

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 62(V)/2013-14

(Arising out of order of the Id. DCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in Appeal No. AA-106221211000112,
disposed of on dtd.19.10.2012)

Present: Sri S. Mohanty
2nd Judicial Member

State of Odisha represented by the
Commissioner of Sales Tax,
Orissa, Cuttack.

.... Appellant

-Versus-

M/s. Jayalaxmi Enterprises,
At/P.O. Plot No.138,
Bapuji Nagar, Bhubaneswar.

... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

For the Respondent : None

Date of Hearing: 10.05.2018 *** Date of Order: 11.05.2018

ORDER

This appeal is directed against the order of learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/DCST) in First Appeal Case No. AA-106221211000112 dtd.19.10.2012 in reducing the order of assessment passed by Assessing Officer/Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, AO/STO) for the assessment period from 01.04.2005 to 31.05.2011 u/s.42(4) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. Basing on three allegations in Audit Visit Report (AVR) like less payment of VAT amounting to Rs.6,253/-, erroneous claim of ITC amounting to Rs.3,973/- and suppression of sale amounting to Rs.45,976.33, the AO conducted audit assessment u/s.42(4) of the OVAT Act of the dealer's unit for the tax period 01.04.2005 to 31.05.2011. The AO found the dealer guilty of purchase suppression and wrong claim of ITC and finally raised demand of balance tax of Rs.13,363.30. Besides tax, penalty twice of the tax amount as per Sec.42(5) of the OVAT Act was also imposed. Thereby the total demand raised to Rs.40,090/-.

The dealer carried the matter before the FAA, who in turn, partly allowed the appeal and reduced the demand to Rs.4,695/-.

3. Being dissatisfied and aggrieved by such reduction in demand, Revenue has preferred this appeal with only contention that, the FAA has done wrong in allowing ITC without tax invoice i.e. in gross violation of the provision u/s.20(6) of the OVAT Act.

4. The appeal is heard ex-parte without cross objection.

5. The moot question to be decided in this appeal is, whether the claim of ITC allowed by the FAA is wrong or not ? It is found that, the AO has disallowed the dealer's plea claiming ITC against four invoices. On the contrary, the FAA has allowed ITC basing on the retail invoices on two counts. As a result, ITC to the tune of Rs.61,13,231.37 was allowed in favour of the dealer. In course of the argument, to the query of the Bench, learned Addl. Standing Counsel conceded that, in many of the decisions passed by the Hon'ble Court and by this Tribunal, dealer has been allowed to claim ITC basing on retail invoice in absence of tax invoices. Such a defect cannot debar the dealer from claiming ITC. In that view of the matter, avoiding further unnecessary discussion on this question, I am of the considered view that, ITC to the extent allowed by the FAA basing on retail invoices on two number of transactions does not suffers from any illegality, hence, need not be interfered with.

In view of the discussion above, it is held that, the appeal preferred by the State sans merit. Accordingly, it is ordered.

The appeal by the State is dismissed ex-parte.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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