

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

**S.A. No. 431 (C) of 2013-14**

(From the order of the Id. DCST (Appeal), Balasore Range, Balasore,  
in First Appeal Case No. AA-39/BD-2013-2014 (VAT),  
disposed of on dtd.22.01.2016)

**Present: Sri S. Mohanty  
2<sup>nd</sup> Judicial Member**

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

.... Appellant

**- V e r s u s -**

M/s. National Agency,  
Prop. Sri Rakesh Sharma (Prop.),  
At/P.O.- Main Road, Charmpa,  
Bhadrak.

... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC

For the Respondent : N o n e

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Date of hearing: 02.02.2019      \*\*\*\*      Date of order: 02.02.2019  
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**ORDER**

Revenue has called the order of the First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (hereinafter referred to as, the FAA) in First Appeal Case No. AA-39/BD-2013-2014 (VAT) in question in this second appeal on the sole ground that allowance of ITC to the tune of Rs.6,102.00 on the sale suppression is erroneous.

2. The dealer was subjected to escaped assessment u/s.43 of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) on detection of purchase suppression and sale suppression by the Vigilance Officials,

Balasore Division, Balasore. On the basis of tax evasion report and as the dealer was already assessed u/s.39 of the OVAT Act, assessment u/s.43 was taken up. The allegations as per the Vigilance report are, the dealer had unaccounted for sale transaction vide three slips to the tune of Rs.1,54,000.00. Similarly, the dealer was found to have excess stock of 12 packets of "Safal" brand Gutkha. The Vigilance Wing had imposed and collected tax and penalty u/s.73(10) of the OVAT Act on such unaccounted for stock to the tune of Rs.1,99,045.00 and realized the same vide money receipt No.12/CT.V dtd.30.06.2012. The assessing authority in consideration of the unaccounted for stock and sale suppression re-determined the GTO and TTO of the dealer at Rs.3,56,125.00 and Rs.3,09,540.00 respectively. Thus, total tax liability was calculated at Rs.46,585.00, besides, penalty u/s.43(2) at Rs.93,170.00 was also imposed and thereby, the total tax due raised to Rs.1,39,755.00.

3. In appeal preferred by the Revenue, the first appellate authority, learned DCST (Appeal), Balasore Range, Balasore deleted the penalty on the plea that, the penalty was already imposed u/s.73(10) of the OVAT Act i.e. five times of the tax due, whereas while doing so he allowed the ITC to the tune of Rs.6,102.00 against the escaped turnover, thereby the tax due is reduced to Rs.40,483.00 instead of Rs.46,585.00.

4. When the matter stood above, State preferred this second appeal challenging the allowance of ITC to the dealer on the plea that, the dealer is found guilty of suppression, he is not entitled to claim ITC on escaped turnover.

5. At the outset, deletion of penalty and determination of the tax liability on the escaped turnover is remained undisputed by the dealer. Similarly, deletion of penalty by the first appellate authority is also not questioned by the Revenue. The Revenue has questioned the allowance of ITC on escaped turnover. In a case where the corresponding purchases from the registered dealer has not been verified and certified, in that case, allowance of ITC on escaped turnover is wrong. Unless there is cogent evidence before the assessing authority that, the selling dealer to the instant

dealer had collected tax which is remitted to the taxing authority, allowance of ITC is not permissible.

6. Learned Addl. Standing Counsel vehemently argued that when dealer is guilty of suppression of the dealer is not entitled to ITC. Hon'ble Kerala High Court placed reliance in **Venus Marketing v. State of Kerala (2012) 51 VST 377 (Ker.)**, has held as follows:

“\*\*\*\*\* We are further of the view that the benefits like input tax credit should be made available to dealers conforming to statutory provisions in regard to maintenance of accounts, filing of returns and remittance of tax and eligibility for input tax credit is not a matter to be considered when suppression is detected. \*\*\*\*\*”

The authority above if replied to the case in hand, then by necessary implication the dealer who has committed suppression is not entitled to avail ITC as granted by the first appellate authority. In consequence thereof, the tax due needs to be recomputed as follows.

The dealer is liable to pay tax at Rs.46,585.00 since the ITC amounting to Rs.6,102.00 is disallowed for the above reason. Accordingly, it is ordered.

7. The appeal is allowed on contest. The dealer is liable to pay tax at Rs.46,585.00. Demand be raised accordingly.

Dictated & corrected by me,

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

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