

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 231(V) of 2017-18

(Arising out of the order of the 1d. JCST (Appeal), Cuttack I Range,
Cuttack, in First Appeal Case No. 106121412000342,
disposed of on dtd.20.06.2017)

P r e s e n t:

**Shri S. Mohanty,
1st Judicial Member**

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

... Appellant

- V e r s u s -

M/s. B.K. Trading & Co.,
Surya Vihar, Link Road,
Cuttack.

... Respondent

For the assessment period: 01.04.2011 to 31.03.2013

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... N o n e

Date of hearing: 17.08.2019 ****

Date of order: 17.08.2019

O R D E R

In an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) relating to the respondent-dealer the tax due and penalty determined by the assessing authority when reduced before first appellate authority at the behest of the dealer, Revenue being aggrieved called the method of calculation of first appellate authority in question by way of this second appeal and prayed for reversal of the impugned order.

2. The assessee-dealer M/s. B.K. Trading & Co., Surya Vihar, Link Road, Cuttack, a partnership concern dealing with business in tractor spare parts and lubricant on wholesale and retail

basis was faced audit assessment u/s.42(4) of the OVAT Act. The allegation as brought in by the Audit Visit Report (in short, the AVR) is that, there was stock discrepancy leading to purchase suppression. The assessing authority taking profit margin @ 3.5% as suggested by the Audit Team has added a sum of Rs.1,67,421.71 to the GTO and TTO as suppression, then determined the balance tax liability which was calculated at Rs.22,351.66. Penalty on it was calculated at Rs.44,703.32, thereby the total demand against the dealer was raised at Rs.67,055.00.

3. Being aggrieved, the dealer carried the matter before the first appellate authority. Learned Joint Commissioner of Sales Tax (Appeal), Cuttack I Range, Cuttack as first appellate authority recalculated the suppression and tax liability taking consideration of the sale statement and in the result, he re-determined the liability which was found at Rs.513.82 as balance tax due and Rs.1,027.64 as penalty. The total demand was calculated at Rs.1,541.00 i.e. in comparison to the demand of Rs.67.055.00 as determined by the assessing authority.

4. When there is such reduction by the order of the first appellate authority, Revenue being aggrieved has preferred this appeal. The only contention of the Revenue is, the first appellate authority has not taken any pain to verify the profit and loss account in order to determine the profit percentage for the relevant period, whereas the audit team on due verification of the books of account has determined the suppression. So, the order of first appellate authority should not stand and the matter should be remitted back for fresh assessment.

5. The appeal is heard without Cross Objection and in absence of the dealer as well since the dealer did not turn up in the hearing.

6. The only question raised for decision in this appeal is, whether the determination of sale suppression and method of

calculation adopted by the first appellate authority is wrong and whether the matter need to be remitted back for fresh assessment.

7. In the grounds of appeal the Revenue has not specifically stated how the method of calculation adopted by the first appellate authority is wrong. So far as the question of profit margin is concerned, it is found that, the first appellate authority has accepted the same profit margin i.e. 3.5% as suggested in the AVR and as accepted by the assessing authority. The difference between the calculation of two fora below as noticed, the assessing authority has accepted the purchase suppression as suggested by the audit team, whereas the first appellate authority has considered the closing stock and further, the impugned order as it revealed, the first appellate authority has held that, there was a calculation mistake with regard to sale figure by the audit team and also by the assessing authority. So, the calculation mistake when rectified by the first appellate authority in the impugned order, the demand became reduced. If that is, I am of the considered view that, the grounds in appeal has no legs to stand. Revenue has failed to apprise how the calculation mode of the first appellate authority is wrong and why the impugned order need to be set aside for any such calculation mistake. Thus, it is held that, the impugned order suffers from no illegality either in law and fact, hence need not be interfered with.

Accordingly, it is ordered.

The appeal is dismissed as of no merit.

Dictated & corrected by me,

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

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