

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)

STATE GOODS AND SERVICES TAXES DEPARTMENT, THRISSUR

PRESENT: SMT. SHYLA PRIYA .V LL.B

1.KVAT Appeal Number	: KVATA 198/19
2.Order Date	: 24.01.2020
3. Instituted on	: 12.04.2019
4. From the order of the	: No.32080849773/14-15 dtd 01.02.2019 of State Tax Officer, Chalakudy.
5. Year of assessment	: 2014-15
6. Name of Appellant	: M/s. Pynadath Logistics, Kuttichira.
7. Turnover Assessed	: Rs. 41,74,828/-
8. Section/Rule under which assessment made	: KVAT Act 2003.
9. Date of hearing	: 13.01.2020
10. Authorized Representative	: Adv. Harisankar V. Menon.

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Pynadath Logistics, Kuttichira TIN 32080849773 filed this appeal against the assessment Order No.32080849773/14-15 dtd 01.02.2019 of State Tax Officer, Chalakudy which was finalized under KVAT Act 2003.

The main grounds of appeal submitted are:-

A. The order of assessment passed by the Commercial Tax Officer is illegal, arbitrary and unjustified.

B: The reply to pre-assessment notice is not properly considered and the same may be treated as a part of this appeal.

C: The appellant admittedly is engaged in the sale of pieces of rocks obtained through quarrying operation from the quarry run by him. The appellant had been satisfying tax at the rate of 5% under entry 97 to the 3rd schedule to the VAT Act which reads as under:

“97. Pebbles, rubbles, gravels, broken or crushed stone

of a kind commonly used for concrete aggregates

for road metalling or for railway or other ballast, shingle

and flint, whether or not heat treated except granite

metal produced with the aid of crushing machines ... 2517.10

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But according to the assessing authority this item is nothing but building stones taxable at 14.5% as per Sl. No. 3003, 3004 under SRO 82/06. But the assessing authority has not stated as to under which entry these items are falling under SRO 82/06. There are no entries having Sl. No.3003 and 3004 in SRO 82/06.

D: Even according to the assessing authority the item dealt by the appellant is building stone. The appellant as stated earlier has classified the item under Entry 97 of the 3rd schedule, with respect to "rubbles". Appellant admittedly is dealing in pieces of rocks having various dimensions which are nothing but "rubbles". The term "rubble" is defined as under:

"rough fragments of broken stone formed by geological processes, in quarrying etc. and used in masonry".

The item dealt by the appellant is being used in masonry work also and so much so, the classification under Entry 97 to the 3rd schedule is perfectly in order.

E: In common parlance as well as commercial parlance, the said item is considered as rubble and this is not taken into account by the assessing authority.

F: The appellant had pointed out that the above item is rightly classifiable under entry 97 for the reasons stated earlier in the objection filed to the pre-assessment notice. But the assessment order does not take into account these contentions and the assessment has been framed without any discussion on the point.

G: The imposition of interest for periods prior to completion of assessment is only to be condemned. Interest if any can be imposed only for periods subsequent to the assessment.

When the appeal was posted for hearing Smt Rajalakshmi appeared and was heard. The same kind of issue of the appellant had already come up for hearing in KVATA 627/17 & 628/17 and final order was passed dt 26.02.2018, On which this authority has directed to the Assessing authority to inspect the premises and the machinery of the appellant and finalise the type of commodity that is produced and sold by the appellant. Thereby the Assessing authority has visited the site on 04.09.2018 and it is confirmed by him that the appellant is dealing with building stone , boulders as per the notification SRO 82/2006 dt 21.01.2006 sl no 40(3)(b) HSN code 2516.90.20 and that the commodity has a tax liability of 14.5% . As the fact is settled at the hands of the Assessing officer. I do not find any merit to go into same kind of contentions raised by the appellant. This appeal is hence dismissed.

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Result: Dismissed.

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

The Appellant through the Authorized Representative,

Copysubmitted1.JointCommissioner(Law),SGSTDept,Thiruvananthapuram,

2 . Deputy Commissioner ,SGST Dept , Thrissur

Copy forwarded to

1. State Tax Officer, Chalakudy.

2. Asst Commissioner ,SGST Dept, Irinjalakuda.

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