

audit assessment u/s.9C of the OET Act on the basis of Audit Visit Report (in short, the AVR). The allegation of the audit team is, the instant dealer has not paid the proper entry tax on inter-State purchase and stock transfer. In the assessment, learned assessing officer found the dealer has not added freight to the inter-State purchases and also on the goods received on stock transfer basis, as a result adding 10% toward freight to the aforesaid purchases and stock transfer on the basis of invoice value determined the purchase value and levied entry tax on the dealer calculated at Rs.90,625.53. The dealer having paid Rs.82,355.00, balance tax due was derived at Rs.8,270.53. Besides, penalty u /s.9C(5) of the OET Act for Rs.16,541.06 also imposed, thereby the total demand against the dealer was raised at Rs.24,812.00.

3. Felt aggrieved, the dealer carried the matter before the first appellate authority who in turn reduced the demand from Rs.24,812.00 to Rs.15,637.00. The first appellate authority held the interstate purchases were included with freight charges paid by the dealer, but the stock transfer/branch transfers are not included with freight. So, in application of the provision u/s.2(j) of the OET Act, he determined the purchase value by adding freight on goods received on branch transfer and thereby on re-determination the tax due and penalty in total calculated and demand at Rs.15,637.00 as mentioned above.

4. When the matter stood thus, the dealer being aggrieved further questioned the sustainability of the order of first appellate authority by way of second appeal. It is contended by the dealer that, the estimation of freight by the first appellate authority is wrong and the addition of freight @ 10% is only based on guess work, the first appellate authority has illegally brushed aside the explanation given by the dealer, so the demand should be deleted.

5. The appeal is heard with Cross Objection from the side of the Revenue. In the cross objection, the Revenue has supported the findings of the first appellate authority.

6. The only question raised for decision in this appeal is,

(i) whether the determination of purchase value by the first appellate authority is erroneous?

(ii) what order ?

7. In the case in hand, the dealer has admittedly received goods on branch transfer basis as well as on purchase basis. The assessing authority added freight @ 10% on the invoice value against the purchases as well as against the goods received on branch transfer. However, the first appellate authority has found that, the interstate purchases are included with freight. The selling dealers has categorically stated that, they billed the item including freight charges. Taking consideration of that, the first appellate authority excluded the amount of inter-State purchases but so far as the goods received on branch transfer basis in absence of any proof, the first appellate authority applied the provision u/s.2(j) of the OET Act proviso for determination of purchase value for the purpose of levy of entry tax. It is needless to mention here that, in many of the decisions of similar nature this Tribunal has held that, the purchase value in case of stock transfer should be calculated by applying provision u/s.2(j) of the OET Act. The proviso appended to the provision states about the mode of calculation of purchase value, it cannot be ascertained from the invoices. The present one is of that nature, where the proviso appended to sec.2(j) of the OET Act is required to be applied to determine the purchase value.

If that be, it is held that, the method adopted by the first appellate authority call for no interference. Resultantly, it is held that, determination of purchase value by adding freight and thereafter calculation of the tax liability and penalty is in accordance to law, hence is not interceptable by this Tribunal in this appeal.

In the result, it is ordered.

The appeal stands dismissed as of no merit. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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