligible as per Act and rules'. The assessing authority rejected the claim on the finding that 'since the dealer is having the habit of suppressing both purchase and sales, I am not in a position to grant exemption upto 10 lakhs in the bonafide behalf that this is not the first year that the dealer is crossing the turnover exemption limit'.

KVAT Act clearly stipulates the turnover limit from which a dealer is liable to pay tax. It also provides that a dealer who crosses the limit for the first time shall be liable to pay tax only on the turnover in excess of the exemption limit. The instances where a dealer is ineligible for basic exemption is also clearly provided. The instruction given to the

assessing authority was to ascertain the eligibility for basic exemption according to Act and rules. The assessing authority cannot over whelm a substantive provision on the basis of surmises. Only on the finding of proven facts like crossing the threshold during previous year, collection of tax irrespective of turnover limit etc the assessing authority can disallow the basic exemption. Hence the disallowance made on the basis of assumptions is not maintainable. The assessing authority is directed to verify the accounts and returns filed by the appellant vis-a-vis the provisions as to eligibility for basic exemption as per Act and rules and modify the assessment in accordance with law.

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, Kuthuparamba
Spare/index/file

