



the tune of Rs.4,41,729.00. There was detection of under-invoicing of purchase, so the assessing authority added an amount of Rs.6,41,394.78 to the purchase return, whereas, it has also added an amount of Rs.11,00,000.00 towards incidental charges and then determined the GTO and TTO under OET Act at Rs.17,35,248.50 and Rs.11,83,125.58 respectively upon the TTO, he calculated the tax due. After adjustment of admitted tax due, the tax balance was calculated and raised by demand notice. As against the demand of balance tax i.e. Rs.7,412.00, the dealer knocked the door of first appellate authority.

Learned Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack as first appellate authority has reduced the demand to Rs.2,137.00 as the enhancement was reduced to Rs.1,63,825.00 and the incidental charges was also reduced as well to Rs.50,000.00 by which is only a consequential to the assessment under OST Act before the first appellate authority in Appeal Case No.AA-306-CUIW-2003-04.

3. When the matter stood thus, Revenue being aggrieved challenged the order of first appellate authority in this appeal with the contentions like, the reduction in enhancement resulting reduction in demand by the order of first appellate authority is not in accordance to law. The order of the first appellate authority being devoid merit should be set aside and the order of assessing authority need to be re-imposed.

4. The appeal is heard without Cross Objection and since the dealer remained absent in the hearing the appeal is decided exparte on merit.

5. Before going into the elaborate discussion on the disputed questions raised in this case for decision, it is apt to mention here that, the OET assessment in the case in hand is consequential to the assessment under OST Act. On being asked, Revenue could not furnish the number and the result of second appeal under OST Act challenging the order of first appellate authority, if any. The findings regarding tax liability under OET Act is consequential to the tax

liability under OST Act. If the OST appeal has been decided in favour of the dealer, then there is no reason to interfere with the order of the first appellate authority here in this appeal with regard to OET liability. Conversely, if the OST appeal is allowed in favour of the Revenue, then being consequential to it, the OET appeal is also need to be allowed. The burden is on the appellant to apprise the forum if there was any appeal preferred by the State and what was the result of the said appeal. In absence of that, it only can be said that, the assessment under OET Act by the first appellate authority calls for no interference.

6. Moreover, for sake of brevity when the impugned order is perused, it is found that, the first appellate authority under OET appeal has just accepted the findings in the OST appeal by the first appellate authority. In that view of the matter, it can be said that, the OET appeal is found to be dismissed.

With the observation as follows:-

Revenue reserves the liberty to reopen the appeal and assessment if it is found that, there was an OST appeal which is decided in favour of the Revenue.

With the observation above, the appeal is dismissed hereby.

Dictated & corrected by me,

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

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