



parts of Rs.9,54,341.00, raw materials for Rs.1,19,12,984.16, tax exempted goods for Rs.1,19,000.00, 4% taxable goods at Rs.1,86,238.27 against which it had claimed ITC of Rs.7,449.53. Accordingly, the dealer had disclosed its total turnover at Rs.1,23,60,942.26 out of which tax exempted goods were shown as Rs.69,54,248.00. Accordingly, the dealer had paid the tax due of Rs.6,57,508.00. On 29.06.2010, there was an interception and inspection of vehicle transporting the goods of the dealer from dealer's unit to Semiliguda. The Enforcement Team found the dealer was transporting 20 bags of soyabodi taxable under the garb of non-taxable goods like aquatic feed. The tax and penalty was realized on those goods at this spot. On a later date i.e. on 07.07.2010 the Enforcement Wing made a visit to the dealer's unit and verified the stock position, sale/purchase by the dealer. The dealer's contention like, the vehicle was actually transporting tax free goods like aquatic feed was not accepted by the enforcement team and accordingly thereafter the enforcement team calculated the total turnover of the dealer relating to tax exempted goods and taxable goods. On the basis of report of the Intelligence Wing. Learned Sales Tax Officer, Koraput Circle, Jeypore as assessing authority initiated assessment u/s.43 of the OVAT Act. In the assessment it had accepted the suggestion of the Enforcement Wing to treat the 50% of the goods claimed by the dealer as tax exempted sale for Rs.69,54,248.00 calculated to Rs.34,77,129.00 as taxable. Thereafter, on re-calculation of the tax liability, the dealer was found liable to pay balance tax of Rs.4,34,639.75 besides statutory penalty of Rs.8,69,279.50 was imposed, resulting thereby the total demand against the dealer raised at Rs.13,03,919.00.

3. The matter was carried in appeal before the first appellate authority who in turn did not interfere with the assessment of the assessing authority, accordingly the demand remained undisturbed.

4. On the backdrop above, the unsuccessful dealer before both the fora has come up with this appeal.

The main contentions of the dealer are, it was the mistake of the driver of the vehicle who paid tax and penalty after inspection of the vehicle on its way to Jeypore. The dealer had actually sent aquatic feed which was tax exempted goods. The calculation of the taxable turnover by the assessing authority and thereafter confirmation of the same by the first appellate authority whimsical, it needs to be re-visited. It is further contended that, the penalty as imposed is baseless and not in accordance with law.

5. The appeal is heard with Cross Objection from the side of the Revenue, whereby and wherein the Revenue has supported the findings of the first appellate authority as just and proper.

6. The question raised for decision in this appeal are,

- (i) whether determination of suppression and enhancement of the suppressed turnover as held by the first appellate authority in its confirming order is wrong?
- (ii) whether the penalty imposed is unwarranted in the case in hand?
- (iii) what order?

7. In the case in hand, the allegation against the dealer is, it was involved in clandestine business transaction such as in the garb of selling soya aquatic feed, a tax exempted goods, the dealer was involved in selling of soya bodi and nuggets which is taxable under the Act. In its return, the dealer had disclosed the tax exempted goods worth of Rs.69,54,248.00, the assessing authority treated 50% of which as taxable i.e. worth of Rs.34,77,129.00. The backdrop of such view is the Enforcement Wing during patrolling duty inspected one vehicle transporting Semiliguda Project from dealer's unit to M/s. Bidla Traders, Semiliguda on 29.06.2010. As it was found that, the dealer was shown the goods as tax exempted, claiming the same as soya aquatic feed with an intention to evade tax, the Enforcement

Wing levied tax and penalty on it at the spot. The goods detected were worth of Rs.12,000.00. In the assessment, the TTO for suppressed turnover was calculated at Rs.34,77,129.00 i.e. 50% of the turnover shown as tax exempted goods under sale.

