

2. In nutshell, the relevant facts giving rise to this appeal are, the assessee-dealer M/s. Hari Om Store, Binodbihari, Cuttack was assessed u/s.42(4) of the OVAT Act for the tax period 01.04.2005 to 31.07.2008 on the basis of Audit Visit Report (in short, the AVR) with the allegation of purchase suppression as well as sale suppression. In the assessment, the authority found the dealer had suppressed sale of 21 boxes of packing tape, 18 pieces of empty pencil box, 24 pieces of pencil boxes, 5 pieces of elkos gold worth Rs.10,429.40. The dealer had excess stock of 3 pieces of staplers worth of Rs.2,280.00 treated as unaccounted for purchase. The dealer was found to have not paid Entry Tax on purchase of scheduled goods from outstate dealers for Rs.2,64,133.00. Finally, the assessing authority determined the total amount of sale suppression and purchase suppression at Rs.12,846.20. When re-determined the GTO and TTO by applying the best judgment principle as per Rule 49(6) of the OVAT Rules, it has enhanced the GTO by Rs.3,00,000.00. Ultimately, the tax due was calculated, penalty as per Sec.42(5) of the OVAT Act on the tax due ,twice of the tax due was levied and total demand against the dealer was raised at Rs.93,866.00.

3. The dealer being aggrieved, preferred appeal before the first appellate authority. Learned Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack as first appellate authority reappraised the AVR and the allegation of purchase suppression as well as sale suppression. He also upheld the Finding of suppression however, did not prefer to confirm the enhancement to the GTO as determined by the assessing authority, as a result, the enhancement was confined to the suppression detected i.e. to the tune of Rs.12,846.20 (it may be mentioned here that, there was a calculation mistake by the first appellate authority resulting the enhancement reduced to Rs.12,709.40 from Rs.12,846.20).

4. When the matter stood thus, the State became aggrieved with the order of first appellate authority has preferred this second

appeal. The contention of the State-appellant is, the first appellate authority has reduced the demand to Rs.2,689.00 which is wrong and illegal.

5. At the outset, it is pertinent to mention here that, the grounds of appeal taken by the Revenue in the appeal memo is found to be confusing, cryptic and vague. In course of the argument Learned Standing Counsel stated that, the deletion of enhancement by the first appellate authority is wrong, the assessing authority has enhanced the GTO by Rs.3,00,000.00 as per Rule 49(6) of the OVAT Rules i.e. on application of the best judgment principle on the basis of suppression established, whereas the first appellate authority confined the enhancement to the exact amount of suppression detected. But, when the submission of the learned Standing Counsel is beyond the grounds of appeal.

6. So far as -enhancement is concerned, it is found that, there is no reasonable nexus between the suppression detected and the enhancement. The assessing authority has not given any reason on which basis the enhancement by Rs.3,00,000.00 was estimated. On the other hand, if we take consideration of the impugned order, there also, it is found that, the first appellate authority has gone in a slip shod manner by one line findings such as, "the assessing authority was required to assess the suppressed turnover along with the admitted turnover". The first appellate authority has not given any findings why the enhancement is wrong in the case in hand.or how the enhancement by Rs.3,00,000.00 is exorbitant. So, it is held that, though the enhancement by the assessing authority is quite exorbitant and whimsical but, on the other hand the deletion of enhancement by the first appellate authority is also without any reason.

7. In that view of the matter, it can be said that, this is a fit case where the matter should be remitted back to the first appellate authority for the limited purpose of re-determination of the question

of enhancement. Whether there should be any enhancement at all relating to the suppression detected and if yes, what should be amount of enhancement on application of the best judgment principle, these two are the questions need to be determined by the first appellate authority.

Accordingly, it is ordered.

The appeal is allowed in part. The impugned order is set aside. The first appellate authority will do well to dispose of the matter within a period of three months hence as per the observation herein above.

Dictated & corrected by me,

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

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