

BEFORE THE CHAIRMAN : ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 309 (VAT) of 2016-17

(Arising out of order of the learned DCST, Angul Range, Angul, in First Appeal Case No. AA/VAT/111/AL/14-15, disposed of on dt. 31.10.2016)

Present : **Shri Sashikanta Mishra,**
Chairman

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

. . . Appellant

- V e r s u s -

M/s. Laxmi Traders,
Talcher, Angul.

. . . Respondent

For the Appellant ... Mr. M.S. Raman, Addl. S.C.(CT)

For the Respondent ... Mr. B.P. Mohanty, Advocate

Date of hearing: 29.06.2018 **** Date of order: 30.06.2018

ORDER

State is the appellant. Order dt. 31.10.2016 passed by learned Deputy Commissioner of Sales Tax, Angul Range, Angul, (in short, 'first appellate authority') in First Appeal Case No. AA/VAT/111/AL/14-15 is under challenge whereby the order of demand of `54,648.00 raised by Sales Tax Officer, Angul Circle, Angul (in short, 'assessing authority') u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the tax period from 01.07.2007 to 31.03.2012 vide order of assessment dt. 27.02.2014, was annulled.

2. The brief facts of the case are that the dealer is engaged in trading of coal. It was assessed u/s. 42 of the OVAT Act for the period 20.07.2007 to 31.03.2012 on the basis of Audit Visit Report (AVR). The AVR recommended for audit assessment as there was less payment of tax of `3,206.00 by the dealer during the relevant period. Learned assessing authority, however, accessed the returns filed by the dealer from the VATIS software and on such basis, determined the TTO. Since the average profit margin during the relevant period, i.e. 2008-12, was taken 3.53%, the purchase for 2007-08 was determined at `1,01,47,060.00 and after allowing ITC of `4,05,882.00, the tax due for 2007-08 was determined at `14,328.00 and for 2008-12 the tax due was found less paid by `3,208.00. Further, in view of the delayed payment of tax, the dealer was held liable to pay interest and penalty also. The demand as aforesaid was raised accordingly.

Being aggrieved, the dealer preferred first appeal inter alia challenging the enhancement of turnover and by contending that such enhancement was beyond the scope of assessment as it was not pointed out in the AVR. On facts, it was contended that the profit margin was wrongly calculated at 3.53% and that the goods purchased and sold by the dealer was obtained from MCL on payment of due taxes and that there was no scope for evasion of tax. Learned first appellate authority observed that the audit officer had not made any adverse allegation, but had recommended

assessment of tax to the extent of less payment, i.e. `3,206.00. The assessing authority had travelled beyond the AVR by raising total demand of `54,648.00. The order of assessment was thus, annulled.

Being aggrieved, Revenue has approached this forum.

3. It is argued by Sri M.S. Raman, learned Addl. Standing Counsel (CT) appearing for the Revenue that it was neither legal nor justified on the part of the first appellate authority to annul the assessment and secondly, it is permissible for the assessing authority to travel beyond the audit report.

4. Per contra, Sri B.P. Mohanty, learned Counsel appearing for the dealer has supported the impugned order on the ground that the error committed by the assessing authority in travelling beyond the audit report, was rightly rectified by the first appellate authority's order. Sri Mohanty, however, fairly submits that the impugned order in so far as it seeks to annul the assessment, should be modified accordingly.

5. It is forcefully argued by Sri Raman that the assessing authority raised demand, which includes the recommendation of audit officer for collection of less payment of tax by the dealer. Therefore, in assuming that the other directions were not proper, then also the order of assessment could not have been annulled. Sri Raman further argues that there is no legal bar to travel beyond the AVR for the assessing authority, if there are materials to show that the dealer had evaded tax liability.

6. We are unable to accept the above contention of Sri Raman in view of the ratio laid down by the Hon'ble High Court of Orissa in the case of Bhusan Power and Steel Ltd. Vs. State of Orissa and others, reported in [2012] 47 VST 466 (Ori.). It is the settled principle of law that in so far as audit assessment is concerned, extraneous materials cannot be looked into by the assessing authority. In the instant case, learned assessing authority has downloaded the monthly returns filed by the dealer during the relevant period from VATIS software and determined the tax liability even though no such adverse observation was there in the audit report. The AVR simply recommended assessment of the amount of less payment of tax. In view of the settled position of law, as stated above, I am not inclined to accept the contention of Revenue in this regard. It is, however, made clear that in case of any escapement/ under assessment, the State can take recourse to suitable remedy provided under law.

7. It is observed that learned first appellate authority found the assessment order to be beyond audit observations and, therefore, annulled the same in the impugned order. This is a wrong procedure, because even if the extraneous materials are taken away from consideration, then also the audit recommendation for assessment of less payment of tax amount remains intact. Therefore, learned first appellate authority should have modified the order of assessment appropriately instead of annulling it altogether.

8. For the foregoing reasons, therefore, the impugned order warrants interference to the above extent only.

9. In the result, the appeal is allowed in part. The impugned order is modified to the extent that instead of annulling the assessment order, the liability of the dealer shall be assessed to the extent recommended in the AVR. Learned assessing authority is directed to recompute the tax liability accordingly within a period of four months from the date of receipt of this order.

Dictated & Corrected by me,

Sd/-
(Sashikanta Mishra)
Chairman

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