

2. The brief facts of the case are that, the respondent-dealer carries on business in sal seeds which is purchased from local areas both from registered and unregistered dealers. On the basis of the Audit Visit Report (in short, the AVR), it is submitted that the respondent-dealer has accrued input tax of Rs.2,68,448.28 against which output tax is Rs.1,576.00 which shall be adjusted against such input tax and balance input tax is to be adjusted against CST payable for the aforesaid period. On the basis of the AVR, the learned STO initiated assessment proceedings and issued notice with subsequent intimations for production of books of account to which the respondent-dealer did not respond. So, the learned STO passed exparte assessment order determining the GTO and TTO at Rs.5,02,19,957.00 and Rs.39,396.00 respectively after deduction of Rs.5,01,80,561.00 towards sale in course of interstate trade and commerce. He levied tax @ 4% on the TTO which was computed at Rs.1,575.84 and disallowed ITC claim of the respondent-dealer and imposed penalty of Rs.3,151.68 u/s.42(5) of the OVAT Act.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST. Being aggrieved by the order of the learned JCST the Revenue as appellant has preferred this second appeal.

4. Cross objection has been filed by the respondent-dealer in this case.

5. The Revenue as appellant has come up with the second appeal on the grounds that the order of the learned JCST appears to be unjust and improper; that both the authorities have failed to calculate the ITC on the basis of the

provision as envisaged in proviso (d) to Sec.20(3)(e) of the OVAT Act which speaks that the input tax credit on purchase when sold in course of interstate trade or commerce shall be allowed only to the extent of the CST payable under the Central Sales Tax Act, 1956 for which there is excess flow of ITC in favour of the dealer; the order of the fora below needs to be re-visited and recalculated and the excess claim thereof may be reversed.

On the other hand, the respondent-dealer has filed cross objection stating that the order of the learned JCST is just and proper; the appellant has got ITC of Rs.2,67,873.00 under the OVAT Act which has not been adjusted against the CST payable for which there will be no balance payable under the CST Act and levy of interest is not at all required; that the input tax credit that remained under OVAT Act should have been adjusted against the CST payable.

6. Heard the learned Addl. Standing Counsel for the State and the learned Counsel for the respondent-dealer. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal and the plea taken in the cross objection so also the written submissions submitted by both the sides. On perusal of the materials available on record it is seen that because of the non-appearance of the respondent-dealer before the learned STO, the learned STO passed exparte assessment order by determining the GTO and TTO and calculating the tax due. Though the respondent-dealer had not produced the books of account at the time of assessment but at the first appeal stage a detailed invoice list of purchases along with copies of

purchase invoices were produced which were examined along with the original invoices and purchase register and were found as genuine. It was rightly held by the learned JCST that as because the respondent-dealer had purchased sal seeds from different bonafide registered dealers of the State on proper tax invoices, he is entitled for ITC benefit of Rs.2,68,448.56 which has also been observed by the STO of Audit Team in the AVR.

7. As regards the claim of adjustment against the CST, the respondent-dealer failed to produce any evidence before the learned JCST that the said amount has been claimed in the relevant returns. It is to be noted that claim of adjustment against CST is required to be in accordance with proviso (d) to Sec.20(3) read with Sec.21 of the OVAT Act. The respondent-dealer having not made its claim by way of filing correct returns, the learned JCST has rightly disallowed the claim of adjustment against the CST payable. The learned JCST accordingly allowed the appeal by concluding that the assessment resulted in excess payment of Rs.2,66,873.00. Thus, the grounds taken in the appeal are baseless and there is no infirmity in the impugned order. Hence, it is ordered.

8. The appeal being devoid of any merit stands dismissed and the impugned order is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

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