

the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') in respect of the dealer-assessee for the tax period 01.04.2006 to 31.03.2011.

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

The dealer-assessee M/s. Agrawal Brothers, Deepsikha, NTPC deals in cement, iron and steel goods, asbestos paints and hardware goods on wholesale and retail basis. It effects all its purchases and sales inside the State of Odisha. As per Audit Visit Report (AVR) a notice was issued to the dealer for its assessment u/S. 42 of the OVAT Act but none on behalf of the dealer responded for which the assessing officer accepted the views of the Sales Tax Officer, Investigation Unit in respect of the dealer-assessee and in absence of its books of account he completed the assessment to his best judgment considering the facts and figures found in the AVR. Then on determining its GTO and TTO he (the assessing officer) concluded that the dealer was required to pay ₹2,44,767.00 towards its tax liability with penalty for the relevant period.

Being dissatisfied with the aforesaid order of assessment the dealer-assessee preferred an appeal before the first appellate authority contending before him that the assessing officer had taken the closing stock of the dealer arbitrarily and enhanced its tax liability which was erroneous and illegal. Further the assessing officer did not consider payment of output tax of ₹10,000.00 made by the

dealer during the financial year 2009-10. Thus assailing the order of assessment as illegal the dealer urged before the first appellate authority to set aside the same. The first appellate authority after going through the order of assessment and the grounds of appeal raised by the dealer-appellant before him opined that the assessing officer while completing the assessment on the basis of AVR had made some error in determination of the GTO and TTO of the dealer apparently by mistake. Consequently there was a mistake in computation of the output tax and further he (the assessing officer) also failed to consider the payment of output tax of ₹10,000.00 by the dealer as claimed by it. Therefore, the first appellate authority redetermined the tax liability of the dealer and in the process he found that the dealer was to pay ₹28,62,019.00 towards its tax with penalty which is much more than the tax with penalty assessed by the assessing officer.

3. The dealer 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 forum below is illegal and erroneous. Levy of tax by enhancing tax liability basing on erroneous figure and calculation of wrong GTO, TTO and purchase turnover of the dealer is certainly against the principle of natural justice and as such illegal in the facts and circumstances of the case.

Cross-objection on behalf of the State has been filed supporting the impugned order.

4. In course of hearing of the appeal from both sides it could be noticed that the first appellate authority had enhanced the assessment without following the statutory provision as envisaged u/R. 89(3) of the OVAT Rules in the present case. No opportunity was given to the dealer to be heard in the matter before enhancement of the assessment against it which also includes penalty in the instant case. Therefore, sheer violation of the principle of natural justice is noticed in disposal of the first appeal by the forum below and as such the same can never be embossed by this forum. Accordingly the impugned order is set aside and the case is remitted to the first appellate authority for fresh consideration and disposal of the appeal on merit in accordance with law.

5. In the result, the appeal preferred by the dealer is allowed. 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