

seized a gate-pass register consisting 93 nos. of written pages depicting therein dispatch of 10.14. MT of angle and channel to the instant assessee-dealer on 09.02.2007 through vehicle No.OR-09D-7967 and dispatch of 9.920 MT of angle and channel on 01.09.2007 to the instant dealer through vehicle No.OR-09J-0517. The authorized agent of the dealer M/s. Rana Sponge Ltd. admitted to have sold the above two unaccounted for consignments to the instant dealer. On the basis of the aforesaid detection, seizure and report thereupon, the instant dealer was subjected to escaped assessment u/s.43 of the OVAT Act covering the tax period from 01.02.2007 to 28.02.2007 as well as for the tax period from 01.07.2007 to 30.09.2007. In the assessment, on due confrontation of the seized documents to the instant dealer the assessing authority felt the dealer guilty of clandestine business activity on different occasions as ascertained from the seized documents. Thereafter, the suppressed turnover was detected for Rs.2,73,780.00 for the tax period 2006-07 and Rs.5,37,570.00 for the tax period 2007-08. Tax on it was calculated at Rs.10,951.00 and Rs.21,503.00 respectively for the two tax periods, penalty thereupon was levied u/s.43(2) of the OVAT Act was i.e. two times of the tax due for each period and as a result the total demand towards tax and penalty raised against the dealer was at Rs.97,362.00.

3. When the matter stood thus, being aggrieved the first appellate authority carried the matter before first appellate authority. Learned Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road as first appellate authority vide impugned order deleted the tax due and penalty and reduced the figure to nil with the findings that, the allegation of clandestine business is not duly proved.

4. When the demand became reduced to nil, Revenue being aggrieved, preferred this second appeal with the contentions like, the dealer has failed to account for the confessional statement of Accounts Manager of M/s. Rana Sponge Ltd. who disclosed about

clandestine business transaction. So, the benefit of doubt given by the first appellate authority basing on the denial statement of dealer is not proper.

5. Appeal is heard without Cross Objection from the side of the dealer. The dealer also remained absent in the final hearing and set exparte.

6. This is a case where the taxing authority has brought allegation of clandestine business transaction by the instant dealer and subjected the dealer to face escaped assessment u/s.43 of the OVAT Act. The allegation against the dealer is, during visit of the unit one M/s. Rana Sponge Ltd., it is found from the gate-pass register that, M/s. Rana Sponge Ltd. had dispatched goods to the instant dealer on different dates. On the other hand, the assessment, the instant dealer took plea of denial. It is found that, when the assessing authority accepted the suggestion of the vigilance team and held the dealer responsible, the first appellate authority on the other hand held that, the evidence is not sufficient and thereby he reversed the finding of the assessing authority.

Learned Standing Counsel strenuously argued that, the authorized agent of M/s. Rana Sponge Ltd. when given a statement that, the instant dealer had purchased goods from M/s. Rana Sponge Ltd., in that case the first appellate authority should have accepted the statement as a conclusive proof and held the present dealer liable.

7. At the outset, it is apt to mention here that, in the facts and circumstances above, if there is an allegation of clandestine business transaction by M/s. Rana Sponge Ltd. which is detected from the gate-pass register, there, the burden of proof rests on M/s. Rana Sponge Ltd. to discharge the liability, whereas, when the allegation is leveled on the instant dealer on the basis of a register of M/s. Rana Sponge Ltd., then the burden of proof is squarely rests on the Revenue to establish the guilt of the dealer. Once the dealer has taken a plea of innocence, the taxing authority should have enquired

into the fact of allegation from the registers, documents and statements of M/s. Rana Sponge Ltd. The authorized agent of M/s. Rana Sponge Ltd. should have examined by the assessing authority or by the first appellate authority by giving a chance of cross examination to the instant dealer, unless the allegation of clandestine business transaction as brought without any document relating to the instant dealer which is not less than a charge like criminal charge, it cannot be said that, the taxing authority has duly discharged the burden.

8. Adverting to the case in hand, it is also a fact that, there are some documents seized disclosing clandestine business transaction by M/s. Rana Sponge Ltd. which might be related to the instant dealer. In that view of the matter it is also unsafe to accept the view of the first appellate authority that, because the taxing authority remained casual to bring the witness into evidence the dealer should left scot free. The first appellate authority is an extended forum of assessment. It should have taken measure to examine the dealer of M/s. Rana Sponge Ltd. and/or to verify other documents so as to scrutinize the truthfulness of the allegation brought by vigilance team. Thus, I am of the considered view that, this is a fit case when the matter is to be remanded back to the first appellate authority with a direction for inquiry afresh by examining the documents and the person of M/s. Rana Sponge Ltd. to establish the guilt if any of the present dealer.

Accordingly, it is ordered.

The appeal is allowed on contest. The impugned order is set aside. The matter is remitted back to the first appellate authority for assessment afresh as per the observation hereinabove.

Dictated & corrected by me,

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

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