

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK

S.A.No.81(V)/2016-17

(Arising out of the order of the learned JCST, Balasore Range, Balasore, in First Appeal Case No. AA-19/BA-2015-16 (VAT), disposed of on 31.03.2016)

Present:

Shri Subrat Mohanty
2nd Judicial Member

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

... Appellant

-Versus-

M/s. Bipin Enterprises,
Dist. Balasore.

... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. S.C. (C.T.)
For the Respondent : None.

(Assessment Periods from 01.04.2012 to 31.03.2014)

Date of Hearing: 18.12.2018 ***** Date of Order: 18.12.2018

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'FAA/JCST') in First Appeal Case No. AA-19/BA-2015-16 (VAT) dtd.31.03.2016 in deleting the penalty passed by the learned Sales Tax Officer/ Assessing Authority, Balasore Circle, Balasore (in short, 'STO/AA') for the assessment period from 01.04.2012 to 31.03.2014 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act').

2. Whether the dealer is liable to pay penalty as per section 45(2) or 43(2) of the OVAT Act for wrong claim of ITC in the facts and circumstances of the case, is the moot question raised in this second appeal by the Revenue for decision.

3. The fact of the case as it revealed, the dealer was subjected to assessment for the period from 01.04.2012 to

31.03.2014 u/s.42 of the OVAT Act. Basing on the report submitted by the audit team, the Assessing Officer proceeded with the assessment and found that the dealer has claimed Input Tax Credit as against the purchases made from one selling dealer called M/s. Krishna Electrical, Jaleswar. It is found that the Registration Certificate (R.C.) of that selling dealer M/s. Krishna Electrical, Jaleswar was under suspension during the period of this sale purchase with the instant dealer. In that event, the assessing officer on application of the provision U/s. 20 (8) (h) of the OVAT Act where it is the mandate of the law that no Input tax credit shall be claimed by or be allowed to a registered dealer in respect of goods purchased from a dealer whose certificate of registration has been suspended and then the input tax credit was not found admissible to instant dealer by assessing authority. In the result, the dealer was determined to pay the tax and thereupon penalty was also imposed i.e. twice of the tax due calculated to Rs.14,224/-.

4. The matter was carried before the FAA by the dealer. The FAA vide impugned order confirmed the findings of the assessing authority to the extent of denial of ITC and imposition of tax liability. However, he deleted the penalty with a finding that it was a bona-fide mistake of the dealer and as the dealer was not knowing about suspension of the registration certificate of his selling dealer, the dealer should be given the benefit of not levied with penalty.

5. Being aggrieved with the deletion of penalty, State has come up with this second appeal for re-imposition of penalty by setting aside the impugned order of the first appellate authority.

It is contended by the State that the first appellate authority has committed wrong in deleting the penalty since, the penalty is a mandatory consequence whenever there is an assessment and demand of tax as per section 42 of the OVAT Act.

6. The appeal is heard without cross objection from the side of the dealer. The dealer is also remained absent in the hearing as a result the appeal is decided setting him ex-parte.

7. The only question to be decided here is, whether the first appellate authority is wrong in deleting the penalty? The assessment order as it revealed, the penalty was imposed invoking provision U/s. 43(2) of the OVAT Act. If we go by the provision itself i.e Section-43 then, it can safely be said that, for wrong claim of ITC no penalty can be imposed as per Section 43(2). Section 43(2) covers only escapement of assessment, under assessment or assessment at a lower rate than the rate at which it is assessable. So far as the wrong claim of ITC is concerned, penalty cannot be imposed as per section 43(2) of the OVAT Act. However, in case of hand it is argued that the penalty is imposed as per Section 42(5) of the OVAT Act, as it is reflected in front page of the order of assessment. Delving into the merit of the case in hand, the claim of the State is the dealer is not entitled to ITC as per section 20(8) (h) of the OVAT Act and this fact remained undisputed. The selling dealer M/s. Krishna electrical, Jaleswar was not having registration certificate at the time of sale to the instant dealer as his registration certificate was under suspension. Claim of the instant dealer is, the fact of suspension of R.C. was not within the knowledge of the instant dealer and there was no notification by the assessing authority regarding such suspension, the dealer was in dark about the fact during purchase. In a result, being a bona fide purchaser in good faith he has disclosed the purchases in his return and also claimed input tax credit as admissible as if it would have been purchased from a registered dealer. On perusal of the impugned order, it is found that there is no reason to interfere with the findings of the first appellate authority. As the dealer was not knowing about the temporary suspension of registration certificate of a selling dealer, the dealer cannot be said to have any intention to evade the tax. Moreover, if we go by provision, U/s.

42(5) and a harmonious reading of the provision along with Rule 46 of the OVAT Rules in that event, it can be said that the mistake of the dealer is unintentional and when it has been detected the dealer has volunteered to pay the tax without claiming the input tax credit. In that case, I am of the considered view that the findings of first appellate authority calls for no interference in the case in hand. Hence, ordered.

The appeal preferred by the Revenue sans merit, is dismissed.

Dictated & Corrected by me,

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

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(S. Mohanty)
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