



2. The appellant-dealer bearing TIN-21981900126 is a wholesaler of turmeric, dead turmeric, niger seeds, mustard seeds, mahua flower, A.C. sheets, G.C. sheets, iron and steels, cement etc. and is also a retailer of certain consumable products. Basing upon an Audit Visit Report (in short, the AVR), the learned DCST initiated a proceeding u/s.9C of the OET Act against the appellant-dealer for its assessment for the period from 01.12.2006 to 12.01.2010 and issued a notice in form E-30 to appear and to produce the books of account. But, in spite of due notice, when none appeared on behalf of the appellant-dealer, he proceeded to assess it exparte on examination of the available materials including the AVR and found out that in the assessment period in question, the appellant-dealer has purchased goods worth Rs.6,64,35,793.64 from unregistered dealers and 4% taxable goods worth Rs.77,14,149.20 and 12.5% taxable goods worth Rs.63,76,086.61 from registered dealers inside the State and has also effected purchase of goods worth Rs.39,520.00 from outside State and has claimed ITC to the tune of rs.11,00,558.15. On consideration of all the transactions, the learned DCST determined the GTO at Rs.8,16,66,107.60 and after allowing deduction of Rs.2,16,66,107.60 towards purchase of non-schedule goods, determined the TTO at Rs.6,00,000.00 and levied Entry Tax thereon @ 1% which came to be Rs.6,00,000.00. Then, he also imposed a penalty of Rs.12,00,000.00, equal to twice of the tax demand u/s.9C(5) of the OET Act and as such both the tax demand and penalty came to be Rs.18,00,000.00, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned DCST, the appellant-dealer preferred an appeal before the learned ACST bearing Appeal Case No. AA (ET)12/2012-13. But, when the matter was taken up for hearing, the appellant-dealer failed to produce the books of account or any other document in support of its contention and as such on consideration of the existing materials, the learned ACST found no merit in its contention and accordingly dismissed the appeal by confirming the order

of the learned DCST. Thus, again being aggrieved with the order of the learned ACST, the appellant-dealer has preferred this second appeal.

4. No cross objection has been filed by the respondent-Revenue.

5. Heard both the sides. The learned Counsel appearing for the appellant-dealer submitted that, the appellant-dealer has not been afforded sufficient opportunity to produce the books of account and the other relevant documents either before the learned DCST at the assessment stage or before the learned ACST at the first appeal stage and also to counter the allegations leveled in the AVR and as such the order passed by the learned forums below without consideration of the contentions of the appellant-dealer is illegal and is liable to be set aside. He further submitted that, the Addl. Commissioner of Sales Tax (Revenue) in Revision Case No.AA-181/VAT/DCST/(LTU)Assmt./GM/2012-2013, which relates to the assessment of the appellant-dealer u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) for the assessment period from 01.12.2006 to 12.01.2010, has remanded the matter to the learned assessing authority for fresh assessment and in compliance to that order, reassessment of the appellant-dealer u/s.42 of the OVAT Act has already been completed and the tax demand has already been reduced to a considerable extent and as such on this ground also the order passed by the learned forums below is liable to be set aside. On the other hand, the learned Standing Counsel appearing for the respondent-Revenue supported the order of the learned forums below and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials on record. The materials on record reveal that, the present proceeding has been initiated against the appellant-dealer basing upon an AVR and the allegations leveled therein needs to be confronted to it. Though the order passed by the learned DCST shows issuance of notice to the appellant-dealer, it is not in dispute that, the order has been passed exparte in its absence. Similarly, the order passed by the learned ACST reveals about

the non-consideration of the books of account and the other relevant documents due to failure of the appellant-dealer to produce it. Further, on perusal of the copy of the order passed by the Addl. Commissioner of Sales Tax (Revenue) in Revision Case No.AA-181/VAT/DCST/(LTU)Assmt./GM/2012-2013 which relates to the assessment of the appellant-dealer for the assessment period from 01.12.2006 to 12.01.2010 u/s.42 of the OVAT Act, it is seen that, the matter has been remanded to the learned assessing authority for fresh assessment of the appellant-dealer on consideration of certain observations made therein. As per the submission of the learned Counsel for the appellant-dealer, in compliance to that order i.e. the order of the learned Addl. Commissioner of Sales Tax (Revenue), reassessment of the appellant-dealer u/s.42 of the OVAT Act has already been completed by the learned assessing authority and the tax demand has already been reduced to a considerable extent. The present proceeding is a consequential one of the said proceeding initiated u/s.42 of the OVAT Act for the same assessment period.

7. Therefore, in the present facts and circumstances, interest of justice demands that, the appellant-dealer should be given a further opportunity to produce the books of account and the other relevant documents before the learned assessing authority and also to take part in the hearing of the matter. Therefore, without going into the merit of the case this forum fees it proper and justified to set aside the order of the learned forums below and to remand the matter to the learned DCST for fresh assessment of the appellant-dealer by affording due opportunity of hearing to it on production of the books of account and the other relevant documents.

8. In view of the above observation, the appeal is allowed in part. The order passed by the learned forums below is hereby set aside. The matter is remanded back to the learned DCST for fresh assessment of the appellant-dealer. But, it is made clear that, there is no necessity of issuance of any further notice to the appellant-dealer by the learned DCST in this

regard. The appellant-dealer is directed to appear before the learned DCST within one month of receipt of this order to receive further instruction from him. The learned DCST is directed to take note of the order passed by the learned Addl. Commissioner of Sales Tax (Revenue) in Revision Case No.AA-181/VAT/DCST/(LTU)Assmt./GM/2012-2013 during the assessment. He is further directed to complete the proceeding within a very reasonable period.

Dictated & corrected by me,

Sd/-  
(Ashok Kumar Panda)  
1<sup>st</sup> Judicial Member

Sd/-  
(Ashok Kumar Panda)  
1<sup>st</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Mishra)  
Chairman

I agree,

Sd/-  
(Ranjit Kumar Rout)  
Accounts Member-II