



2025:KER:31073

OT Rev.4&5/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

OT.REV NO. 4 OF 2025

AGAINST THE ORDER DATED 06.11.2024 IN TAVAT NO.33 OF
2019 OF KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM

REVISION PETITIONER/RESPONDENT:

M/S. ANNOOR DENTAL COLLEGE
PERUMATTOM, MUVATTUPUZHA REPRESENTED BY ITS
DIRECTOR BINYAMINE T. S, PIN - 686673

BY ADVS.
P.N.DAMODARAN NAMBOODIRI
HRITHWIK D. NAMBOOTHIRI

RESPONDENT/APPELLANT:

STATE OF KERALA
REPRESENTED BY IT'S SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM, PIN -
695001

OTHER PRESENT:

GP SMT.RESMITHA RAMACHANDRAN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
ADMISSION ON 07.04.2025, ALONG WITH OT REV.5/2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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OT Rev.4&5/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

OT.REV NO. 5 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 06.11.2024 IN TA NO.34
OF 2019 OF KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM

REVISION PETITIONER/RESPONDENT:

M/S.ANNOOR DENTAL COLLEGE
PERUMATTOM, PUTHUPPADY. P.O, MUVATTUPUZHA
REPRESENTED BY ITS DIRECTOR BINYAMINE T.S, PIN -
686673

BY ADVS.
P.N.DAMODARAN NAMBOODIRI
HRITHWIK D. NAMBOOTHIRI

RESPONDENT/APPELLANT:

STATE OF KERALA
REPRESENTED BY IT'S SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM, PIN -
695001

OTHER PRESENT:

SRI.V.K.SHAMSUDHEEN, SR.GP

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR
ADMISSION ON 07.04.2025, ALONG WITH OT REV.4/2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



DR. A.K.JAYASANKARAN NAMBIAR, J. & EASWARAN S., J.

O.T.Rev.Nos.4 and 5 of 2025

Dated this the 7th day of April, 2025

O R D E R

Easwaran S., J.

These revision petitions are preferred by the assessee aggrieved by the common order passed by the Kerala Value Added Tax Appellate Tribunal, Additional Bench, Ernakulam in TA(VAT) Nos.33/2019 and 34/2019 dated 6.11.2024.

2. The brief facts necessary for the disposal of these revision petitions are as follows:

M/s.Annoor Dental College was proceeded against under Section 67(1) of the Kerala Value Added Tax Act, 2003 ('KVAT Act', for short) for not taking registration under the said Act though they crossed the turnover limit for registration and also for not remitting VAT for the sales effected by the institution for the assessment years 2013-14 and 2014-15. Aggrieved by the penalty orders for the assessment years 2013-14 and 2014-15, the assessee preferred appeals before the Deputy Commissioner (Appeals), who in turn set aside the impugned penalties and allowed the appeals. Aggrieved by the order of the 1st appellate authority, the State approached the Kerala Value Added Tax Appellate



Tribunal contending that the assessee cannot escape the mandatory requirement of registration under the KVAT Act, since they are supplying food to students through canteen. Though the Dental College is managed by an education trust, named Annoor Educational Trust, for the purpose of establishing and conducting charitable educational institutions, they are running a dental college in the name Annoor Dental College, which is enjoying the benefits under Section 12AA of the Income Tax Act, 1961. The penalty proceedings were initiated relying on the income and the expenditure account of the assessee for the assessment years 2013-14 and 2014-15. Income from sales of record books, students materials & student kits and income from snack bar & mess fees were considered for determining the tax liability.

3. The tribunal while considering the appeal preferred by the State found that the primary functions carried out by the assessee are educational activities and dental health care services as evident from the nature of the institution and its business. It was also found that the assessee is selling students kit and uniform and also charging mess fees from the hostel mates, who are the students of that institution. After analysing the activities of the assessee, the tribunal concluded that though the mess fees cannot be considered as sales, if the canteen sales are termed as mess fees then such exemption is not allowable and,



therefore, found that the assessee is liable to take registration under the provisions of Sections 15 read with 6 of the Act. Be that as it may, the tribunal by affirming the order of the 1st appellate authority partly allowed the appeal preferred by the State and directed the assessee to take registration and further directed the assessing authority to complete the assessment under Section 25(1) of the Act. It is against the said finding that the assessee is in revisions before us.

4. Heard Sri.Hrithwik D. Namboothiri, the learned counsel appearing for the revision petitioner, and Sri.V.K.Shamsudheen, the learned Senior Government Pleader appearing for the State.

