

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

S.A. No. 356 (V) of 2014-15

(From the order of the learned DCST (Appeal), Bhubaneswar Range,
Rourkela, in First Appeal Case No. AA-1062221422000046,
disposed of on dtd.26.09.2014)

P r e s e n t :

Shri S. Mohanty,
2nd Judicial Member

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

... Appellant

- V e r s u s -

M/s. Shree Balaji Marble & Granite,
At/P.O.- Plot No.385, Rasulgarh,
Bhubaneswar.

... Respondent

(Assessment Period : 01.04.2007 to 30.11.2012)

For the Appellant ... Mr. M.S. Raman, A.S.C.
For the Respondent ... N o n e

Date of hearing: 26.12.2018

Date of order: 28.12.2018

ORDER

Revenue being aggrieved with the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA), whereby he reduced the tax liability to Rs.34,319.00 from Rs.1,17,491.00 as determined by the Sales Tax Officer/Assessing Authority, Bhubaneswar III Circle, Bhubaneswar for the assessment period 01.04.2007 to 30.11.2012.

2. Bereft unnecessary details, it is stated that proceeding for assessment u/s.42(4) of the OVAT Act was initiated on the basis of the report submitted by audit visit team with three number of allegations/irregularities detected during the tax period from 01.04.2007 to 30.11.2012 relating to the assess-dealer. The allegations are (i) wrong claim of ITC, (ii) delay furnishing of return attracting liability u/s.65(2) of the OVAT Act and (iii) non-filing of documents in proof of payment of tax at the checkgate as claimed by the assess-dealer in return. The assessing authority found the allegation No.i i.e. wrong claim of ITC to be correct, allegation No.ii i.e. delay filing of return and separate proceeding was suggested in allegation No.iii. Payment of tax at checkgate as claimed by the dealer was found proved. Besides, the above three allegations the assessing authority also found there is suppression as a result the tax due on redetermination of GTO and TTO tax due was redetermined. The balance tax due and thereupon the penalty as per Sec.42(5) of the OVAT Act was imposed and the total demand raised at Rs.179454.00.

In appeal at the instance of the dealer before first appellate authority the findings relating to wrong claim of ITC was reversed as the first appellate authority accepted the proof of payment of tax and credited the ITC to the account of the dealer. Similarly, the first appellate authority also reversed the finding of the assessing authority relating to tax paid at checkgate, as a result the first appeal was partly allowed and the demand was reduced to Rs.34,319.00 that includes the differential balance tax due and penalty.

3. As against such reduction/modification, felt aggrieved State has filed this second appeal. The second appeal evolves around the findings of the first appellate authority on two counts i.e. claim of ITC and claim of tax paid at checkgate. As regards the dispute relating to ITC as claimed by the dealer, in absence of the tax invoices the assessing authority denied the same to the dealer, whereas the first appellate authority on examination/scrutiny of the documents like retail invoices instead of tax invoices allowed the ITC admissible to the dealer. In many of the decisions

this Tribunal taking cue from the authority by the Hon'ble Court has held that the claim of ITC cannot be denied in absence of tax invoice only if it is otherwise proved that, the dealer has paid tax. Thus, keeping view the principle as well settled it is believed that the first appellate authority has not committed any wrong in allowing the dealer to avail ITC admissible on the documents like retail invoices and others in proof payment of tax.

So far as the question No.2 i.e. the satisfaction of the first appellate authority relating to payment of tax at checkgate, the findings of the fora below as it revealed, the first appellate authority has observed that the assessing authority should have verified the periodical returns of the dealer and cross checked it with the documents of Unified Checkgate, Jamsolaghat and thereafter, if any discrepancy for non-payment noticed then, the dealer should have made liable. It is undisputed that, the view of the first appellate authority is correct. However, it is found that the first appellate authority has accepted the claim of payment of tax at checkgate but the LCR does not reveal that the first appellate authority has made any such query from the checkgate or from the periodical returns or documents on production by the dealer. So, notwithstanding the fact that, the view of the first appellate authority is correct but it is factually not established that the dealer had paid tax at the said checkgate. On this score, it is held that this is a fit case where the matter should be remitted back to the assessing authority with a limited purpose for cross verification of the claim of payment of tax at the checkgate from the relevant documents of the dealer or from the documents of the concerned checkgate. So far as the decisions on other points of the allegation as determined by the first appellate authority are accepted by the Revenue.

In that view of the matter, it is hereby ordered.

4. The appeal by the Revenue is allowed in part. The matter is remitted back to the assessing authority for scrutiny of the documents relating to the payment of tax at the checkgate and thereafter raise demand

of tax, if any to which the dealer is found liable in addition to the liability determined by the first appellate authority in the impugned order.

Dictated & corrected by me,

(S. Mohanty)
2nd Judicial Member

(S. Mohanty)
2nd Judicial Member