BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A.No. 109(V)/2011-12

(From the order of the ld.DCST, Ganjam Range, Berhampur, in Appeal No. AA.(VAT) 41/2010-2011, dtd.23.04.2011, confirming the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Maa Santoshi Traders,
Dolua Street, Berhampur,
Dist. Ganjam. ... Appellant

-Versus-

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

For the Appellant : None
For the Respondent : Mr. S.K. Pradhan, ASC (C.T.)

(Assessment Period : 27.05.2007 to 30.09.2009)

Date of Hearing: 29.11.2018 Date of Order: 29.11.2018

ORDER

The Audit Visit Report (AVR) bearing No.197/2009-10 was the basis for initiation of assessment proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) covering tax period from 27.05.2007 to 30.09.2009 relating to the appellant-dealer M/s. Maa Santoshi Traders, Dolua Street, Berhampur, Dist. Ganjam, who was a proprietorship concern carried on business in ghee, fruits, drinks, phenyl, scrubs on wholesale basis. The allegation against the dealer as per the AVR is, the dealer was guilty of sale suppression. The regular return of the dealer was considered by the Sales Tax Officer/Assessing Authority, Ganjam-I Circle, Berhampur (in short,

STO/AA) and compared the same with allegations in AVR. The dealer admitted the sale suppression of Rs.4,075/- in stock in trade whereas, he disputed the other allegation of suppression of sale to the tune of Rs.60,683.43. The dealer disputed the gross profit percentage taken by the Audit team i.e. 7.48% and claimed for the gross profit percentage @4%. However, the AA discarded the plea of the dealer and accepted the AVR. Thereafter, he proceeded to re-determine the GTO and TTO adding an enhancement to the tune of Rs.70,000/-, GTO was re-determined at Rs.34,11,423.11 Out of that Rs.1,83,335.13 towards collection of output tax was deducted and consequently the TTO was determined at Rs.32,28,087.98. Taxing the same @4% on Rs.25,34,394.03 and @12.5% on Rs.6,93,693.95 and then the tax already paid and the claim of ITC were adjusted thereby, the balance tax due was calculated at Rs.4,652/-. Thereupon, penalty u/s.42(5) of the OVAT Act i.e. twice of the tax due was also imposed and as such the total tax due and penalty became raised to Rs.13,958/-.

2. Being aggrieved with the order of assessment and demand raised, the dealer preferred appeal before the FAA, whereby the ld.DCST, Ganjam Range, Berhampur as FAA did not interfere with the order of the AA, resulting the demand of tax and penalty remained un-disturbed. The FAA also accepted the allegations in the AVR to be true and the determination of the AA to be sustainable.

When the matter stood thus, finding no alternative, the dealer preferred this second appeal. The contention of the dealer is, the determination of the sale suppression by the AA are baseless. The levy of penalty as determined by the AA is not tenable in law.

3. Though the appeal was preferred by the dealer, but it is heard in absence of the dealer setting him ex-parte as the dealer did not choose to contest the case as the dealer avoiding the process of

Court, which is evident from the report of the Officer, who resorted the mode of affixture service to give notice of the date of hearing on the appellant-dealer.

4. Delving into the merit of the case, it was found that, there was allegation of suppression against the dealer in the AVR, which was the basis for initiation of audit assessment u/s.42 of the OVAT Act. The assessment of the AA as it revealed, the dealer had admitted the suppression in stock of goods of Rs.4,075/-. Similarly when the AA determined the gross profit rate at 7.48% in place of 4% which was claimed by the dealer and when there was detection of suppression of sale to the tune of Rs.60,,683.43, the enhance of the GTO by Rs.70,000/- is reasonable. There is no plausible and reasonable explanation advanced by the dealer before the FAA or before this Tribunal to discard the view of AA. The question of fact like sale suppression as determined by both the fora below calls for no interference for the reason that, the dealer could not adduce any trustworthy evidence to rebut the same. A question of fact determined by both the fora below cannot be interfered with on the mere hypothetical grounds taken by the dealer. Thus, it is held that, the sale suppression as determined by the AA, which was later confirmed by the FAA in the case in hand, calls for no interference.

5. Coming to the next point i.e. the penalty as imposed invoking the provision u/s.42(5) of the OVAT Act, in the event of suppression determined u/s.42(1) read with Sec.42(4), the penalty u/s.42(5) is the mandatory consequence. Be that as it may, it is held that, the penalty as imposed being a mandatory consequence of the detection of tax liability on sale suppression, the same as determined by the fora below also needs no interference on the basis of a mere plea that, the penalty is not tenable.

Thus from the above, it is held that, the dealer is guilty of sale suppression leading to demand of balance tax payable by the dealer and the dealer's further liability to pay penalty as determined by the fora below is justified. Accordingly, it is ordered.

The appeal by the dealer being devoid of any merit stands dismissed.

Dictated and Corrected by me,

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

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