8. Learned Authorised Representative of the dealer strenuously argued that, the deduction and thereafter the payment of tax and penalty was paid by the driver of the truck without any knowledge and consent of the dealer. The dealer had never sent any taxable goods, so to say, 'soya bodi' to Semiliguda. The Enforcement Wing should have visited the dealer's unit on the very day of detection i.e. 29.06.2010, but they had visited much after (i.e. 07.07.2010). From this, no inference can be drawn that, the dealer was engaged in selling of taxable goods as tax exempted. For sake of argument, if it is accepted that, the goods detected during transportation were belong to the dealer even then, there was detection of Rs.12,000.00, it should not have enhanced by 290 times without any basis and inasmuch as calculated at Rs.34,77,129.00.

Thus, here, the dealer has claimed that, the inspection of the vehicle on raid and the levy of tax and penalty did not relate to dealer's unit. On the other hand, if it is accepted to be true then, also the enhancement by 290 times to the suppressed turnover is arbitrary. The first contention of the dealer has no legs to stand as it is the Enforcement Wing has detected the sale of soya bodi when transported through vehicle by the dealer. The dealer had not adduced any evidence to rebut such presumption. Mere plea which is nothing but afterthought, the dealer cannot be left scot-free from the allegation of clandestine business transaction as detected by the assessing authority.

9. So far as enhancement of suppressed turnover is concerned, the authorities below have held that, 50% of the goods shown as tax exempted goods as taxable. Eventually, that 50%

amounts to 290 times of the suppression detected during transportation.

On perusal of the orders as it revealed, the authority has analyzed the ratio of sale of tax exempted goods with that of taxable goods disclosed by the dealer for the period 2008-09 and 2009-10. On verification of the physical stock of the soya bodi, the ACST, Enforcement suggested that disallowance of tax exempted sale, whereas the assessing authority levied tax on 50% of the tax exempted sale shown by the dealer. This calculation is based on subjective satisfaction of the authorities below. Both the authorities below, on calculation of the volume of business transaction of the dealer, nature of goods produced by the dealer has applied the best judgment principle to determine the enhancement of turnover. It is calculated at 50% of the goods shown as tax exempted sale. The argument of the dealer like, the enhancement by 290 times is not theoretically correct as the enhancement is not made taking into account of the suppression detected during transit. Here, the enhancement determined as per the stock position and volume of transaction over the period for which was disclosed by the dealer in his turnover.

So, I am of the considered view that, there is no reason before this Tribunal to interfere with the findings on question of fact as held by both the fora below. Accordingly, it is held that, the suppression as determined is not interfered with.

Coming to the question of penalty, as imposed in this case invoking provision u/s.43(2) of the OVAT Act, it is found that, the authority has imposed penalty at two times of the tax due. Learned Counsel argued for deletion of penalty, penalty u/s.43(2) of the OVAT Act is attracted when there was escaped turnover under re-assessment as per provision u/s.43 of the OVAT Act. A wrongdoer having involved in clandestine business transaction, found guilty of tax evasion hence does not deserve any leniency.

However, while countering the imposition of penalty, it is pertinent to take note of the fact that, different benches of this Tribunal has held that the provision u/s.43(2) of the OVAT Act as amended w.e.f. 01.10.2015 should be applicable to pending cases and appeals and accordingly has imposed penalty at one time of the tax due u/s.43(2) of the OVAT Act. The amended provision u/s.43(2) of the OVAT Act is liberally applied to pending appeals keeping in mind the very intention of this Legislature. So, in acceptance of the view of the earlier decided cases by this Tribunal, I consider it proper to impose penalty at one time which will serve better ends of justice in this case.

Accordingly, it is ordered.

The appeal is allowed in part on contest. The impugned order is set aside. The dealer is liable to pay balance tax due of Rs.4,34,639.75 and penalty of Rs.4,34,639.75. Demand be raised accordingly.

Dictated & corrected by me,

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

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