BEFORE THE JUDICIAL MEMBER-II:
ODISHA SALES TAX TRIBUNAL: CUTTACK.

P r e s e n t: Shri S.K. Rout,
2nd Judicial Member

S.A. No. 318(V) of 2018
(Arising out of the order of the learned Joint Commissioner of Sales Tax (Appeal), CT & GST Territorial Range, Bhubaneswar, in First Appeal Case No. 106221722000059, disposed of on dtd.30.10.2018)

M/s. P.K. Agency,
Plot No.78, Sabar Sahi Lane,
Cuttack Road,
Bhubaneswar-751006. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. C.R. Das, Advocate
For the Respondent ... Mr. D. Behura, S.C.

Date of hearing: 20.05.2023 *** Date of order: 17.06.2023

O R D E R

The dealer prefers this appeal challenging the order dtd.30.10.2018 passed by the learned Joint Commissioner of Sales Tax (Appeal), CT & GST Territorial Range, Bhubaneswar (hereinafter referred to as, JCST/first appellate authority) in First Appeal Case No. 106221722000059, thereby confirming the order of assessment dtd.24.01.2017 passed by the learned Sales Tax

Officer, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, learned STO/assessing authority) u/s.42 of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) for the tax period from 01.04.2013 to 31.03.2015 raising demand of ₹16,33,389.00 including penalty of ₹10,88,926.00 imposed u/s.42(5) of the said Act.

2. The brief fact of the case is that, the dealer in the instant case being a proprietorship concern is engaged in wholesale/retail distribution of electrical goods and equipments inside the State of Odisha. Pursuant to Audit Visit Report (in short, the AVR), learned assessing authority initiated the assessment proceeding u/s.42 of the OVAT Act for the tax period 01.04.2013 to 31.03.2015 and raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the demand.

4. Further, being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection in this case is filed by the State-respondent.

6. During course of argument, learned Counsel for the dealer-appellant contended stating that the order passed by the forum below deserves to be set aside as there is non-application of mind for disallowance of ITC

amounting to ₹1,35,115.00 and allowance of labour and service charges at ₹31,61,934.00 against the claim of ₹39,52,418.00.

7. Per contra, learned Standing Counsel for the Revenue refuted the claim of the dealer-appellant stating that the orders of the forums below are genuine. Learned Standing Counsel for the Revenue also submitted that the grounds and averments of the dealer-appellant that the disallowance of ITC u/s.20(3a) of the OVAT Act because the ITC claim by the dealer has no corresponding output tax paid by the dealer of ₹1,35,115.00 as mismatch detected in the ITC ledger and allowance of labour and service of ₹31,61,934.00 against the claim of ₹39,52,418.00 and imposition of penalty thereon are rightly adjudicated upon by both the forums below. This apart further contention of the learned Standing Counsel is that, the tax liability has been computed by the learned STO and subsequently confirmed by the learned first appellate authority which is based on the findings of AVR and the dealer-appellant failed to submit any documentary evidence in support of its claim. The forums below have rightly imposed penalty u/s.42(5) of the Act as provided in the statute because the same are statutory in nature irrespective of mens rea proved.

8. Heard the contentions and submissions of both the parties in this regard. From the rival contentions of the parties, it becomes apparent that the sole dispute in

the instant case is the disallowance of ITC amounting to ₹1,35,115.00 and allowance of labour and service charges at ₹31,61,934.00 against the claim of dealer at ₹39,52,418.00.

9. Perused the case record vis-à-vis grounds of appeal, cross objection and the materials available on record including the orders of the fora below. On perusal of the orders of the fora below, it becomes quite evident that during the time of final hearing of the first appeal, the dealer-appellant failed to produce relevant books of account maintained towards labour and service charges claim. Bereft of such, the dealer-appellant also could not be able to explain cogently against disallowance of ITC amounting to ₹1,35,115.00. The admitted fact is that there is discrepancy in the dealer ledger and as such the learned first appellate authority was inclined to justify the order of the learned assessing authority assigning the reasons that with regard to claim of ITC amounting to ₹1,35,115.00 on the ground of discrepancy in the dealer ledger, the appellant failed to produce the relevant tax invoices with books of account for verification. This apart with regard to claim of labour and service charges amounting to ₹7,90,484.00 as no documentary evidence could be furnished on behalf of the dealer-appellant for which he observed that the learned assessing authority has rightly allowed labour and service charges basing on the AVR. On this score, have a glance to the provisions of

sec.42(5) of the OVAT act which entails that "without prejudice to any penalty or interest that may have been levied under any provisions of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or sub-section (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections", the word 'shall' denote the mandatory character of the provision. Moreover, in M/s. Jindal Stainless Ltd. Vs. State 54 VST page 1, it is held that-"we are of the considered view that Section 42(5) of the OVAT Act authorizing imposition of penalty equal to twice the amount of tax assessed u/s.42 rule (3) or (4) of the OVAT Act is constitutionally valid. So, it is neither arbitrary nor unreasonable nor oppressive.

10. So in view of the above analysis, to my view, the learned first appellate authority has rightly adjudicated upon the issues which are inconsonance with the provisions of law and as such the same needs no interference.

11. In the result, the appeal preferred by the dealer is dismissed and the orders of the fora below are hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

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