

day of visit was Rs.4,814,235.00 as against the book balance of Rs.5,39,904.00 thereby, he determined the suppression by the dealer of Rs.58,669.00 i.e. the differential amount between the book balance and physical stock. Ultimately, the total suppression found established at Rs.1,49,924.55, tax liability was determined at Rs.12,371.00, penalty u/s.42(5) was imposed at Rs.24,742.00, totaling the demand of Rs.37,113.00 towards tax and penalty against the dealer.

3. Felt aggrieved, the dealer knocked the door of the first appellate authority who in turn did not interfere with the order of assessing authority but reiterating the view of the assessing authority confirmed the demand.

Thereafter, being unsuccessful before both the fora below, the dealer preferred this second appeal.

4. The main contention of the dealer is, the mode of calculation by the assessing authority is contrary to the mandatory provisions. The penalty as imposed is not tenable in law, whereas the suppression as reported and determined is not based on actual facts but on surmises.

5. The appeal is heard without cross objection.

6. The contention of the dealer in this appeal are, the calculation of the suppression is erroneous and beyond the provision of law. There is calculation error apparent on the face of the record and imposition of penalty is not sustainable. Learned Counsel for the dealer in the hearing submitted that, the dealer had filed application u/s.81 of the OVAT Act for rectification before the assessing authority showing discrepancy in the calculation but the petition was not entertained, whereas, the first appellate authority had no occasion to deal the rectification application as the fact of the rectification petition was not reflected in the order impugned before him. Learned Counsel for the dealer placed the xerox copy of the calculation sheet of the audit team, copy of the rectification petition and pointed out that, the calculation of the suppression as per the audit team is not tallying with the assessing authority. It is argued that, the calculation of stock suppression taking the book value i.e. the value of goods including VAT and

value of physical stock excluding VAT commodities does not amount to any suppression.

Learned Addl. Standing Counsel for the Revenue on the other hand submitted that, since the dealer has not maintained the stock register, the stock suppression as determined leading to sale suppression is beyond question. So far as the calculation of the suppression can be a matter of re-scrutiny for any arithmetical error.

7. Gone through the documents filed. The dealer was dealing with goods of two different tax groups. It is fact that, the dealer had not maintained physical stock register. However, the authority can calculate the tax liability very well from the opening balance, the purchases and the sale made during the tax period under scrutiny. When the dealer has maintained the sale/purchase register and both the registers are not rejected by the assessing authority, in that case, the opening balance, closing balance, purchases and sale in the interim period if taken into consideration jointly, then the suppression if any can be calculated without any mistake. So, in the circumstances hereinabove, I am of the considered view that, this is a fit case where the matter should be remitted back to the assessing authority for re-determination of suppression, if any to fix liability on the dealer.

8. The question of penalty as raised cannot be decided since the determination of suppression is to be made afresh. However, it is made clear that, when there is suppression then penalty u/s.42(5) is a must. Without expressing any view regarding penalty in the case in hand but the ratio as above, it is held that, the matter should be remitted back. Accordingly, it is ordered.

9. The appeal is allowed on contest. The appeal order consequentially, the assessment order both are set aside. The assessing authority will do well to make assessment afresh as per observation hereinabove. He is requested to dispose of the remand assessment within a period of four months hence. The dealer is required to appear before him

and take further instruction without waiting for the notice from assessing authority.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

Sd/-
(S. Mohanty)
1st Judicial Member