



31.03.2013 raising a balance tax demand and penalty amounting to Rs.7,93,470.00.

2. The appellant-dealer bearing TIN-21291300027 is a manufacturer of aluminium circles and aluminium utensils and to manufacture the finished products it uses raw materials like aluminium scraps, plates and circles. In course of business transaction it used to effect purchase and sale both inside as well as outside the State and also effect transfer of goods to its branches located outside the State on the strength of the statutory declaration form 'F'. Similarly, in addition to the purchase made inside and outside the State, it also used to purchase goods from outside the country by way of import. Basing upon an Audit Visit Report (in short, the AVR), the learned DCST initiated a proceeding u/r.12(3) of the CST(O) Rules against the appellant-dealer for its assessment for the period from 01.04.2011 to 31.03.2013 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the appellant-dealer appeared and produced the books of account which were duly been examined in the light of the allegation of the AVR. On examination, the learned DCST found out that, in the assessment period in question, though the appellant-dealer has effected interstate sale worth Rs.14,99,05,759.00 and branch transfer worth Rs.3,69,38,826.00, it could only be able to produce the required declarations in form 'C' and form 'F' for an amount of Rs.14,66,71,208.00 and Rs.3,69,38,826.00 respectively and accordingly determined the GTO and NTO and levied tax at the appropriate rate on different transactions. Though the appellant-dealer claimed adjustment against excess ITC to the tune of Rs.17,67,174.00, the learned DCST allowed the same to the tune of Rs.15,57,411.00 and as such the order passed by him finally resulted in a balance tax demand of Rs.2,64,489.96. Then, he also imposed a penalty of Rs.5,28,979.92, equal to twice of the balance tax demand u/r.12(3)(g) of the CST(O) Rules and as such both the balance tax demand and penalty came to be Rs.7,93,470.00 in total, 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/106101510000399/2015-16 mainly on the following grounds –

- (1) The ITC reversal on CST sales & branch transfer amount to Rs.17,67,174.00 but the ld. Assessing Officer has wrongly allowed the same as Rs.15,57,411.00 hence there is extra demand of tax of Rs.2,09,763.00 which is liable to be deleted.
- (2) The payment of tax being Rs.11,78,064.00 but has been taken in assessment order wrongly as Rs.11,23,332.00.

4. On hearing and on consideration of the materials available on record, the learned ACST did not accept any of the contention of the appellant-dealer in view of the fact that, it could not be able to substantiate its contention by producing sufficient materials 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 raising the self-same grounds.

5. The respondent-Revenue has filed its cross objection supporting the orders of the learned forums below.

6. Heard both the sides. When the matter was taken up for hearing, the learned Counsel appearing for the appellant-dealer filed a memo stating that he does not want to press the ground relating to the adjustment of ITC as the appellant-dealer has already accepted the finding and order of the learned forums below passed in this regard. As regard the other ground, he submitted that, in spite of due proof of payment of Rs.54,732.00 by the appellant-dealer, the learned forums below have not considered the same and as such it has resulted in excess tax demand and the consequential demand of penalty. On such submission, he prayed for proper consideration of the due payment of Rs.54,732.00 and rectification of the order by this forum. In support of his contention, he filed the copy of the payment particulars amounting to Rs.54,732.00. On verification, the learned Standing Counsel appearing for the respondent-Revenue though accepted the

contention of the appellant-dealer relating to the payment of Rs.54,732.00, he submitted that, on proper calculation the total payment of tax made by the appellant-dealer comes to Rs.11,77,730.00 and not Rs.11,78,064.00 as claimed by the appellant-dealer. To such submission of the learned Standing Counsel, the learned Counsel appearing for the appellant-dealer did not raise any objection.

7. Perused the materials available on record including the orders passed by both the learned forums below. From the materials on record, it is seen that, on verification of the materials available on record, the learned DCST has allowed adjustment of ITC to the tune of Rs.15,57,411.00 and the same has further been confirmed by the learned ACST at the first appeal stage due to failure of the appellant-dealer to produce convincing materials in support of its contention. As the appellant-dealer has already accepted the finding and order arrived at by the learned forums below in this regard, this issue needs no further discussion by this forum.

8. But, so far as the payment of tax made earlier by the appellant-dealer is concerned, from the copy of the payment particulars, it is seen that, it has already paid tax to the tune of Rs.54,732.00 and the same has not been considered by the learned forums below. As the learned Standing Counsel appearing for the respondent-Revenue has accepted the contention of the appellant-dealer in this regard on proper verification, payment of Rs.54,732.00 already made by the appellant-dealer is taken into account and the total tax paid by it is calculated to be Rs.11,77,730.00 as pointed out by the respondent-Revenue and consented by the appellant-dealer and as such the balance tax demand came to be Rs. 2,10,091.96. Similarly, a penalty of Rs.4,20,183.92, equal to twice of the balance tax demand u /r.12(3)(g) of the CST(O) Rules is imposed upon the appellant-dealer and as such both the balance tax demand and penalty came to be Rs.6,30,275.88 in total, rounded off to Rs.6,30,276.00, to be paid by the appellant-dealer.

9. In the result, the appeal is allowed to the extent indicated above. The cross objection is disposed of accordingly. The appellant-dealer is liable

to pay the balance tax demand and penalty amounting to Rs.6,30,276.00.  
The demand notice be issued accordingly.

Dictated & corrected by me,

Sd/-  
1<sup>st</sup> Judicial Member,  
Odisha Sales Tax Tribunal.

Sd/-  
1<sup>st</sup> Judicial Member,  
Odisha Sales Tax Tribunal.

I agree,

Sd/-  
Accounts Member-I,  
Odisha Sales Tax Tribunal.