

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

Date of Order: 26.02.2020

KVATA Appeal order VATA No. : VATA 211/2019
Instituted on : 18.12.2019
From the orders of the : Order no. 32120783774/2015-16
dated.27.11.2019 of State Tax Officer,
Taliparamba.
Year of assessment : 2015-16
Name of appellatant : M/s. Skinco Products, Mundayad
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 : 04.02.2020
Present for Appellant : Sri. K.Babu, Advocate.

APPELLATE ORDER AND GROUNDS OF DECISION

The appellatant M/s. Skinco Products, Mundayad filed appeal against the assessment order of State Tax Officer, Taliparamba passed u/s 25(1) of the Act issued vide proceedings dated 27.11.2019 demanding tax Rs.12,893/- for the year 2015-16.

The assessment for the year was revised on the basis of irregular exemption claimed by the appellatant and on the basis of sales return not proved with documents. Variation in purchase turnover between annual return and audit report was also assessed with tax.

When the appeal was posted for hearing Sri. K.Babu, Advocate appeared on behalf of the appellatant and was heard. The contentions put forth by the appellatant are as follows.

1. *The order of the State Tax Officer, Goods and Services Tax, Thaliparamba, Kannur is opposed to law, facts and circumstances of the case and is highly illegal and unjust.*
2. *The assessment order is passed in violation of the principles of natural justice and is not sustainable.*
3. *The appellatant had clearly shown Rs 2,05,349.42/-as tax collection in the annual return. As per the KVAT Act the total turnover means taxable turnover plus tax collection. Hence the appellatant have given details separately in the returns as detailed below.*
4. *Taxable sales.....Rs.41,06,984.11/-*
5. *Tax collection.....Rs.2,05,349.42/-*
TOTAL TURNOVER... 43,12,333.53/-

So taxing the tax collection again will duplicate the tax. Copy of the annual return enclosed.

6. *The assessing authority have taxed the difference in purchase between annual return and audited statements Rs.29,061/- My auditor found out certain omissions in purchase and I have applied revision of returns as per section 42 of KVAT Act, but the assessing authority have not given permission for the same. Hence the action*

of the assessing authority is against the principle of natural justice.

7. *The assessing authority have not considered the sales return shown in the monthly return as well as audit statements for Rs.16,179.00/- for want of evidence. But the appellant have produced all the debit/credit notes at the time of filing the returns itself, which was not considered by the assessing authority. Hence the action of the authority is illegal.*

8. *As the assessment order was passed after the introduction of section 25AA in the Finance Act-2019, the assessing authority have not considered this provision while passing the order. So the appellate Assistant Commissioner may be pleased to cancel the assessment and grant me permission to complete the proceeding under section 25AA.*

9. *The appellant has maintained true and correct accounts.*

10. *Without prejudice to the above, the assessment 25% GP is highly excessive and arbitrary.*

The appellant further prayed that the impugned assessment the 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 they had clearly shown that Rs. 2,05,349.42/- pertain to tax collection as evidenced from annual return. They stated that total turnover means taxable turnover plus tax collection. They stated that they had requested for revision of return under section 42 of the Act to cure the difference in purchase turnover found, but the assessing authority did not gave permission. They stated that they produced debit/credit note at the time of filing of return which was not considered by assessing authority and hence denial of sales return is incorrect. They stated that they are eligible for the benefit of section 25AA of the Act.

The appellant produced copy of annual return in support of their arguments vis-a-vis assessment on the claim of exemption. On verification of the same, it is clear that the differential amount pertain to tax payable for the year. The appellant is directed to produce the books of accounts before the assessing authority within three weeks of receipt of copy of this order. The assessing authority shall verify the same and delete from assessment if found genuine and modify the assessment.

The appellant apart from the argument failed to show that they requested for revision of return under section 42 of the Act. As such, they failed to comply with the requirements of statute. The appellant also failed to prove that the variation in purchase is reflected in either sales or stock. Hence their argument is rejected. Assessment made on the basis of variation in purchase turnover is sustainable and is hence upheld.

The argument of appellant as to eligibility for the benefit of section 25AA has force. The assessment was finalized after the insertion of the section and hence the provisions are squarely

applicable to this assessment. The assessing authority shall adopt the guidelines stipulated in section 25AA of the Act vis-a-vis giving input tax credit and modify the assessment.

The argument of appellant against disallowance of claim of sales return cannot be accepted. They failed to produce any evidence to prove that they already filed the documents before the assessing authority. The assessing authority rejected their arguments as no documentary evidence was filed by the appellant. Moreover no such documents was produced even at the appellate stage. In the circumstances, the arguments of appellant cannot be accepted as they failed to discharge the burden of proof. Hence assessment made in this behalf is sustainable and hence is upheld.

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, Taliparamba.
Spare/index/file

