

2. The facts as revealed from the case record are as follows :

The dealer M/s. Prasad Agency, Rajabazar, Jatni is engaged in the business of Frooti, Britannia brand biscuits and cakes, dairy whitener etc. on wholesale basis. Responding the notice from the Asst. Commissioner of Sales Tax, Jatni Circle, Jatni (in short, 'assessing officer') authorized representative of the dealer had appeared before him and produced the books of account. The assessing officer had verified its books of account and confronted the Audit Visit Report (AVR) against the dealer since as per the AVR the dealer's firm had availed ITC amounting to ₹2,93,806.00 in respect of the stock held by it on 01.04.2005 for which it had applied in Form VAT-607. Since the dealer had availed ITC without receipt of communication made in Form VAT-608 it was held by the Audit Team that the dealer had violated the provision of sub-rule (3) of Rule 123 of the OVAT Rules. The dealer's explanation as to under what circumstances such lapses on its part had occurred the same was not accepted by the authority concerned and as its claim for ITC was rejected by the Sales Tax Officer the dealer was asked to pay the entire amount of ITC which was availed by it illegally as its tax due for the relevant period.

Being aggrieved by this order the dealer preferred an appeal before the first appellate authority who in course of hearing of

the appeal had gone through the order of assessment vis-à-vis the grounds of appeal and the materials available on record. He had also gone through the copy of the relevant rejection letter and then observed as follows :

Quote : "Verification hearing for availing ITC on stock held on 1.4.05 was heard on 22.8.05, but order of rejection was passed on 16.5.2006. The Ld. Sales Tax Officer has not examined the claim of the dealer as per provisions of law.

Returns of the period 1.4.05 to 28.2.06 cannot be the basis for rejection of claim of ITC on stock held on 1.4.05. Even also, no irregularity has been detected by the Ld. Sales Tax Officer in these returns. Rather he has rejected the claim on a flimsy ground which is bad in law and against the principles of natural justice.

The Ld. Assessing Authority has mentioned about the issue of rejection letter, nothing about its service upon the dealer. Hence the appellant's claim that he has not received the rejection letter appears to be true.

To hold a stock worth more than 22 lakhs on 1.4.05 on the part of a dealer making monthly purchase and sale of 10 to 12 lakhs is surely practical. Rejection of his total claim implies the conclusion by the Authority that the dealer had no stock on 1.4.05, which cannot be a fact.

The Ld. Sales Tax Officer, though took almost 9 months to pass the rejection order, has not tried to ascertain the physical stock position with reference to the books of account at any time."

Unquote.

Under such circumstances he remitted the case to the assessing officer while holding that the dealer was deprived of natural justice. He directed the assessing officer for reassessment following his certain instructions which we prefer to quote here for proper appreciation of the case.

Quote : "1. First, he has to re-examine the application in Form VAT-607 for availing ITC of ₹2,93,806.00 on the stock of ₹22,34,709.04 held by the dealer on 1.4.05 as per procedures laid down in the OVAT Act.

2. Then, as per his findings, he is to determine whether full, part or nil amount of the total claim of ITC of the dealer is admissible and issue an order to that effect.
3. Then he is to complete the re-assessment taking into consideration the amount allowed by him for availing ITC to the dealer along with any other findings he may come across." Unquote.

3. The State being aggrieved by this order of the first appellate authority preferred second appeal before the Tribunal on the grounds that the order passed by the first appellate authority is erroneous, arbitrary and bad in law. The ITC was disallowed by the Sales Tax Officer on opening stock as on 01.04.2005 and the same should not have been interfered with by the first appellate authority at the stage of appeal before him. The erroneous claim of adjustment of ITC attracts penalty u/S. 107(4) of the OVAT Act, 2004. Therefore, the

impugned order be quashed and the assessing officer may be directed to recompute the liability of the dealer by addition of penalty.

4. The dealer has filed cross-objection in this appeal mentioning therein that the order of assessment is illegal and determination of GTO and TTO of the dealer being on the extreme higher side is bad in law. The DCST, Puri Range, Puri has set aside the assessment rightly. The dealer had applied ITC on closing stock as on 31.03.2005 in VAT-607 Form on 27.06.2005 i.e. in time. The STO, Jatni who heard the case on 22.08.2005 neither issued any intimation disallowing ITC nor issued VAT-608 Form to the dealer till audit assessment hearing on 19.02.2008. The dealer came to know that the ITC of stock held as on 01.04.2005 was disallowed illegally on 31.03.2006.

5. In course of hearing of the appeal both the parties were heard elaborately. Learned Standing Counsel (CT) for the State-appellant could not justify convincingly as to why there should not be a fresh assessment in the instant case in the light of the observation of the first appellate authority and in terms of its instructions when it could be detected that principle of natural justice has not been followed strictly in the instant case when the dealer was saddled with some tax liability. In the aforesaid circumstances we find no reason to interfere with the impugned order.

6. In the result, the appeal preferred by the State is dismissed and the cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III