

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

S.A.No. 415(V)/2015-16

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore, in Appeal No. AA-14/MB-2014-2015 (VAT), dtd.30.12.2015, modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Prakash Automobiles,
Mayurbhanj.

... Respondent

For the Appellant : Mr. M.S. Raman, A.S.C. (C.T.)
For the Respondent : None

(Assessment period : 01.04.2011 to 31.03.2013)

Date of Hearing: 11.01.2019 *** Date of Order: 11.01.2019

ORDER

Revenue being aggrieved with the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/DCST) in First Appeal Case No. AA-14/MB-2014-2015 (VAT) has preferred this second appeal.

2. The facts in brief giving rise to the present appeal are : The assessee-dealer was subjected to assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the tax period 01.04.2011 to 31.03.2013 on the basis of Audit Visit Report alleging thereby purchase suppression and wrong claim of ITC. The AA in confrontation of the Audit Visit Report (AVR) to the dealer and

thereafter on consideration of the books of account, connected documents and the explanation of the dealer, determined the GTO and TTO and tax liability thereon. Adjusting the tax already paid from the tax liability, the tax due was calculated at Rs.8,782/-, penalty u/s.42(5) of the OVAT Act was imposed on the tax due at Rs.17,564/- and thereby the total demand was raised to Rs.26,346/-.

3. The assessment was challenged before the FAA, who in turn, though confirmed the findings of the AA with regard to the determination of the GTO by adding the suppressed purchase turnover leading to suppressed sale turnover, but he allowed ITC to the dealer on the suppressed turnover. As a result, the tax due became reduced to Rs.558/- only.

When the tax due reduced, State has came up with the second appeal. It is contended by the State that, when the suppression was almost admitted by the dealer, the dealer is not entitled to ITC. Further, the ITC as allowed was not properly verified from the books of account of the selling dealer.

4. The appeal is heard with cross objection from the side of the dealer, whereby the dealer has supported the impugned order and contended that, the ITC on the amount of purchase of Rs.69,187/- was duly paid by the dealer to his selling dealers i.e. the dealers of local market and as these purchases were tax suffered goods, the instant dealer had by mistakenly not reflected the same in his return.

In course of the argument, learned Addl. Standing Counsel has drawn the attention of the Bench to the relevant portion of the impugned order determining the issue of ITC. As per the FAA, the dealer had purchased goods from the dealers inside the State and the goods were already tax suffered. Learned Addl. Standing Counsel

vehemently argued that, no documents to that effect were produced and verified by the FAA as it is evident from the LCR. The statement of the dealer before the Audit team as it revealed, the dealer had failed to explain the discrepancy in physical stock. As a result, the purchase suppression was suggested by the audit team. Such purchase suppression was established before the AA i.e. to the tune of Rs.69,187/-. The AA added 5% profit to it and thereby the sale suppression was calculated at Rs.72,646/-. According to AVR and according to the AA, ITC to the tune of Rs.9,340/- was available to the dealer on such purchases from local dealers value of Rs.69,187/. If that be, there is no reason to interfere with the order of the FAA allowing thereby the ITC accrued to the dealer as above. The only question arises here is, whether the goods are already tax suffered goods and the findings of both the fora below, if based on scrutiny of the documents/books of account of the selling dealer, who had paid the entry tax. If the selling dealer of the instant dealer had paid the entry tax, then only, question of tax suffered goods in the hands of the instant dealer can be established and thereupon the instant dealer will be found entitled to ITC.

5. From the discussion above, it is believed that, this is a fit case where the matter should be remitted to the AA for a limited purpose i.e. to verify, if the selling dealer of the instant dealer or his selling dealer if any, had ever paid entry tax on the goods. If the AA is satisfied that, the goods are already tax suffered on due verification of the documents either on production by the instant dealer or by calling for from the selling dealers, then there is no reason to deny ITC to the instant dealer. Accordingly, it is ordered.

The appeal by the State is allowed in part. The matter is remitted back to the AA for assessment afresh in the light of observation above.

Dictated and Corrected by me,

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

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