

dealer by his selling dealer M/s. Mahalakshmi Company, Navaratanpuram, Madurai asking him to make payment of Rs.4,500.00 against the goods supplied vide invoice No.13296 dtd.15.05.2004. The explanation of the dealer was, aforesaid bill amount was sent through UCO Bank, Berhampur but it was not released till the visit of intelligence officer was not accepted. Though the dealer has submitted a copy of invoice, where the destination was written as Ichapuram and it has been written by hand, the assessing authority declined to accept the documents as an afterthought. As a result, the suppression of Rs.4,500.00 against the aforesaid allegation was found established. Similarly, there was another allegation relating to invoice No.023 dtd.30.04.2004 issued by R.R. Arromatics, Vijayawada in favour of the assessee-dealer towards sale of soap compound valued at Rs.6,864.00. The dealer had admitted the same as out of account purchase before the intelligence team but, at the time of assessment the dealer took a different plea that, the invoice was entered in the personal ledger and in the register on 30.08.2004 i.e. a week after visit of the intelligence officials. Such entry was treated as afterthought and the assessing authority found the allegation of suppression against soap compound valued at Rs.6,864.00 as established. The third allegation against the dealer was, verification of the physical stock of 29 types of items. They detected discrepancy against 13 no. of items. Similarly, the dealer's explanation regarding the purchase and sale of dalchini of 95 bags vide invoice No.707 dtd.16.11.2000 was also turned down and the value of this goods were determined and treated as suppression by the dealer. In ultimate analysis, the assessing authority re-determined the GTO, TTO and tax liability of the dealer. The tax liability was calculated at Rs.2,85,138.13, surcharge @ 10% of the tax liability was also levied, thereby the total became calculated at Rs.3,13,652.00. The dealer having paid of Rs.2,65,605.00, he was required to pay balance amount of Rs.48,047.00.

3. The dealer challenged the demand and assessment above before the first appellate authority who in turn did not interfere with the order of the assessing authority and confirmed the same.

As against the confirming order of the dealer, the dealer filed this appeal with the contention as follows that, the fora below has illegally and whimsically turned down the explanation of the dealer before them. Even though the dealer has produced purchase bill against the 95 bags of dalchini which were found lying in damage condition in the dealer's business unit but, still the assessing authority or the first appellate authority did not accept the explanation of the dealer and treated the same as suppression. The estimation of the suppression by both the fora below in hand is erroneous.

4. The appeal is heard without cross objection from the side of the Revenue.

5. This appeal was filed by the dealer on 31.01.2008. After that, it is almost 11 years, the dealer did not turn up. Due to the absence of the dealer in the hearing, the appeal is heard exparte. So far as the suppression as detected by both the fora below are the subjective satisfaction of both fact finding authorities. On meticulous scrutiny of the order of the assessing authority and thereafter the impugned order, it is found that, the authority has carefully examined the explanation of the dealer and determined the suppressions. However, in one case i.e. the physical stock of 91 bags of dalchini, it is found that, though the dalchini of 91 bags were found lying in the godown but, the explanation of dealer was not accepted by both the fora below. The dealer had explained that, the dalchini were damaged and could not be sold, whereas the authority below has taken a view that, the dalchini purchased in the year 2000 could not have left in that condition till 2004 when the intelligence team visited the dealer's unit. This reasoning is not found to be plausible. Whether it is purchased in the year 2000 or in the year 2004 but when in the visit, the intelligence team found there lying 91 bags of dalchini in damaged condition, then damaged for any period which needs to be deducted from the TTO of the dealer. So, I am of the view that, the allegation against the dealer regarding suppression of purchase of dalchini is not found established.

In that view of the matter, it can safely be said that, the amount of suppression against the dalchini of 91 bags should have been deducted from out of the total suppression. With the view above, it is hereby ordered.

6. The allegation of suppression as determined by fora below is modified to the extent that, the suppression against 91 bags of dalchini is to be deducted from the suppression determined. Tax liability should be determined and raised accordingly. In the result, it is ordered.

7. The appeal is allowed in part. The dealer is liable to pay tax on the suppression amount on fresh determination by reducing the amount of suppression of the value of dalchini of 91 bags. Demand be raised accordingly.

Dictated & corrected by me,

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

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