



from inside and outside the State. For the period of assessment from 01.04.2013 to 31.03.2015, the dealer had claimed ITC of Rs.26,26,499.00 but due to mismatch of figure between the selling dealer and the appellant regarding collection of tax and accrual of ITC in the hands of the appellant, ITC to the tune of Rs.2,54,221.00 was disallowed before the assessing authority.

In appeal before the first appellate authority also the appellant claim was denied and the disallowance of ITC by the assessing authority became confirmed. On this backdrop, the appellant has filed this appeal against the concurrent finding of first appellate authority with the contention like, disallowance of ITC to the tune of Rs.2,54,221.00 is against the provision of law u/s.20(3) of the OVAT Act. In spite of the production of original tax invoice as well as total books of account showing the bonafide purchases, the claim of ITC was rejected illegally.

3. The appeal is heard with Cross Objection from the side of the Revenue. In the cross objection, Revenue has supported the findings of the first appellate authority stating therein the denial of ITC, imposition of penalty and levying of interest are just and proper.

4. From the rival contentions above, following substantial questions based on law and facts are framed for decision in this appeal,

- (i) whether the first appellate authority is wrong in confirming the order of assessing authority by disallowing ITC for the reason of mismatch of ITC amount between the selling dealer and purchasing dealer for an amount of tax by selling dealer;
- (ii) whether the first appellate authority is wrong in confirming the order of imposing penalty u/s.42(5) of the OVAT Act of the dealer.

5. On the disputed question of ITC, the claim of the dealer is, it has submitted original invoices depicting payment of tax to selling dealer. The dealer cannot be held liable for any fault of the selling dealer in depositing tax. Per contra, argument of the Revenue is, ITC is not admissible when selling dealer has not deposited the tax collected as it is evident from the return of selling dealer.

Regard being had to the facts of the case in hand above, when we look into the authorities deciding the identical question we can rely in **Sri Vinayaga Agencies v. Asst. Commissioner (CT), Vadapalani-I, Assessment Circle, Chennai and another [2013] 60 VST 283 (Mad.)**. The Hon'ble Court has held as below:-

“(ii) That sub-section (16) of section 19 states that the input-tax credit availed is provisional. It, however, does not empower the authority to revoke the input-tax credit availed of on a plea that the selling dealer has not paid the tax. It only relates to incorrect, incomplete or improper claim of input-tax credit by the dealer. it was not so in these cases.”

Similarly, in the matter **Faiveley Transport Rail Technologies India Limited v. Asst. Commissioner (CT), Hosur (South), Hosur (2017) 97 VST 395 (Mad)**, it is held as follows:-

“Held, allowing the petitions, that the dealer could not be denied the entire tax credit on verification of the Department website alleging that the dealer had reported higher purchases and availed of input-tax credit in excess.”

Further, in **Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others TS-2-SC-2018-VAT**, the Hon'ble Apex Court in SLP before it upheld the view of the Hon'ble High Court that, Sec.9(2)(g) of the Delhi VAT Act to the extent it disallows input tax credit to purchaser due to the default of the selling dealer in

depositing tax, as violative of Article 14, 19(1)(g) of the Constitution of India.

6. Treating both, the guilty purchaser and the innocent purchaser at par is violative of the Article 14 of the Constitution. A bona fide purchaser cannot be denied because of the intentional or intentional default of the selling dealer over whom the purchasing dealer has no control. The taxing authority is not handicapped under law to collect tax from the defaulting dealer and punish the defaulting dealer also. It is only to be seen that, the selling dealer is a registered dealer or not. Once the purchasing dealer has demonstrated that, the assessee has complied with the requirements, then he cannot be denied ITC only because the selling dealer fails to discharge his obligation under the Act. The selling dealer ought to have deposited the tax collected under the law.

In the matter of **Shanti Kiran India Pvt. Ltd. v. Commissioner of Trade Tax Department, 2013 (2) TM 180** which was later on confirmed by the Hon'ble Supreme Court it is observed that, it is not the dealer's liability to see whether the tax was deposited by the taxing authority or not.

Here, we can be benefited further from the notification of CCT. The Notification No.1465/dtd.16.01.2016 came into force w.e.f. 01.10.2015. Sec.20(3)(3a) as inserted w.e.f. 01.10.2015 read as follows:-

“Notwithstanding anything contained in this Act, no amount of input tax credit shall be allowed to a registered dealer on any purchase of goods in excess of the amount of such tax actually paid under the Act.”

The notification above is indicative of the intention of the legislature to allow the dealer ITC to the extent of tax it has paid to his selling dealer. If that be, the findings of the FAA in the impugned order being not in consonance with the authoritative pronouncements mentioned above, it

cannot withstand in law. Here, it is held that, mismatch of ITC never can be a ground to disallow ITC to the bona fide dealer-purchaser who acted in good faith. However, the fact remains, in the event it is found that, the selling dealer is a fake entity dealer or the tax invoice is forged then in the event, it is nothing but a fact of commission of fraud in that case, the question of ITC cannot arise. So for the ends of justice, herein the case in hand, the matter needs to be remitted back to the assessing authority for verification of the genuineness of the tax invoices against purchase by the instant dealer. It is made clear that, for any fault of the selling dealer the present dealer cannot be denied to avail ITC.

Accordingly, it is ordered.

The appeal is allowed in part on contest. The matter is remanded back to the assessing authority for assessment afresh as per the observation above. The assessing authority will do well to dispose of the remand assessment within a period of four months hence. The dealer is directed hereby to appear before the assessing authority without waiting for any notice of hearing from the learned assessing authority.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member