

Vigilance Wing, Cuttack. In course of inspection they have recovered few incriminating documents pertaining to the business activities of the dealer from his possession basing on which an adverse report was submitted. In the said report the inspecting officials have reported about the suppression of sales and also the indulgence of the dealer in the practice of under-invoicing leading to less discharge of tax liability than that is due to the State.

3. Upon receiving the said report, the Ld. AA has instituted proceeding U/s.43 of the OVAT Act which resulted in creation of the impugned demand of Rs.3,75,744.00 including penalty levied U/s.43(2) of the OVAT Act.

4. The dealer on being aggrieved has preferred an appeal before the Ld. FAA, who reduced part of the impugned demand being created without jurisdiction. While passing the above order, the Ld. FAA was of the opinion that since the alleged transactions were inter-State in nature, the initiation of escaped assessment proceeding under the Odisha Value Added Tax Act is not sustainable. Similarly the demand raised on account of under-invoicing was also deleted by the Ld. FAA due to absence of any procedural mechanism of Section 101 of the OVAT Act, and in deciding the same the Ld. FAA has relied upon the decision of this Tribunal in S.A.No.12(VAT) of 2008-09 dated 9.2.2011 in case of M/s. Bharat Trading Co.,Cuttack Vrs. State of Orissa.

5. On being dissatisfied with the above order passed by the Ld. FAA, the State has preferred the present appeal challenging the order of the first appellate authority to be unjust and improper in view of the

immunity provided U/s.98 of the OVAT Act. Besides, the State has sought for restoration of the order passed by the Ld. AA, in view of the judgement of Hon'ble Supreme Court of India, dated 11th July 2008, and dt.15th December, 1997 in case of M/s. Deepak Agro Foods Vrs. State of Rajasthan and Others in Civil Case No.4327-28 of 2008 and that of M/s. Sri Durga Oil Mills & Anr. in Civil Appeal No.3785-86 of 1988 respectively.

6. No cross objection has been filed by the respondent dealer.

7. Heard the case from the learned counsel of the State. As there is no appearance from the side of the respondent dealer, the case is decided exparte on its own merit basing on the materials available on record.

8. During the course of hearing the learned counsel of the State has reiterated the grounds of appeal and has averred that the proceeding initiated U/s.43 of the OVAT Act cannot be invalidated in view of Section 98 of the Act, which envisages that no proceeding shall be invalid or deemed to be invalid merely because by reason of any mistake, defect or omission, if in substance and effect, the same is in conformity with or according to the intents, purposes and requirement of the Act. He further relied upon the decision of the Hon'ble Supreme Court of India in Civil Appeal Case No.4327-28 of 2008 in case of M/s. Deepak Agro Foods Vrs. State of Rajasthan & Ors, which distinguishes between a "null and void" order with an "illegal or irregular" order. In stating so, the learned counsel has contended that since it was a case of irregularity in the assessment order the same could have been cured but should not have

been declared null and void. Further, the Learned Counsel has referred to the decision dt.15.12.1997 of the Hon'ble Apex Court in Civil Appeal No.3785-86 of 1988 in case of Sales Tax Officer & Anr. Vrs. Shree Durga Oil Mills and Anr, wherein the Hon'ble Court was pleased to observe that public interest must override any consideration of private loss or gain.

8. On perusal of record, it is revealed that the alleged transactions were of inter-State in nature for which the demand raised was deleted due to want of jurisdiction. The Appellant State also failed to contradict the findings of the Ld. FAA that the said transactions were intra-State in nature.

9. Now coming to the factual issue, on examination of record, it is revealed that the alleged transactions against which the demand was deleted by the Ld. FAA were of inter-State in nature. Even the transactions against which the allegation of under-invoicing was lodged are also found to be inter-State in nature. The State Appellant failed to contract the findings of the Ld. FAA so far as the factual aspect is concerned. Since the alleged transactions are found to be inter-State in nature, the same could have well be addressed by the Ld. AA in invoking escaped assessment proceeding under the CST law. We thus find that the action of the Ld. AA to be without jurisdiction which can not be treated as procedural irregularity and therefore curable under the pretext of application of Section 98 of the OVAT Act. Similarly, the case laws cited by the Appellate State as cited above are also considered to be out of context.

10. In view of the above discussion, we do not find any infirmity in the order passed by the Ld. FAA in reducing the assessment.

11. Resultantly, the appeal preferred by the State-Appellant is considered to be without merit and hence dismissed and the impugned order passed by the Ld. FAA stands confirmed. Appeal is disposed of accordingly.

Dictated and corrected by me

Sd/-
(S.R.Mishra)
Accounts Member-II.

Sd/-
(S.R.Mishra)
Accounts Member-II.

I agree,

Sd/-

(S.K.Rout)
2nd Judicial Member.