

inside the State. Consequent upon receipt of Tax Evasion report from the Vigilance Wing, Berhampur against the business activities of the dealer-appellant alleging both suppression of purchases and sales the ld. assessing authority in course of hearing for assessment confronted the dealer with the contents of the Tax Evasion report. The ld. assessing authority came to the conclusion that there is a net suppression of turnover to the tune of Rs.29,33,886.00. Therefore, the ld. assessing authority rejected the books of accounts produced by the dealer as the same do not depict true picture of the business and completed the assessment U/s.43 of the OVAT Act to the best of judgment bifurcating 55% of the suppressed turnover under the category of 5% tax group and the balance 45% of the turnover was made exigible to tax under 13.5% category. Accordingly, the ld. assessing authority completed the assessment raising demand of Rs.7,77,477.00 which includes penalty of Rs.5,18,318.00 U/s.43 of the OVAT Act. This led the dealer to prefer first appeal before the ld. first appellate authority.

The dealer challenges the order of the ld. assessing authority before the first appellate authority on the grounds that:-

The assessing authority has directly resorted to the assessment proceedings U/s.43 of the OVAT Act without assessing the appellant U/s.39 of the OVAT Act which is mandatory. The ld. Advocate on behalf of the dealer argued that the allegations levelled by the Vigilance Officers have not been duly confronted to the appellant at the assessment stage. That apart, it was also contended that the loose written slips do not relate to the business transactions of the instant dealer and no adequate opportunities have been offered to the appellant to substantiate his claim at the assessment stage which violates the compliance to the statutory provisions of law as well as principles of natural justice. The ld. first appellate authority after careful consideration came to

the conclusion that the appellant has already been assessed U/s.39 of the OVAT Act and the contentions of the Id. Advocate on behalf of the dealer that sufficient opportunities have not been allowed at the time of assessment is not at all correct for the dealer-appellant has been duly confronted against all the points of allegations levelled against the business transactions at the assessment stage by the Id. assessing authority with these findings the Id. first appellate authority confirmed the impugned order of assessment.

3. Being aggrieved, the dealer-appellant approached this Tribunal with the following grounds:-

- (i) The Id. joint Commissioner of Sales Tax (Appeal) has acted illegally and justification for upholding the assessment U/s.43 of the OVAT Act without giving sufficient opportunity to examine seized documents at the stage of hearing.
- (ii) The order of assessment basing on the case report submitted by Vigilance Officials after having documents/papers from the business places have not supplied any of the same. Thus, the appellant was deprived of scope to substantiate the allegation of discrepancy at any stage. The appellant applied copies of document, but same has not supplied.
- (iii) The suppression as alleged to have been detected having not be confronted to the dealer/appellant at any stage and heavy Reliance being placed on the untested and uncorroborated materials, the assessment order cannot be held to be sustained in the eye of law having nor fair by computed by conducting the assessment, entire assessment proceeding is liable to be set-aside.
- (iv) The impugned analysis of visit and modality work out of purchase/sale suppression by the learned S.T.O. is contrary to his scheme of law and unattainable. The estimate of purchase/sale suppression referred in the order of

assessment are irrelevant and cannot be the factors leading to suppression when the appellant maintains books of accounts in regular course of business. The impugned modality adopted by the S.T.O. is unreasonable, observed and contrary to law for which the impugned allegations made on the basis are liable to be dropped in the end of justice.

- (v) The levy of penalty U/s.43(2) of the OVAT Act is unwarranted to law without any evidence relating to mala fide intention of the appellant.
- (vi) The appellant has been deprived of the reasonable opportunity to know and to explain the allegation charged against the person proceeding against him on the basis of evidence natural justice (Mena Transport Vrs. A.C.C.T. (2006) 143 STC 58).

4. The respondent-State filed memo of cross objection stating that the ld. assessing authority and the ld. first appellate authority have rightly completed assessment/appeal basing on the statutory provisions under the Acts and Rules with regards to the points raised by the dealer. It has been further contended that the instant dealer had failed to provide documentary evidence to substantiate his claim. Moreover, it has been stated that the ld. first appellate authority has dealt each and every item which is self-explanatory and requires no further interference.

5. The dealer appellant failed to appear and substantiate his stand on the date fixed for hearing. As the dealer-appellant failed to appear before the Bench the appeal order is passed on merit in absence of the dealer-appellant.

6. On the contrary, Shri S. K. Pradhan, ld. Addl. Standing Counsel (C.T.) appeared on behalf of the Revenue and reiterated the stand taken vide the memo of cross objection filed. The ld. Addl. Standing Counsel (C.T.) took the contention that

orders of the first appellate authority being a reasoned and speaking order, the same requires no interference.

7. Gone through the grounds of appeal, cross objections filed, impugned orders of assessment and appeal, records of appeal and assessment. The main issues to be addressed before the Bench are:- (i) Whether the ld. first appellate authority is justified in upholding the assessment U/s.43 of the OVAT Act without giving sufficient opportunity to examine seized documents at the stage of hearing? And (ii) Whether the levy of penalty U/s.43(2) of the OVAT Act without mala fide intention of the appellant is warranted?

The aforesaid two questions have already been dealt by the ld. first appellate authority in the appeal order. As per the findings of the ld. first appellate authority the dealer has already been duly confronted with all the points of the allegation levelled against the business by allowing sufficient opportunities at the time of assessment and the contention of the Ld. Advocate on behalf of the dealer-appellant that the instant dealer has not been assessed U/s.39 of the OVAT Act is not true. The dealer-appellant has also been allowed ample opportunity to substantiate its claim that it has not engaged itself in any such tax evasion activities as reported by the Vigilance Wing, Berhampur but there was no positive response from the side of the instant dealer. It is also noticed that the ld. assessing authority has already confronted the contents of allegations lodged in the fraud case report submitted by the Vigilance Wing, Berhampur. The dealer-appellant has not appeared and produced cogent and corroborating evidence to substantiate its points raised in the grounds of appeal filed as the fora below have already agreed to the fact that the dealer is engaged in suppression of transactions beyond reasonable doubts there is no question of deletion of penalty U/s.43 of the OVAT Act. Hence we have deemed it proper to proceed *ex parte* on merits in

absence of dealer's participation and production of relevant documents in support of points raised in the grounds of appeal. We do not find any incongruity in the impugned order of Id. first appellate authority as he has recorded valid reasons in support of his findings.

8. As a result, the appeal is dismissed and the impugned order of the Id. first appellate authority is confirmed. The cross objection is disposed of accordingly.

Dictated and corrected by me,

(P. C. Pathy)
Accounts Member-I

I agree,

(P. C. Pathy)
Accounts Member-I

(Subrat Mohanty)
Judicial Member-II