5. On consideration of the rival submissions raised across the bar, we are of the considered view that the revision petitions have to fail primarily on the ground that no substantial question of law arises for consideration before us. A reading of the order impugned in these revision petitions shows that the tribunal has not decided any question against the assessee, but, in fact, had directed the authority to verify as to whether the mess fees are collected for the purpose of canteen sales. Therefore, essentially, the tribunal wanted the authority to ascertain a particular fact, which would enable the authority to proceed in accordance with the provisions of the Act.

6. Although the learned counsel for the revision petitioner



contends before us that the primary activity of the revision petitioner being imparting education, any ancillary business done by it in pursuance to the said avocation cannot be construed as a business and, therefore, the revision petitioner will not come within the definition of the term “dealer”. In support of his contention, relied on the decision of the single Bench of the Uttarakhand High Court in **Scholors Home Senior Secondary School v. State of Uttarakhand [(2011) 42 VST 530]**. We have perused the decision of the Uttarakhand High Court and are of the view that the said decision has to be understood as rendered on the particular facts of the case and also construing the provisions of the Uttarakhand Value Added Tax Act, which substantially varies from the provisions of the KVAT Act, 2003.

7. Section 2 (ix) of the KVAT Act defines “business” and Section 2(xv) defines “dealer”. For the sake of convenience, we deem it appropriate to extract the provisions of Sections 2 (ix) and 2(xv) hereunder:

“(ix) “Business” includes –

(a) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade commerce, manufacture, adventure or concern;



and

(b) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture adventure or concern;"

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“(xv) “dealer” means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or on any system of payment by installments; transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration not being an agriculturist and includes: -

(a) a casual trader;

(b) a commission agent, a broker or a delcredere agent or an auctioneer or any other mercantile agent, by whatever name called, of such dealer;

(c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not situated outside the State;

(d) a person who, whether in the course of business or not, sells

(i) goods produced by him by manufacture or otherwise; or

(ii) trees which grow spontaneously and which are agreed to be severed before sale or under the contract



of sale;

(e) a person who whether in the course of business or not:

(i) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;

(ii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;”

When we read the definition “business” juxtaposed with the definition of a dealer, which, according to us, is inclusive enough to cover each and every activity done by a person, other than in due course of his business, the petitioner cannot contend that he will fall otherwise. Therefore, we are not in agreement with the submissions of the learned counsel for the revision petitioner that the revision petitioner is not required to take registration.

8. It is further contended by the revision petitioner that even if it is assumed that the sales in the canteen are found to be assessable under the provisions of the VAT, it falls within the threshold limit and therefore, the revision petitioner cannot be compelled to take registration. However, we are not in a position to accept the aforesaid



argument. It may be true that the sales across the counter in the canteen may be within the threshold limit, but however that by itself will not enable the revision petitioner to contend that it is not bound to take registration under the provisions of the KVAT Act. In fact, we noticed that the tribunal has only remanded the matter back to the authorities to verify the question as to whether the canteen sales are being termed as mess fees. The liability to pay tax would definitely depend upon the verification ordered to be conducted by the tribunal. This is precisely the reason why we started the judgment by opining that no substantial question of law arises for consideration before us in these revisions.

As an upshot of these discussions, we are of the view that no substantial question of law arises for consideration in the present revision petitions. We find no merit in the revision petitions. They are accordingly dismissed. No order as to costs.

Sd/-

DR.A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

EASWARAN S.
JUDGE



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APPENDIX OF OT.REV 4/2025

PETITIONER ANNEXURES

- | | |
|--------------------|---|
| Annexure A1 | TRUE COPY OF THE PENALTY ORDER DATED
27.09.2017 NO. IBM IV/IR-178/14-15/OR-
24/17-18 FOR THE YEAR 2013-14 . |
| Annexure A2 | ORIGINAL OF THE 1ST APPELLATE ORDER
DATED 04.10.2018 IN KVATA NO.1116/18 FOR
THE ASSESSMENT YEAR 2013-14 . |
| Annexure A3 | ORIGINAL CERTIFIED COPY OF THE ORDER
DATED 06.11.2024 IN T.A (VAT) NO.33/2019
ON THE FILES OF KERALA VALUE ADDED TAX
APPELLATE TRIBUNAL, ERNAKULAM . |
| Annexure A4 | TRUE COPY OF THE JUDGMENT REPORTED IN
SCHOLARS HOME SENIOR SECONDARY SCHOOL
VS. STATE OF UTTARAKHAND (2011) 42 VST
530 . |



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NO.34/2019 ON THE FILES OF KERALA VALUE
ADDED TAX APPELLATE TRIBUNAL,
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