

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 330(V)/2012-13

(From the order of the Id.DCST (Appeal), Cuttack-II Range, Cuttack, in Appeal No. AA/15/OVAT/CUII/12-13, dtd.26.12.2012, modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

M/s. Salipur Paints Supply,
At/P.O. Salipur,
Dist. Cuttack.

... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. P.K. Jena, Advocate
For the Respondent : Mr. S.K. Pradhan, ASC (C.T.)

(Assessment period : 01.04.2009 to 30.04.2011)

Date of Hearing: 12.12.2018 *** Date of Order: 12.12.2018

ORDER

The present second appeal has been directed against the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/DCST) in First Appeal Case No. AA/15/OVAT/CUII/12-13 dtd.26.12.2012 in reducing the order of assessment passed by the learned Sales Tax Officer/Assessing Authority, Cuttack-II Circle, Cuttack (in short, STO/AA) for the assessment period from 01.04.2009 to 30.04.2011 u/s.43(1) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The facts in brief giving rise to the present appeal are : the AA initiated re-assessment proceeding u/s.43 of the OVAT Act relating to the appellant-dealer for the assessment period 01.04.2009 to 30.04.2011 on the basis of fraud case report. The assessee was originally self-assessed u/s.39 of the OVAT Act and on cross verification of the self-assessment with the fraud case report, the re-assessment proceeding was begun. Out of so many allegations, some allegations are found not established hence dropped by the AA, whereas the other allegation which are found established are, the purchase of materials for Rs.2,844/- vide invoice No.700162513 dt.04/09/2010 was not reflected in the register. Rs.50,000/- received on 23.02.2010 was found unaccounted for an amount of Rs.75,000/- against purchase of mixing machine was also not shown in the register. Similarly, there was discrepancy in the register regarding sale as reflected in the register dtd.08.12.2009. The claim of return of goods to the tune of Rs.6,000/- to M/s. Asian Paints Industries Limited by the instant dealer was also disbelieve and the reversal of ITC was also found wrong. The AA on due confrontation of the aforesaid allegations to the dealer, when found the explanation of the dealer were not sufficient and satisfactory, then he reassessed the GTO and TTO adding the suppression to the GTO and TTO. The additional tax liability was calculated. Penalty u/s.43(2) of the OVAT Act was imposed thereupon and as a result the total tax due and penalty was calculated to Rs.77,240/-.

3. In appeal, the FAA accepted the argument of the dealer against the suppression of the price of the colour mixing machine and

accordingly reduced the liability under the head of tax and penalty to the tune of Rs.41,152/-.

4. For better appreciation of the points raised by the dealer, which are based on facts only, it is found that, the AA has accepted the allegation as per the seizure of one Oxford exercise book containing 16 written pages. The findings of the AA was also accepted by the FAA in the impugned order, since the dealer was found to have taken inconsistent explanation, which are not believable. So far as the cash of Rs.50,000/- received on 23.02.2010 which is treated as unaccounted for, the explanation of the dealer before the Vigilance Wing differs from the explanation before the AA and even it differs from the explanation given before the FAA. As such, the explanation was rightly turned down. Another allegation such as, purchase of one colour mixing machine worth of Rs.75,000/-, the explanation of the dealer was accepted by the FAA. It is not the dealer who was found to be engaged in clandestine business of sale of mixture machine. The FAA has held that, it was purchased for the use by the dealer. Similarly, the sale suppression as per the chart mentioning the impugned order which were effected on 08.12.2010, it was found that, the FAA has gone into detail and the findings to that effect calls for no interference. In the same fashion, if we go by the entire impugned order, it is found that the FAA has taken consideration of the explanations, pleas and claim of the dealer and has dealt it in accordance to law. The findings of the FAA on facts on due verification of the allegation and on confrontation of the same to the dealer and scrutiny of the documents filed by the dealer calls for no interference for the reason that, the dealer has not filed a scrap of paper as

rebuttal evidence to the findings of the FAA before this Tribunal. The findings of fact by the fora below leaves no room, particularly without any cogent and trustworthy evidence from the side of the dealer. Hence, I am of the view that, in the impugned order the FAA has rightly reduced the demand but at the same time the dealer is not found to any further relief as claimed. If that be, the impugned order calls for no interference. Hence, confirmed.

The appeal is dismissed on contest as of no merit.

Dictated and Corrected by me,

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

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