

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 33(V)/2017-18**

(From the order of the Id.JCST (Appeal), Cuttack-I Range, Cuttack,
in Appeal No. AA.106121512000047, dtd.27.02.2017, modifying
the order of Assessing Officer)

Present: Sri S. Mohanty & Sri P.C. Pathy
2nd Judicial Member Accounts Member-I

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

-Versus-

M/s. Arval India Private Ltd.,
Dist. Cuttack. ... Respondent

For the Appellant :Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : Mr. B.B. Panda, Advocate

(Assessment period : 01.04.2013 to 31.03.2015)

Date of Hearing: 30.06.2018 *** Date of Order: 02.07.2018

ORDER

Revenue as appellant has challenged the order of learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-I Range, Cuttack (in short, FAA/JCST) deleting thereby the tax due and penalty raised in a proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the period of assessment from 01.04.2013 to 31.03.2015 relating to the dealer-respondent.

2. The facts in brief giving rise to this appeal are : The Audit team in consideration of the period from 01.04.2013 to 31.03.2015 relating to the dealer, which is a Private Ltd. Company dealing with leasing and giving motor vehicles on rent, has submitted report with the allegation like irregular claim of ITC to the tune of Rs.1,66,577/-. The audit team has made an

observation that, the dealer has availed ITC of Rs.88,451/- for the year 2013-14 against seller M/s. OSL Motors Private Ltd., TIN-21931201220 and Rs.2,40,463/- for the year 2014-15 i.e. Rs.1,62,337/- against M/s. Sky Automobiles, TIN-21501301415 and Rs.78,126/- against M/s. Utkal Automobiles Ltd., TIN-21791100029 which has not been reflected as output tax by sellers. During sale of old vehicles, the firm has collected output tax @5% on Rs.4,33,334/- which comes to Rs.21,667/- as per Finance Department Notification No.24984-CTA-14/2007-F(SRO 343/07) dt.31.05.2007 inserted w.d.f.1.6.2007. The AO on cross verification of the documents filed by the dealer with the return filed by the dealer and the registers maintained by the dealer during the period found that, the taxable turnover of the dealer at Rs.27,18,881/-. Total tax/output VAT on it was calculated to Rs.3,30,216/-. The Assessing Officer disallowed the ITC of Rs.1,66,577/- u/r.11A(5)(b) of the OVAT Amendment Rules, 2016 and added the same to the output tax resulting the total output tax collected by the dealer at Rs.4,96,993/-. As a result, the tax due from the dealer was determined at Rs.3,34,656/-. The tax paid by the dealer of Rs.82,761/- in the periodical return was deducted. Accordingly, the balance tax due was calculated at Rs.2,51,895/-. On the said amount, penalty at one time was imposed. Resultantly, the total demand raised to Rs.5,03,790/-.

3. As against that, the dealer preferred first appeal whereby the Id.JCST (Appeal), Cuttack-I Range, Cuttack as FAA came to a conclusion that, the mis-match in ITC was due to wrong crept in the return filed by the dealer. However, on verification of VATIS of the selling dealer, he became satisfied that, the selling dealer had disclosed the transaction with the instant dealer and then he allowed the claim of the dealer of ITC amounting to Rs.1,66,577/- to the dealer. As a result, the tax due reduced to nil.

4. When the matters stood thus, State being aggrieved preferred this appeal on the contentions like, the FAA, without proper verification of the documents relating to the ITC paid by the selling dealer through VATIS has allowed the claim of ITC of the dealer mechanically. So the impugned order is not sustainable.

5. Here in the case in hand, the dispute revolves around the claim of ITC by the dealer. According to the dealer, the amount of ITC claimed was supported by the documents issued by the selling dealers. Same is also evident from the VATIS of the selling dealer. It is submitted that, due to wrong filing in the form of return such mismatch occurred. The FAA, who on proper verification of the same, allowed the claim of ITC. Learned Addl. Standing Counsel, Mr. Pradhan, vehemently argued that, the FAA has gone mechanical without proper verification of the relevant documents. He argued that, Sec.95 of the OVAT Act cast burden on the dealer to prove by adducing sufficient evidence in support of his claim of ITC. According to him, here in this case, the dealer has not filed any documents, hence, the allowance of ITC is mechanical and perverse.

Per contra, learned Counsel for the dealer draws the attention of this forum to the orders of the fora below, where it is seen that, the AO had the occasion to cross verify the purchase invoices produced before him with the certificates given by the selling dealer like M/s. Sky Automobiles. But he could not satisfy regarding the claim of ITC against the transactions with OSL Motor Pvt.Ltd., and Utkal Automobiles. As such, he denied the ITC whereas the FAA has taken into consideration of the returns of these two dealers from VATIS and arrived at a conclusion that these two dealers had shown such sales to the instant dealer. For better appreciation of fact, the relevant portion of the impugned judgment by the FAA is reproduced below :

“In course of hearing of appeal the dealer furnished related papers and documents towards payment of tax at earlier stages to selling dealers who have filed returns during the said periods disclosing purchases and sales turnover. Considering the above discussed facts, submitted Grounds of Appeal, written submission, papers and documents, and written declaration by selling dealers and invoice copies, etc., the disallowing of ITC as claimed by the dealer amounting to Rs.1,66,577/- by the Sales Tax Officer of Cuttack-I West Circle, Cuttack is not proper and as per the provisions of law. So now the dealer is allowed Input Tax Credit amounting to Rs.1,66,577/- as per the discussion made above”.

Now such being the findings on factual side by the FAA, when the Addl. Standing Counsel challenges the same as mechanical, then it is nothing but questioning the wisdom of a competent authority under law. There is no rebuttal evidence adduced by the State to dispute the findings of FAA. To put it in other way, it can be said that, the Revenue could have produced the copy of the returns filed by the two selling dealers from VATIS to dispute the findings of FAA. In absence of any cogent and rebuttal evidence, it cannot be presumed that, a responsible officer has acted with malafide intention. Law is well settled that, any order passed by the public officer in his official capacity is presumed to be bona-fide and passed in accordance to law, unless otherwise proved with definite evidence. Here in the case in hand, the said presumption is applicable. In that event, on surmisation and conjectures, this Tribunal cannot hold that, the FAA has not verified any documents and mechanically mentioned the fact of verification in the impugned order.

In ultimate analysis, it is held that, the grounds of appeal has no substance. It never can be accepted that, the dealer had not discharged the burden rests on him u/s.95 of the OVAT Act. Accordingly, it is ordered.

The appeal be and same is dismissed as of no merit

Dictated and Corrected by me,

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

I agree,

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

Sd/-
(P.C. Pathy)
Accounts Member-I