

documents submitted by Vigilance officials. The Enforcement Wing and Vigilance Wing made a surprise visit to the dealer's unit on 25.07.2015. They came across certain documents and seized those from the Managing Director of the company Mr. Manoj Kumar Subudhi as per sec.73(6) of the OVAT Act. On cross verification of the incriminating documents seized with the books of account and connected registers, they submitted tax evasion report only in respect of one document vide Sl. No.08 out of nine number of documents. The one document vide Sl. No.08 of the seizure list basing which escaped assessment was initiated contain 27 printed serial numbers and 53 pages. As it revealed, there was dispatch of semi-finished goods like plastic rolls and PP granules to other firm under the name and style of M/s. Jagannath Polypacks Ltd. for processing work and returned after being processed. The seized documents indicate items, quantity in meters in time to time sent through vehicles with its number. On verification of the seized documents like original job work, challan of the corresponding time periods in which dates and quantity and value of dispatched semi-finished goods are mentioned and thereafter found that, the goods under the said seized documents were transported covering the period from 31.07.2014 to 19.10.2014 such as job work challan vide Sl. No.16 dtd.31.07.2014 to Sl. No.87 dtd.19.10.2014. The discrepancy was determined at Rs.9,94,580.00 and it was treated as sale suppression. Taxing the same @ 5%, the tax due was calculated at Rs.49,729.00, penalty of Rs.99,458.00 was imposed as per Sec.43(2) of the OVAT Act over it, thereby the total demand against the dealer was raised at Rs.1,49,187.00.

3. In appeal before the first appellate authority, learned JCST (Appeal), Cuttack II Range, Cuttack on verification of the seized documents and challan vide Sl. No.16 dtd.31.07.2014 to Sl. No.87 dtd.19.10.2014 of the dealer company compared to challan vide Sl. No.10 dtd.06.08.2014 to challan vide Sl. No.31 dtd.16.10.2014 of another company M/s. Jagannath Plastipacks Limited, he found that

there was no discrepancy, no irregularities and illegalities in the transactions. He held that, disallowance of challan No.10 dtd.06.08.2014 to Sl. No.31 dtd.16.10.2014, goods value of Rs.10,25,995.00 of M/s. Jagganath Plastipacks Limited as assessed by assessing authority without any reason, hence he accepted the same with his further finding that, when goods were suffered with central excise duty as per norms and conditions there can be no further tax liability, so the penalty imposed is uncalled for, hence he deleted the demand.

4. Being aggrieved, with the order of first appellate authority, Revenue has preferred this appeal. It is contended by the Revenue that, challan No.31 dtd.16.10.2014 amounting to Rs.10,25,995.00 against suppressed amount of Rs.9,94,580.00 as determined by the STO should not be interfered with. When the challan amount is different from the suppressed amount, it indicates the challan submitted before the first appellate authority is a manufactured one in order to get benefit out of it. The first appellate authority without application of mind simply accepted the same with an unsustainable reasoning that, the goods were suffered with Central Excise norms and conditions, so levy of further tax amounts to double taxation.

At the outset, it is pertinent to mention here that, on perusal of the assessment order, impugned order and vigilance report along with the written submissions by the dealer, the facts as it revealed, M/s. Jagannath Polymer Limited, M/s. Jagannath Plastipacks Limited and M/s. Jagannath Polypacks Limited are three units separate from each other. M/s. Jagannath Polypacks Limited engaged in performing the job work of other two companies. On the date of visit of the Vigilance officials, two companies like M/s. Jagannath Polymer Limited and M/s. Jagannth Plastipacks Limited have dispatched the materials to M/s. Jagannath Polypacks Limited for process of job work.

Learned Counsel for the dealer draws attention of the forum to the copy of the challan vide Sl. No.16 dtd.31.07.2014 to Sl. No.87 dtd.19.10.2014 of M/s. Jagannath Polymer Limited and challan vide Sl. No.10 dtd.06.08.2014 to Sl. No.31 dtd.16.10.2014 for an amount of Rs.10,25,995.00 of M/s. Jagannath Plastipacks Limited. The first appellate authority accepted the challan Sl. No.10 dtd.06.08.2014 to Sl. No.31 dtd.16.10.2014 of M/s. Jagannath Plastipacks Limited for an amount of Rs.10,25,995.00.

From the impugned order it is not made clear how the challan relates to M/s. Jagannath Plastipacks Limited as produced before the first appellate authority, copy of which produced before this forum can eradicate that the documents relates to dealer M/s. Jagannath Polymer Limited. A confusion arised in view of the similar name of the three units mentioned above. Copy of the challan No.10 to 31 produced before this forum was also produced before first appellate authority as stated by Advocate for the dealer and it is also stated that, the first appellate authority accepted the challan and dropped the charge of evasion but, when the dealer before us in the case in hand is, M/s. Jagannath Polymer Limited how the challan of M/s. Jagannath Plastipacks Limited will answer the question is not explained. M/s. Jagannath Polypacks Limited is the industry used to perform the job work given by other two, so M/s. Jagannath Polymer Limited is related to M/s. Jagannath Polypacks Limited for its job of work. On the other hand, M/s. Jagannath Polypacks Limited is related to M/s. Jagannath Plastipacks Limited for its separate job work. The confusion above needs further inquiry. Hence, I am of the considered view that, the matter should be remitted back to the first appellate authority to re-hear the dealer and then on due scrutiny of the documents will decide if the alleged charge is proved or not?

Accordingly, it is ordered.

5. The appeal is allowed in part. The impugned order is set aside. The matter is remitted back to the first appellate authority for

decision afresh on scrutiny of the challan No.10 dtd.06.08.2014 to Sl. No.31 dtd.16.10.2014 furnished if relate to the charge against the present dealer and whether the present dealer is liable for any tax and penalty.

Dictated & corrected by me,

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

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