

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

Date of Order: 23.01.2020

KVATA Appeal order VATA No.	:	VATA 190/19
Instituted on	:	22.11.2019
From the orders of the	:	Order no.32122283174/2016-17 dated.26.10.2017 of State Tax Officer, Payyannur
Year of assessment	:	2016-17
Name of appellant	:	M/s. Payyannur Gold, Keloth, 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	:	19.12.2019
Present for Appellant	:	Sri. K. Mohammed Rafeeqe, Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appellant M/s. Payyannur Gold, Keloth, Payyannur filed appeal against the assessment order of State Tax Officer, Payyannur passed u/s 25(1) of the Act issued vide proceedings dated 26.10.2017 reversing special rebate claimed on 6(2) purchase of gold made during the year.

The assessment for the year was revised on the basis that special rebate claimed on 6(2) purchase of gold which remained unsold at the closure of business will be reverse tax.

When the appeal was posted for hearing Sri. K. Mohammed Rafeeqe, 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. 32122283174/2016-17, dated 26.10.2017 of the State Tax Officer, SGST Department, Payyannur is against law, facts and circumstances of the case.*
- 2. The assessing authority ought to have found that the closing stock of gold ornaments were taken by the partners themselves and in the facts and circumstance, question or application of Sec. 11(7) or 12(4) of the KVAT Act, 2003 does not arise.*
- 3. The assessing authority should also found that no assessment as reckoned in the order is warranted. Estimation of sale including assessment at the rate of 5% is legally unsustainable, as the entire stocks were taken by the partners in view of the shares held by them and that it is not by way of sale or disposal of the same to connect with provisions as stated in the order.*
- 4. Without prejudice to the above, it is submits that even if the assessment is sustained, there is no meaning in assessing the entire estimated sale to tax, as it is applicable only on goods remains unsold which is involving input tax credit availed and not to the entire stock of goods. Assessment is without considering the opening stock already suffered tax including other aspects in respect of input tax already adjusted, hence assessment on entire estimated stock is quite incorrect and therefore legally unsustainable in all respects.*

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 the closing stock of gold ornaments was taken by Partner's themselves and hence question of application of such 11(7) or 12(4) of KVAT Act does not arise. They stated that estimation of sale including assessment at the rate of 5% is legally unsustainable. They stated that there is no meaning in assessing the entire estimated sales to tax, as it is applicable only on goods remaining unsold which is involving input tax credit availed and not to the entire stock of goods.

The assessing authority on finding that the appellant has not reversed the input tax or special rebate claimed on goods which remained unsold at closure of business demanded the same. The appellant is liable to pay reverse tax on goods which remained unsold at closure of business for which special rebate has been claimed (S.12(4)). Also no input tax is allowable on goods which remains unsold at closure of business (Section 11(5) (K)). Also where the goods are used in respect of which input tax credit or special rebate is claimed fully or partly for purpose other than those specified, reverse tax shall be charged in relation to such goods (Section 11(7) and Section 12(4)).

It is undisputed that the goods which remained unsold at the closure of business was that for which either input tax credit or special rebate was claimed. As such, by virtue of the provisions discussed supra, the appellant is liable to pay reverse tax on the stock at closure of business. The arguments made by the appellant are not sustainable. Hence in the interest of justice, the impugned order is upheld.

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, Payyannur

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