

BEFORE THE DIVISION BENCH-II: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 36 (V) of 2016-17

(Arising out of the order of the learned JCST, Koraput Range,
Jeypore, in 1st Appeal Case No. AAV (NGP) 20/15-16,
disposed of on dtd.24.02.2016)

P r e s e n t : Shri A.K. Panda, & Shri R.K. Rout,
1st Judicial Member Accounts Member-II

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

... Appellant

- V e r s u s -

M/s. Bidyanath Trading Co.,
Main Road, Jeypore.

... Respondent

For the State ... Mr. M.L. Agarwal, S.C.
For the Dealer ... N o n e

Date of hearing: 18.05.2018 ***** Date of order: 23.05.2018

ORDER

This appeal is directed against the order dtd.24.02.2016 passed by the learned Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter referred to as, the learned JCST) in 1st Appeal Case No. AAV (NGP) 20/15-16, wherein and whereby he has allowed the first appeal by passing an order of refund amounting to Rs.60,234.00 instead of the balance tax demand and penalty amounting to Rs.2,57,209.00 raised by the learned Sales Tax Officer, Koraput Range, Jeypore (hereinafter referred to as, the learned STO) in an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) in respect of the respondent-dealer for the assessment period from 01.04.2012 to 31.03.2014.

2. The respondent-dealer M/s. Baidyanath Trading Co. bearing TIN-24641600874 is a trader of paddy, rice, maize, jaggery, tamarind, horse gram, ragi, biri, gunny bags, chemical fertilizers, maize seeds and certain jute products and in course of business transaction it used to effect purchase and sale both inside as well as outside the State of Odisha. basing upon an Audit Visit Report (in short, the AVR) submitted by the Audit Team, Koraput Range, the learned STO initiated a proceeding u/s.42 of the OVAT Act against the respondent-dealer for its assessment for the assessment period from 01.04.2012 to 31.03.2014 and issued a notice to appear and to produce the books of account. But, in response to the notice, when none appeared on behalf of the respondent-dealer, the learned STO proceeded to assess it exparte on examination of the available materials and on examination found out that, in addition to the other transactions, the respondent-dealer has not included the freight charges in the sale value of the goods for collection of output tax. Therefore, in view of the definition of sale price and purchase price in the OVAT Act, he determined the freight charges at Rs.30,81,022.00 @ 5% of the sale value of the goods amounting to Rs.6,16,20,436.00 and after addition of the freight charges to the sale value of the goods, levied tax thereon @ 5% and on final calculation the order of the learned STO resulted in a balance tax demand of Rs.8,051.00. Then, he also imposed a penalty of Rs.1,68,101.00 equal to twice of the balance tax demand u/s.42(5) of the OVAT Act and as such both the balance tax demand and penalty came to be Rs.2,57,209.00 in total, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST bearing 1st Appeal Case No. AAV (NGP) 20/15-16. On hearing and on consideration of the materials on record including some sale bills produced by the respondent-dealer, the learned JCST re-determined the freight charges at Rs.94,165.00 and recomputed its tax liability and as such the order of the learned JCST resulted in a direction for refund of an amount of Rs.60,234.00

instead of the balance tax demand and penalty amounting to Rs.2,57,209.00 as raised earlier by the learned STO. Thus, being aggrieved with the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. The respondent-dealer has filed its cross objection supporting the order of the learned JCST.

5. When the matter was taken up for hearing, none appeared on behalf of the respondent-dealer and as such it was heard *ex parte* and is disposed of on merit. The learned Standing Counsel appearing for the appellant-Revenue submitted that, without assigning any proper reason, the learned JCST has determined the freight charges at Rs.94,165.00 which is 5% of the transactions amounting to Rs.18,14,278.00 and not of the total transactions amounting to Rs.6,16,20,436.00 and as the order passed by the learned JCST is totally erroneous and is not supported by any valid reason, the same needs to be set aside and the order passed by the learned STO being proper and reasonable needs to be restored.

6. Perused the orders of both the learned forums below and the other materials on record. There is no dispute that, in the assessment period in question, the respondent-dealer has effected sale of goods amounting to Rs.6,16,20,436.00 and the same does not include the freight charges. As the freight charges is to be included in the sale value of the goods for collection of output tax, the learned STO examined the available materials including some sale bills amounting to Rs.18,14,278.00 and found out the freight charges paid thereon to be Rs.94,165.00, which was 5% of the said transactions. Further, as the learned STO could not be able to verify the other sale bills in view of the non-appearance of the respondent-dealer he determined the total freight charges to be Rs.30,81,022.00, which was 5% of the total transactions amounting to Rs.6,16,20,436.00 and levied tax thereon further @ 5%. But, subsequently at the first appeal stage, on examination of the books of account and the other relevant documents produced by the respondent-dealer, the learned JCST redetermined the freight charges at Rs.94,165.00 which relates to

only the transactions amounting to Rs.18,14,278.00. Though, the respondent-dealer has failed to produce the other sale bills showing the actual expenditure towards the freight charges, the learned JCST has deleted the freight charges as determined by the learned STO @ 5% relating to the rest of the transactions and while deleting the same he has assigned the reason that it has been determined only on the basis of presumption. But, peculiarly, he has not assigned any basis, under which, the freight charges upon rest of the transactions is to be determined. Therefore, the order passed by the learned JCST appears to be erroneous. On the other hand, on examination of certain sale bills the learned STO found out the payment of freight charges to the tune of Rs.94,165.00 upon the sale value of the goods amounting to Rs.18,14,278.00 which was approximately 5% of the same and as the respondent-dealer could not be able to produce the sale bills for rest of the transactions, he determined the freight charges @ 5% of the total sale value amounting to Rs.6,16,20,436.00 which came to be Rs.30,81,022.00. In this background, the order passed by the learned STO is quite proper and justified in the facts and circumstances of the present case and as such the same is liable to be restored and the order passed by the learned JCST is liable to be set aside.

7. In the result, the appeal is allowed. The order passed by the learned JCST is hereby set aside and the order passed by the learned STO is restored. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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

I agree,

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