

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 6(V)/2018

(From the order of the Id.JCST (Appeal), Cuttack-I Range, Cuttack, in
Appeal No. 106121612000021, dtd.22.09.2017, modifying the
assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

M/s. S.G. Agencies,
Naya Sarak, House No.83,
P.O. Chandini Chowk,
Dist. Cuttack.

.... Appellant

-Versus-

State of Odisha represented by the
Commissioner of Sales Tax,
Orissa, Cuttack.

.... Respondent

For the Appellant : Mr. R. Chhapolia, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment period : 01.04.2013 to 31.03.2015)

Date of Hearing: 08.02.2019 *** Date of Order: 08.02.2019

ORDER

Concurrent order of both the fora below whereby, the assessee-dealer was denied to avail ITC for the reason like, the purchases are made from the dealer whose registration was not valid or cancelled and further that selling dealer has filed Nil return without showing the transaction with the instant dealer, is called in question in this second appeal by the assessee-dealer as not sustainable in law.

2. The instant dealer was subjected to audit assessment u/s.42(4) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the tax period 01.04.2013 to 31.03.2015 on the basis of Audit Visit Report (AVR) and it was found that, the dealer had purchased

goods from M/s. Amit Pharmaceuticals, whose Registration Certificate (RC) was already cancelled w.e.f. 07.03.2012. As the purchases are made during the period when the selling dealer's Registration Certificate was cancelled and when it was found that, the selling dealer M/s. Amit Pharmaceuticals has not shown the factum of such sale to the instant dealer in its return, the Assessing Authority, Cuttack-I City Circle, Cuttack (in short, AA) denied ITC to the instant dealer against such purchases with the findings that, ITC of Rs.19,284/- claimed against the cancelled dealer is disallowed. Accordingly, in ultimate analysis, the dealer was asked to refund the ITC amount and also asked to pay penalty u/s.42(5) of the OVAT Act i.e. twice of the ITC amount as aforesaid.

3. Such assessment was questioned by the dealer before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-I Range, Cuttack (in short, FAA/JCST), who in turn, while dismissing the appeal of the dealer vide impugned order, has held that, even though in a latter period the cancellation of R.C. of the dealer was suspended by the competent authority, but when the transactions between both the dealers took place the selling dealer had no valid R.C. and further when the selling dealer had not shown such transaction in his return, as detected from the VATIS, then the instant dealer is not entitled to ITC.

On this backdrop, being aggrieved by orders of both the fora below, the dealer has preferred this second appeal challenging the impugned order to be not sustainable on the contentions like the cancellation of the R.C. of the selling dealers was not within the knowledge of the instant dealer. The cancellation order/R.C. of the selling dealer was lifted by the competent authority. As such, it is wrong to say that, the purchases was made from a cancelled dealer

and further contended that, the selling dealer has duly shown the details of sale to the instant dealer in his return, which is evident from the documents.

4. The dealer has prayed for allowance of ITC by reversing the impugned order.

5. The appeal is heard with cross objection from the side of the Revenue. The Revenue has firmly stood by the impugned order with the plea that, the R.C. of the selling dealer was cancelled w.e.f. 07.03.2012. As the alleged transaction took place on dt.31.01.2015. So, the ITC is not admissible to the dealer.

6. The facts remained undisputed in the case are, the R.C. of the selling dealer M/s. Amit Pharmaceuticals was cancelled w.e.f. 07.03.2012. The instant dealer had purchased goods from M/s. Amit Pharmaceuticals on dt.31.01.2015. The cancellation of R.C. was latter revoked by the competent authority. The argument of the learned Counsel for the dealer is, cancellation of R.C. was never communicated to the instant dealer or never notified in accordance to the provision under the Act. So under bona-fide belief, the dealer has purchased goods from M/s. Amit Pharmaceuticals. It is also argued that, the cancellation of R.C. was latter suspended and thereby the R.C. of the selling dealer remained valid for the entire interim period. Learned Addl. Standing Counsel on the other hand vehemently argued that, notwithstanding the fact that the R.C. of the dealer restored without any interpretation but the fact remains on the date of transaction between the instant dealer and M/s. Amit Pharmaceuticals the status of the R.C. of the selling dealer was a cancelled one.

7. Learned counsel appearing for the dealer in answering to the submission of the learned Addl. Standing Counsel has argued that, in all eventualities it is evident from the document that, the

selling dealer had collected tax from the instant dealer. He submitted the ledger copy of the selling dealer against the sale transaction in question. It is also argued by the learned Counsel for the dealer that, the selling dealer had filed return which was duly accepted by the Revenue time to time and the same can be very well detected by the returns filed by the dealer.

In **Shanti Kiran India Pvt. Ltd. -Vrs.- Commissioner of Trade Tax Department, 2013 (2) TM 180** Hon'ble Delhi High Court has held as follows :

“This Court is of the opinion that in the absence of any mechanism enabling a purchasing dealer to verify if the selling dealer deposited tax, for the period in question, and in the absence of notification in a manner that can be ascertained by men in business that a dealer's registration is cancelled (as has happened in this case) the benefit of input credit, under Section 9(1) cannot be denied”.

The above view is approved by the apex court in SLP preferred by revenue reported in **Commissioner of Trade Tax Department vrs. Shanti Kiran India Pvt. Ltd.TS-2-SC-2018-VAT.**

8. Reverting to the case in hand, it is found that the Addl. Commissioner of Sales Tax has set-aside the impugned order of cancellation of R.C. of the selling dealer M/s. Amit Pharmaceuticals. If that be, it is to be seen whether the selling dealer, who has collected tax from the instant dealer has remitted the same to the taxing authority or not? If it is found the selling dealer has not remitted the same, then, no doubt the taxing authority can proceed against the selling dealer for realization and as well as it can penalize the selling dealer also for such default. But once it is found established that, the selling dealer has collected tax, then the assessee-dealer cannot be held responsible for non-deposit of the same by the selling dealer.

9. From the discussion herein above, it is held that, the matter should be remitted back to the AA for enquiry on the limited point that, whether the selling dealer has collected tax from the instant dealer or not and for the purpose, the AA is at liberty to exercise the jurisdiction u/s.92 of the OVAT Act to examine the selling dealer and thereafter, if it is found that, the instant dealer has already paid tax, then by necessary implication thereof, the instant dealer will be entitled to get ITC, whereas if it is found that, the selling dealer has not deposited the tax collected so, the AA will be at liberty to proceed with the selling dealer as per law, but in case, once the document like ledger copy filed by the instant dealer are found correct, then the dealer will be entitled to ITC. Accordingly, it is ordered.

The appeal is allowed on contest. The matter is remitted back to the AA for determination of the ITC entitlement of the instant dealer as per the observation above.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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