

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 184(V)/2017-18

(From the order of the Id.JCST (Appeal), Balasore Range, Balasore,
in Appeal No. AA-74/BA-2012-2013 (VAT), dtd.22.05.2017,
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Dixit Enterprises,
Dist. Balasore. Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : Mr. A.K. Behera, Advocate

(Assessment Period : 01.04.2005 to 30.09.2011)

Date of Hearing: 06.04.2019 *** Date of Order: 06.04.2019

ORDER

M/s. Dixit Enterprises, I.G. Marg, Near Central School, Karanjia, Balasore being a TIN dealer deals in cement on wholesale-cum-retail sale basis. For the tax period 01.04.2005 to 30.09.2011, the dealer was subjected to audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) on the basis of Audit Visit Report (AVR). The AVR suggested for audit assessment on the basis of the stock position and sale-purchase as disclosed by the dealer. The dealer has disclosed gross sale at Rs.7,14,13,664.69 and gross purchase at Rs.7,20,54,194.45 with ITC admissible of Rs.79,77,607.41 and output tax collected at Rs.79,69,817.76 with carried forward ITC as on dt.01.10.2011 at Rs.41,923/-.

On acceptance of the aforesaid statement, the Assessing Authority/Deputy Commissioner of Sales Tax, Balasore Circle, Balasore (in short, AA/DCST) calculated the tax liability at Rs.79,69,818/-. The dealer had paid an amount of Rs.17,626/- at the time of filing of return. The dealer was allowed ITC at Rs.79,35,684/- and accordingly the balance tax due from the dealer was calculated at Rs.16,508/-. In addition to tax due penalty u/s. 42(5) of the OVAT Act at Rs.33,016/- was imposed and thereby the total demand raised against the dealer was at Rs.49,524/-.

2. In appeal at the instance of the dealer, the learned FAA/JCST vide impugned order deleted the entire tax due and penalty as calculated by the AA with a finding that, the dealer had overlooked the sale figure for the month of November, 2005 amounting to Rs.2,28,281/- reflected in its sale register Page No.8 to 10. Taking account of that sale transaction, the dealer was found entitled to ITC and in adjustment of that, the liability of the dealer is reduced to Nil.

3. When the tax due as imposed by the AA is deleted by the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/JCST), Revenue being aggrieved preferred this second appeal. It is contended by the Revenue that, the FAA has taken imaginary figures and deleted the tax due. There is no co-relation between the facts and figures taken by the AA and the facts and figure considered by the FAA.

4. The appeal is heard with cross objection. In the cross objection, the dealer has contended that, the order of the FAA is in

accordance to law based on the books of account and connected documents.

5. Question raised for decision in this appeal is:- Whether the FAA is correct in deleting the tax due and penalty as determined by the AA basing on the facts and figures considered by him. The AA had assessed the dealer as per the disclosure made by the dealer in its regular return. There was no allegation of any kind of suppression, evasion, underassessment etc. against the dealer in the AVR. The audit team had only suggested for Audit assessment and it was done in the light of return figure shown by the dealer. In accordance to that assessment, the dealer was found liable to balance tax and in addition to balance tax, penalty was imposed.

6. When the matter stood thus, the FAA has re-calculated the GTO, TTO and tax liability taking consideration of the omission of facts and figure relating to the year 2005 reflected in a revised return. The impugned order as it revealed, the FAA has taken consideration of the revised return relating to the period covering November, 2005 and then found the dealer's ITC was not properly carried forward and in consideration of the same, the FAA found the dealer not liable to pay further amount of tax.

7. Gone through the order of the FAA as discussed above. On a conspectus of the order of FAA, it is found that, the FAA has gone in a slip-shod manner. It has not elaborately discussed how the fact and figure relating to 2005 became relevant in the assessment of the year 2011 and how the ITC admissible to the dealer during that period can be carried forward or adjusted. The order of the FAA is found to be ambiguous and confusing. In that view of the matter, it is found necessary to remit the matter back to the FAA for assessment afresh by giving an elaborate and reasoned

order stating any kind of relief if available to the dealer. From the discussion above, it is hereby ordered.

8. The appeal by the State is allowed on contest. The order of the FAA is set-aside. The matter is remitted to the FAA to re-hear the appeal of the dealer as per the observation above on proper verification of the books of account and claim of the dealer in accordance to law. It is made clear that, the FAA should not be influenced by any of the observation so far as the admissibility of the ITC or tax due to be paid by the dealer.

Dictated and Corrected by me,

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

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