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

S.A.No. 180(ET)/2013-14

(From the order of the ld.DCST, Koraput-Range, Jeypore in Appeal No. AAE(KOR)55/2004-2005, dtd.28.10.2013, modifying the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

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

-Versus-

M/s. S. Viswanathan And Sons,
Daily Market, Jeypore,
Dist. Koraput.

... Respondent

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

(Assessment Year : 2004-2005)

Date of Hearing: 29.11.2018 *** Date of Order: 29.11.2018

ORDER

When the balance tax due calculated in a proceeding u/s.7(4) of the Odisha Entry Tax Act, 1999 (in short, OET Act) was deleted in appeal by the First Appellate Authority/Deputy Commissioner of Sales Tax, Koraput-Range, Jeypore (in short, FAA/DCST), the order of the FAA is impugned in this second appeal by the Revenue as not sustainable.

2. The facts in brief giving rise to the present appeal are: The dealer was initially assessed u/s.7(4) of the OET Act for the period of assessment 2004-05. The dealer had disclosed gross purchase of schedule goods amounting to Rs.1,07,51,219.90 and to have paid tax

at the check gate of Rs.1,32,480.50. The dealer had also disclosed that the gross purchase the amount as aforesaid includes the freight of Rs.1,64,00,019/-. The Sales Tax Officer/Assessing Authority, Koraput Circle, Jeypore (in short, STO/AA) could found that the dealer had preferred to pay the tax at check gates and the tax has been collected at different check gates were after enhancing the disclosed value so as to ascertain the purchase value i.e. including the freight etc. After going through the details of the purchase value including the freight as reflected in the M.R. placed before the AA i.e. in original order and in photocopy, the AA accepted the M.R. to the tune of Rs.96,729/-. As the rest amount of purchase as claimed by the dealer was not supported by any original M.R. with the explanation of the dealer that, at the check gate one M.R. was issued covering different dealers So, the dealer could not get the original but the Xerox was not accepted. As a result, the AA though accepted the value disclosed by the dealer of Rs.1,07,51,217.90 as GTO and TTO in the case in hand and determined the tax liability @1% on it at Rs.1,07,512.20 but as the dealer could produce the M.R. for Rs.96,729/- the rest amount i.e. Rs.10,783.20 remained outstanding balance tax due and accordingly the demand was raised.

3. Being aggrieved with such assessment, the dealer knocked the door of the FAA. The FAA in his cryptic, confusing, incomplete and almost vague order, deleted the demand of tax determined by the AA which led the Revenue to prefer this second appeal.

It is contended by the appellant-Revenue that, the order of the FAA is not clear, the demand has been reduced to nil mechanically. It is further contended that, the FAA should not have taken consideration of money receipt, which was produced in Xerox. The appellant Revenue has prayed for restoration of the order of the AA.

4. The appeal is heard with cross objection from the side of the dealer. In cross objection, the dealer has contended that, the impugned order suffers from no illegality and it calls for no interference.

5. Here in this appeal, it is to be seen that, whether the FAA was wrong in deleting the tax due as assessed by the AA. The instant dealer was subjected to assessment u/s.7(4) of the OET Act. The dealer was paying tax at the check gate. The GTO as disclosed by the dealer has accepted by the AA, whereas the tax amount on the GTO, which is the TTO as claimed by the dealer was also accepted by the AA and it was held that, the dealer's tax liability at Rs.1,07,512.20 was disclosed by the dealer. The only dispute is, the AA found the money receipt of tax paid at check gate to the tune of Rs.96,729/-. The dealer could not satisfy him about the payment of rest amounting tax i.e. Rs.10,783.20. The explanation of the dealer is at check gate sometimes one money receipt was issued relating to many dealers and for that reason, each dealer was not in a position to produce the original money receipt. The present dealer has got the xerox of the said money receipt reflecting payment of tax by him along with other dealers and the same should have taken into consideration by the AA. If that be, it is believed that, the AA could have cross verified the fact of payment of tax by the dealer with the relevant check gate on the basis of xerox money receipt. Without such verification, it cannot be said that, the dealer had not paid the tax or the money receipt in xerox furnished by the dealer were forged and fabricated. At this juncture, it is pertinent to mention here that, looking at the impugned order it can very well said that, the FAA has not applied his mind. The impugned order makes no sense and it is explicit a pre-designed view of the FAA to delete the demand of tax. From above, it is believed that, this is a fit

case where the unclear and vague impugned order should not be left to stand in the eye of law. But at the same time it will be unsafe to restore the order of AA for the reason that, the claim of the dealer needs further scrutiny to the extent that, whether the dealer has actually paid tax to the tune of Rs.10,783.20 at check gate, as reflected in the xerox of the money receipts. Thus, it is held that, this is a fit case while setting aside the order of the FAA, the matter should be remitted back to the AA for assessment afresh and the AA on such remand assessment should give proper opportunity to the dealer to produce any document in support of the payment of tax of the disputed amount and on the other hand, the AA also directed to cross verify the xerox money receipt with the documents of relevant check gate to ascertain if the dealer actually had paid the tax and only, thereafter, a proper assessment can be made fixing the liability of the dealer, if any. Accordingly, it is ordered.

The appeal as preferred by the dealer is allowed. The impugned order is set-aside. The mater is remitted back to the AA for assessment afresh in the light of the observation above.

Dictated and Corrected by me,

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

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