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

S.A. No. 213(V) of 2018
(Arising out of the order of the learned Addl. CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA (VAT) 71/2017-18, disposed of on dtd.09.07.2018)

P r e s e n t: Shri A.K. Dalbehera, O.S.J.S.
M.A., LL.M.
1st Judicial Member

M/s. Sahil Automobiles,
At/P.O.- Aska Road, Berhampur,
Ganjam. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. G.R. Sahu, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 22.02.2021 *** Date of order: 15.03.2021

O R D E R

This appeal is directed against the order dtd.09.07.2018 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Ganjam Range, Berhampur (hereinafter referred to as, the learned ACST) in Appeal Case No. AA (VAT) 71/2017-18, wherein he confirmed the order of the learned Deputy Commissioner of Sales Tax, Ganjam I Circle, Berhampur (hereinafter referred to as, the learned DCST) for the assessment period 01.04.2013 TO 31.03.2014 u/s.43 of

the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, the appellant-dealer is a partnership concern engaged in purchase and sale of automobile parts and accessories including tyres, tubes and lubricants on retail basis. The appellant-dealer effects purchase of goods from inside as well as from outside the State. The learned DCST initiated proceeding u/s.43 of the OVAT Act against the appellant-dealer basing upon scrutiny of return and verification of Annual Audit Report. The appellant-dealer had disclosed damaged goods for Rs.9,75,215.00 and had not reversed the input tax credit as required u/s.20(9) of the OVAT Act. In response to the notice, the partner of the appellant-dealer's firm appeared and produced the books of account. The learned DCST found that the appellant-dealer did not reverse input tax credit for the damaged goods without any reasonable cause and completed assessment reducing the ITC claim to the extent of Rs.1,31,654.00. Penalty equal to twice the amount of tax assessed amounting to Rs.2,63,308.00 was imposed u/s.43(2) of the OVAT Act. So, the demand and penalty altogether came to Rs.3,94,962.00.

3. Being aggrieved by the order of the learned DCST, the appellant-dealer preferred an appeal before the learned ACST who confirmed the order of assessment. Being aggrieved by the order of the learned ACST, the appellant-dealer has preferred this second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the order passed by the learned ACST is bad in law and needs to be set aside; that during the

year 2013-14 the appellant-dealer had shown a damaged stock of Rs.9,75,215.00 in its audited profit and loss account which is the subject matter of dispute in this appeal; that the appellant-dealer's books of account also clearly reflect the said sales of damaged goods for the year 2014-15; that since the appellant-dealer was not aware of the said facts at the time of assessment, could not give definitive answers about the damaged goods, that as there was no tax evasion on part of the dealer and the damaged goods were also sold in course of business as defective goods and due tax was paid, imposition of penalty is uncalled for and needs to be deleted; that despite submission of necessary documents to prove the fact that all the damaged goods had been sold in course of its business in later year and due tax had been paid, the learned ACST disallowed the same which is illegal and devoid of merit and the input tax disallowed by the learned DCST as well as the learned ACST should be allowed and penalty imposed should be deleted.

Cross objection has been filed by the respondent-Revenue supporting the impugned order.

5. Heard the learned Counsel for the appellant-dealer so also the learned Addl. Standing Counsel appearing for the Revenue. Perused the materials available on record so also the orders passed by both the fora below. I also perused the grounds taken in the appeal so also the plea taken in the cross objection. On perusal of the materials available on record it is seen that the damaged goods for Rs.9,75,215.00 have been reflected in the trading and profit and loss account for the year ending 31.03.2014. No reversal of ITC has been made on

damaged goods as provided u/s.20(9) of the OVAT Act. The appellant-dealer has admitted that the damaged goods have been sold during the financial year 2014-15 and due tax has been paid on such sales. The learned ACST did not take into consideration such contention of the appellant-dealer. No reason has been assigned by the appellant-dealer as to why the damaged goods were sold during the subsequent financial year instead of the year 2013-14 as the assessment period relates to 01.04.2013 to 31.03.2014. Thus, the learned ACST has rightly held that the attempt of the appellant-dealer is an afterthought one to cover up or to patch up reversal of ITC as required u/s.20(9) of the OVAT Act. The learned Addl. Standing Counsel relied upon an order of this Tribunal vide S.A. No.254(V) of 2014-15, disposed of on dtd.08.04.2016 similar to this case. The said appeal was dismissed by this Tribunal and the impugned order was confirmed. The appellant-dealer also agitated about the imposition of penalty as arbitrary but it is seen that due to the established fact of sale suppression and evasion of tax made by the appellant-dealer in this regard without any reasonable cause the penalty imposed upon the appellant-dealer is justified. When the appellant-dealer became liable to pay tax basing on the audit assessment levy of penalty u/s.43(2) of the OVAT Act is justified as per the settled law. The plea taken by the appellant-dealer that he was not aware of damaged goods at the time of assessment is afterthought. Hence I do not find any infirmity in the impugned order. Hence, it is ordered.

6. The appeal is dismissed being devoid of any merit and the impugned order is hereby confirmed. The cross objection is accordingly disposed of.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

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