



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

SALES TAX APPEAL NO. 6 OF 2025

BETWEEN:

M/S KALYAN JEWELLERS SALEM (PVT.) LTD.,
NO.17, DICKENSON ROAD,
BANGALORE- 560 042,
REPRESENTED BY ITS DIRECTOR.

...APPELLANT

(BY SMT. APARA NANDA .K, ADVOCATE FOR
SHRI. MANOHAR N., ADVOCATE)

AND:

THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES, (SMR)-3,
BENGALURU.

...RESPONDENT

(BY SHRI. ADITYA VIKRAM BHAT, AGA)

THIS APPEAL IS FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT, 2003, PRAYING TO CALL FOR RECORDS AND QUASH THE IMPUGNED ORDER NO.ZAC/03/BNG-05/SMR-165/2024-25 DATED 16.01.2025 UNDER SECTION 64(1) OF THE KVAT ACT FOR THE ASSESSMENT YEAR 2010-11 PASSED BY THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, SMR-3, BENGALURU MARKED AS ANNEXURE-H.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:





CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

This appeal was listed for admission and was heard on admission.

2. The above appeal is filed under Section 66(1) of Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "KVAT Act") questioning correctness of the order dated 16.01.2025 passed in ZAC/03/BNG-05/SMR-165/2024-25 for the assessment year 2010-11, by the Additional Commissioner of Commercial Taxes, SMR-3, Bengaluru as per Annexure-'H'.

3. The appellant has raised the following two substantial questions of law;

"1. Whether in the facts and circumstances of the case, the respondent herein can initiate Suo moto revision under Section 64 of the KVAT Act, 2003 after the expiry of 4 years since the passing of the order by the First Appellate Authority?"

2. Whether on the facts and in the circumstances of the case, the



respondent was justified in invoking powers of revision under Section 64 of the KVAT Act to set aside the order of First appellate authority, in the absence of satisfying the twin conditions?"

4. Heard learned counsel Smt.Aparna Nanda K., advocate for Sri.Manohar V., advocate for appellant and Sri.Aditya Vikram Bhat, learned AGA for respondent.

5. Perused the entire appeal and papers.

6. Learned counsel with regard to substantial question of law No.1, would submit that the proceedings initiated under Section 64 of KVAT Act, is barred by time, since the show cause notice is issued on 21.11.2024, whereas First Appellant Authority had passed order on 16.09.2014. Learned counsel would submit that the First Appellate Authority passed order on 16.09.2019, hence it is submitted that the show cause issued on 21.11.2024, is beyond the period prescribed under Section 64 (3) (c) of KVAT Act. In addition to the above, learned counsel for the appellant would also submit that against the order dated 16.09.2019 passed by the First Appellate Authority, appeal is provided under Section 63 of KVAT Act and the time



limit provided for filing appeal is 30 days and extended period upto 180 days.

7. It is the specific contention of the learned counsel for the appellant, that having not preferred appeal, as against order passed by the First Appellant Authority, the proceedings initiated under Section 64 of KVAT Act, is not maintainable in view of 64(3)(a) of KVAT Act. Learned counsel would submit that as mandated under sub-section(3), the Additional Commissioner or the Commissioner shall not exercise power under sub-section (1) or sub-section (2), if the time limit for filing appeal has not expired. Thus, on this ground also learned counsel for the appellant would submit that the proceedings initiated under Section 64 of KVAT Act, is barred by the time.

8. With regard to the second substantial question of law, learned counsel for the appellant submits that the assessee/appellant herein has not challenged the order dated 20.01.2017 passed under section 39(1) of KVAT Act. He filed rectification application under Section 69 of KVAT Act on 15.5.2019 and the prescribed authority by its order dated 25.6.2019 had dismissed the rectification application and it is



submitted that against the order on rectification application, the appeal was filed under Section 62 (6) of KVAT Act 2003.

9. Learned counsel submits that the rectification Order would merge with the reassessment order passed under Section 39(1) of KVAT Act. Therefore, the First Appellate Authority ought to have considered the appeal filed by the petitioner on merit. Thus, learned counsel for the appellant would submit that the Revisional Authority failed to examine the grounds raised by the appellant and the Revisional Authority also failed to examine the entitlement of input tax credit, claimed by the appellant. Thus, learned counsel would pray for allowing the appeal.

