

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES TAX DEPARTMENT, THRISSUR
PRESENT: SMT SHYLA PRIYA .V LL.B

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| 1.KVAT Appeal Number | : KVATA 264/19 |
| 2.Order Date | : 25.02.2020 |
| 3. Instituted on | : 14.06.2019 |
| 4. From the order of the | : No. 32081106284/14-15 dtd 30.03.2019 of State Tax Officer, Chavakkad. |
| 5. Year of assessment | : 2014-15 |
| 6. Name of Appellant | : M/s. Bindu Fancy Stores. |
| 7. Turnover Assessed | : 18,02,850/- |
| 8. Section/Rule under which assessment made | : U/s. 25(1) of KVAT Act 2003. |
| 9. Date of hearing | : 21.01.2020 |
| 10. Authorized Representative | : Adv. V.R Padmanabhan. |

APPELLATE ORDER AND THE GROUNDS OF DECISION

M/s. Bindu Fancy Stores TIN 32081106284 filed this appeal against the assessment Order No. 32081106284/14-15 dtd 30.03.2019 of State Tax Officer, Chavakkad which was finalized U/s. 25(1) of KVAT Act 2003.

The main grounds of appeal submitted are:-

1. The impugned assessment order of the State Tax Officer, Chavakkad u/s 25 (1) of the Act for the year 2014-15 is opposed to law, facts and circumstances of the case and, therefore, is liable to be set aside.
2. The best judgment assessment is completed ex parte without serving a pre-assessment notice. The observation in the order that the notice was received by the dealer on 01.03.2019, but not filed any objections is contrary to facts. The assessing authority ought to have noted that the proprietor of the business, Sri.T.T.Domini had expired on 05.12.2012.
3. The appellant's father, Sri T.T. Domini had run a business in the name and style 'Bindu Fancy Stores, South Nada, Guruvayur' with TIN 32081106284. The above business was stopped due to the death of the proprietor of the business on 05.12.2012. The stopped business was taken over with all assets and liabilities by the legal heir of the deceased Sri T.T. Domini who is the appellant in the present case and a new business in the same name and style was commenced with TIN 32081169903 in her name.
4. The impugned interstate purchase which was detained by the Commercial Tax Inspector, Walayar on 09.07.2014 and security deposit of Rs. 1,450/- was collected was actually made by the appellant who is the proprietrix of the new business. The goods were detained due to the mistake in noting the TIN of the stopped business (32081106284) instead of the TIN of the new business of the appellant, i.e. 32081169903. The defect in the TIN number was purely due to a mistake on the part of

the seller dealer. They have mistakenly entered the TIN of the stopped business as the name and address of the new business was the same as that of the stopped business. The above purchase has been duly accounted in the return of the appellant, Bindu Fancy Stores TIN 32081169903.

5. The Enquiry officer as well as the assessing authority seriously erred in not considering that the business with TIN No. 32081106284 was already stopped due to the death of the proprietor as early as on 05.12.2012 whereas the impugned interstate purchase was made on 09.07.2014.
6. The assessing authority ought to have considered that it was not at all possible for Sri T.T. Domini who had expired on 05.12.2012 to effect interstate purchase on 09.07.2014.
7. The assessing authority failed to consider that the impugned purchase was made by the newly started business, Bindu Fancy Stores TIN 32081169903 and security deposit was remitted by them. As such, the best judgment assessment, if any, ought to have been made in the name of the above dealer.
8. The assessing authority ought to have found that the alleged unaccounted local purchases for Rs. 25,729.36 were made by the appellant's new business which were properly accounted in the returns filed.
9. The method of assessment is patently irregular. The assessing authority totally went wrong in adding back the alleged suppressed turnover detected in vehicle checking and in scrutiny of returns to the turnover conceded for the year 2012-13. The impugned assessment relates to the year 2014-15 and the proprietor of the business had already expired on 05.12.2012. Hence taking the sales turnover conceded for 2 years back as basis for the assessment for the year 2014-15 is illegal and unsustainable. Apart from the alleged suppression detected in vehicle checking and scrutiny, the assessing authority has not pointed out any other instance of omission or suppression by the deceased father of the appellant. Hence adding back the turnover conceded for the year 2012-13 which has already been subjected to assessment is highly irregular.

When the appeal was posted for hearing Sri.V.R. Padmanabhan appeared and was heard Sri T.T. Domini who was the proprietor of the firm had expired on 05.12.2012 and at the time effect interstate purchase for Rs. 25,729/- on 09.07.2014, the said person is no more. The assessing authority failed to consider that the impugned purchase was made by the newly started business, Bindu Fancy Stores TIN 32081169903 and security deposit was remitted by them, and the transaction is accounted by them. As such, the best judgment assessment, if any, ought to have been made in the name of the above dealer. He also added that taking the sales turnover conceded for 2 years back 2012-13 as basis for the assessment for the year 2014-15 is illegal and unsustainable.

On my verification of the assessment with the appellants contention that is found correct the assessment is completed against the TIN 32081106284 which is already cancelled on 01.06.2013 due to death of its proprietor. Hence I find the assessment is ultravires and unlawful. The assessment is herewith Annulled .

Result: Annulled

ASSISTANT COMMISSIONER (APPEALS)

THRISSUR

To

*The Appellant through the Authorized Representative,
Copsubmitted 1. Joint Commissioner(Law),SGST Dept, Thiruvananthapuram,
2 . Deputy Commissioner ,SGST Dept , Thrissur*

Copy forwarded to

- 1. State Tax Officer, Chavakkad*
- 2. Asst Commissioner, ,SGST Dept, irinjalakuda.*

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