

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

Date of Order: 28.01.2020

KVATA Appeal order VATA No.	:	VATA 186/19
Instituted on	:	18.11.2019
From the orders of the	:	Order no.32121054955/2015-16 dated. 28.02.2019 of State Tax Officer, Kuthuparamba
Year of assessment	:	2015-16
Name of appellant	:	M/s. Six-R-Kids Gallery, Mangattidam, 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	:	09.01.2020
Present for Appellant	:	Sri. U Mohanan, FCA

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Six-R-Kids Gallery, Mangattidam, Kuthuparamba filed appeal against the assessment order of State Tax Officer, Kuthuparamba passed u/s 25(1) of the Act issued vide proceedings dated 28.02.2019 demanding tax Rs.179861/- for the year 2015-16

The assessment for the year was revised on the basis that the exemption claimed for Rs.817815/- was not supported with documents. Purchase suppression detected on scrutiny was also assessed to tax.

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, Kuthuparamba, Kannur 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 failed to note that all the purchases, which have been subjected to tax as not exempt, are local purchases which have already been subjected to tax at scheduled rate and hence the appellant is eligible for input tax credit on the purchases in full.*
- 3. The goods under reference which are subjected to tax @ 5% have already been subjected to tax @5% on purchases as evident from the annual return filed and hence the input tax paid on purchases should have been allowed as deduction as specified under section 11 of the KVAT Act.*
- 4. The appellant could not respond to the pre- assessment proceedings in full as the notice said to have sent is not served on the appellant. The demand notice together with the assessment order came to the knowledge of the appellant only on recovery proceedings being initiated.*

5. *The learned officer grossly erred in subjecting to tax Rs.1005429/-@14.5%. Actual turnover liable to be taxed @ 14.5% is only 167930/- and the turnover on which exemption is claimed amounting to Rs.817815/-, if at all assessable, is liable to be taxed @ 5% only as the rate for the said product are only 5% and not 14.5% as assumed by the officer. Similarly the tax already paid and input claimed as per the annual return, other than those relating to the exempted turnover claimed amounting Rs.19962/- is not considered and allowed by the officer while completing the assessment. All the figures other than the turnover which was claimed as exempt, stated in the annual return was ignored and overlooked by the officer while completing the assessment.*

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 all purchases which are subject to tax are local purchases which have already been subjected to tax at scheduled rate. They stated that they are eligible for input tax credit on the purchases in full. They stated that the officer erred in subjecting to tax Rs.1005429/-. They stated that actual turnover liable to be taxed @ 14.5% is only Rs.167930/- and turnover on which exemption is claimed amounting to Rs.817815/- is liable to be taxed at 5%. They stated that tax already paid and input tax claimed as per annual return other than those relating to exempted turnover claimed is not considered and allowed. The appellant also objected against equal addition made towards purchase suppression found.

The appellant produced copy of annual return in proof of their arguments. The arguments of appellant has been verified with copy of annual return produced. On verification there is force in their arguments. The assessing authority added the exempted turnover to the total turnover and arrived at Total turnover proposed for Rs.2142385/- (which is inclusive of purchase suppression of Rs.25642/- with equal addition). After deducting the conceded turnover, the assessable turnover was determined at Rs.1686914/- which is incorrect. Actually the exempted turnover is only Rs.817815/-. The assessing authority shall modify the assessment adopting correct figures on the basis of above discussion and modify the assessment. The appellant is directed to produce all the documents in support of their arguments together with ledger and invoices in support of their argument before the assessing authority. The assessing authority shall also adopt the correct rate of tax vis-a-vis the turnover determined. The appellant has not claimed input tax credit in full as they claimed exemption for Rs.817815/-. The assessing authority shall give input tax credit on purchases conceded by appellant in return provided the appellant produce original invoices.

The purchase suppression detected spreads over more than one return period. As

such a pattern of suppression is clearly established. 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 the 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

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, Kuthuparmaba
Spare/index/file