10. Per contra learned AGA, Sri.Aditya Vikram Bhat, for respondent would support the order passed by the authorities under Section 64(1) of KVAT Act. Learned AGA with regard to substantial question No.1 would submit that it is settled position of law that the limitation of 4 years would have to be taken note from the date of calling of the records and it cannot be computed from the date of issuance of show cause notice. It is submitted that the authorities called for records on



21.12.2019, whereas the First Appellate Authority had passed order on 16.9.2019. Therefore, he submits that the initiation of proceedings under Section 64(1) of KVAT Act is within the time prescribed under sub-section (3) of Section 64 of KVAT Act, 2003. Learned AGA, would invite attention of this Court to proviso to sub-section 3 of section 64 of KVAT Act and would submit that since the Order passed by the First Appellate Authority is on merit under Section 62 of the KVAT Act, the appellant cannot place reliance on sub-section (3)(a) of section 64 of KVAT Act.

11. Learned AGA would further submit that the appellant failed to file appeal against reassessment Order passed under Section 39(1) of KVAT Act, much after the period of limitation prescribed to file the appeal, appellant filed rectification application under Section 69 of KVAT Act, which was rejected vide order dated 25.6.2019. Further, it is submitted that both the provisions providing appeal, as well as filing rectification application are two different statutory remedies available for the appellant. Hence, he submits that the contention of the appellant that the order passed for rectification application



would merge with the order of reassessment passed under Section 39(1) of KVAT Act, cannot be countenanced.

12. Learned AGA would submit that having failed to avail appeal remedy provided against the reassessment order passed under Section 39 (1) of KVAT Act, the petitioner while filing rectification application cannot urge the grounds, that could be urged in an appeal. Thus, he submits that the 2nd substantial question of law would also not arise for consideration. Thus, prays for dismissal of the appeal, at the admission stage itself.

13. Having heard the learned counsel for the parties and on perusal of entire appeal papers, we are of the considered opinion that both the substantial questions of law raised by the appellant would not arise for consideration for the following reasons;

14. Admittedly, the proposition notice under Section 39(1) read with section 36 and 72 (2) of KVAT Act was issued to the appellant by the prescribed authority on 22.9.2016. On filing of the reply to the notice by the appellant, the prescribed authority passed reassessment order under Section 39(1) of KVAT Act dated 20.01.2017.



15. Admittedly, the petitioner has not filed appeal against the said reassessment order as provided under Section 62 of the KVAT Act. More than two years after the reassessment order, the appellant/assessee filed application for rectification under Section 69 of the KVAT Act, to the prescribed authority. The rectification application could be filed to rectify any mistakes in the record. In the instant case, the rectification application was not filed for rectification of any mistake apparent on the face of the record, but it was filed like an appeal against the reassessment order passed under Section 39(1) of KVAT Act.

16. Aggrieved by the dismissal of the rectification application, the assessee/appellant filed appeal under Section 62(6) of KVAT Act and the First Appellate Authority partly allowed the appeal on 16.9.2019 directing to issue the revised demand notice. The Additional Commissioner on 21.12.2019 called for records from First Appellate Authority to initiate proceedings under Section-64 of the KVAT Act. The date of calling of records would be relevant for determining limitation period, prescribed under sub section (3) of section 64 of KVAT Act, 2003. If the order passed by the First Appellate Authority



dated 16.9.2019 and the calling for records vide letter dated 21.12.2019 is taken, the proceedings initiated under Section 64(1) of KVAT Act, is well within time. Hence, the substantial question of law No.1 would not arise for consideration.

17. With regard to substantial question No.2, the contention of the learned counsel for the appellant, that the rectification Order passed on rectification application would merge with the reassessment order passed under Section 39(1) of the KVAT Act, cannot be countenanced. Appeal provided against the reassessment order passed under Section 39(1) of KVAT Act and the provision providing for filing rectification application under Section 69 of KVAT Act are two different remedies provided to the appellant/assessee.

18. The appellate jurisdiction against the reassessment order under Section 39(1) of KVAT Act, cannot be equated with the jurisdiction conferred under Section 69 of KVAT Act to seek rectification .

19. Admittedly, the assessee/appellant has not filed appeal against the reassessment order passed under Section 39(1) of KVAT Act and appeal filed by assessee/appellant filed



under Section 62 (6) of KVAT, is only against dismissal of the rectification application. Hence, examining the order of reassessment in an appeal filed against rejection of rectification application would not arise. The First Appellant Authority in an appeal filed against rejection of rectification application could not go into the validity of reassessment order passed under Section 39(1) of KVAT Act, 2003.

20. Under the above circumstances, we are of the considered view that the substantial question of law No.2, would also not arise for consideration.

Accordingly, both the appeals stands ***rejected***.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

AKV
List No.: 1 Sl No.: 25