

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

Date of Order: 22.01.2020

KVATA Appeal order VATA No.	:	VATA 198/19
Instituted on	:	05.12.2019
From the orders of the	:	Order no.32121037102/2010-11 dated. 01.10.2019 of State Tax Officer, Kuthuparamba
Year of assessment	:	2010-11
Name of appellants	:	M/s. S B Enterprises, 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 M/s. S B Enterprises, Kuthuparamba filed appeal against the assessment order of State Tax Officer, Kuthuparamba. passed u/s 25(1) of the Act issued vide proceedings dated 01.10.2019 demanding tax Rs.95066/- for the year 2010-11

The assessment for the year was revised on the basis of sales suppression detected on scrutiny of returns with KVATIS.

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. There is violation of the principles of natural justice in the case as the order is ex-parte and also without giving an opportunity of being heard in the matter.*
- 2. The assessment u/s 25 or section 25(A) of the KVAT Act is hopelessly barred by limitation as more than 8 years has been elapsed. The Honorable High Court of Kerala in Philips India Ltd Vs. Assistant Commissioner (Assessment) Aluva (2017) 26 KTR 209 (ker) has held that the assessment u/s 25(1) or 25(A) of the KVAT Act must be done within 5 years; hence the assessment made is illegal and untenable.*
- 3. The assessment u/s 25A is untenable in the case as this particular provision has come into effect from 01-04-2012 only as the provision applies only for the subsequent assessment years.*
- 4. The assessment done by the State Tax Officer of the SGST Department is beyond the jurisdiction as there is no such designated officer in the KVAT Act.*
- 5. The assessment for the year 2010-11 is also barred by limitation as the assessment ought to have been completed within*

one year from the notification of amendment to the Constitution of India.

6. *The assessment done without furnishing the correct name and TIN of the purchasing dealers is illegal as the appellant was not able to trace the purchasers. In the place of purchaser, the name of the appellant and his TIN is furnished in the PA Notice and also in the assessment Order.*
7. *The appellant admit almost all the sales in the List furnished in the order. Most of those sales are to Regd. dealers and were reported to tax in the same month in which the sale was affected. However the mismatch may be due to the error in the Bill Nos. etc reported by the purchasers.*
8. *The sales beginning with the prefix "IN" is not known to the appellant as the purchasers' names are not furnished. It might be included in the total sales turnover reported. The sale Bills were issued through Computers as per the soft ware of the supplier company, however the same is irrecoverably lost due to lapse of time.*
9. *The assessing authority failed to understand the bona-fides of the appellant in his request to cancel the assessment order u/s 56 of the KVAT Act and pass fresh order in the mater as it was to correct the illegality in the assessment order the mistake was brought to the notice of the assessing authority. Hence the present order u/s 66 of the KVAT Act is untenable as there are drastic changes from the assessment order passed earlier.*
10. *In an assessment u/s 25 of the KVAT Act, after the issue of PA Notice an opportunity of being heard to be given before the order is passed. However in the case of original order no such opportunity of being heard was given.*
11. *The levy of interest in a best judgment assessment would accrue only after the date of service of the Demand Notice.*

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 order passed ex- parte is without giving opportunity of being heard. They stated that assessment done without furnishing the correct name and TIN of purchasing dealer is illegal as they were not able to trace the purchasers. They admitted all the sales shown to have made . They stated that sales beginning with prefix 'IN' is not known to the appellant as purchaser's names are not furnished. They stated that the assessing authority failed to understand the bonafides of them in their request to cancel the assessment order under Section 56 of KVAT Act. They also objected against the levy of interest.

The appellant at the time of hearing argued that they accounted all the sales but mismatch occurred due to inclusion of abbreviation 'IN' and 'IT'. They produced uploaded sales list in support of their arguments. On verification of their arguments the same is found correct. Several cases are uploaded by the appellant with abbreviation 'IN'. The appellant also produced copy of bill for verification to show that invoices with abbreviation 'IT' was

included in 'bulk uploading'. On verification there is force in their arguments. The appellant is directed to produce the documents in support of their arguments before the assessing authority within three weeks of receipt of copy of this order. The assessing authority shall verify the same and delete those cases included in the returns filed 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, Kuthuparamba
Spare/index/file

