

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

S.A. No. 130 (V) of 2013-14

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in First Appeal Case No.AA-106111211000231,
disposed of on dtd.31.03.2013)

P r e s e n t :

Shri A.K. Panda,
1st Judicial Member

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

... Appellant

- V e r s u s -

M/s. Subash Plastics,
At/P.O.- Shop No.G-254, Unit-I,
Capital Market, Bhubaneswar.

... Respondent

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

Date of hearing: 04.08.2018

Date of order: 31.08.2018

ORDER

This appeal is directed against the order dtd.31.03.2013 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (hereinafter referred to as, the learned DCST) in First Appeal Case No. AA-106111211000231, wherein and whereby, he has allowed the first appeal in part by reducing the balance tax demand and penalty to Rs.1,15,359.00 from Rs.1,71,531.00 raised by the learned Sales Tax Officer, Bhubaneswar IV Circle, Bhubaneswar (hereinafter referred to as, the learned STO) in an assessment u/s.42 of the of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) in respect of the respondent-dealer for the assessment period from 15.09.2008 to 31.12.2011.

2. The respondent-dealer bearing TIN-21551122180 is a retailer of plastic goods. Basing upon an Audit Visit Report (in short, the AVR) submitted by the STO, Tax Audit Unit, Bhubaneswar IV Circle, Bhubaneswar, the learned STO initiated a proceeding u/s.42 of the OVAT Act against the respondent-dealer for its assessment for the period from 15.09.2008 to 31.12.2011 and issued a notice to appear and to produce the books of account and in response to the notice, the proprietor of the respondent-dealer firm along with his Advocate appeared and produced the books of account which were duly been examined. During assessment, when the respondent-dealer failed to offer any satisfactory explanation to the allegation of purchase and sale suppression leveled in the AVR, the learned STO accepted the allegation as true and genuine and on consideration of the materials available on record, determined the stock of goods and after addition of profit margin of 7% upon the value of the goods, finally determined the sale suppression to be Rs.4,84,177.00. Similarly, as the respondent-dealer could not be able to produce purchase bills for goods amounting to Rs.3,288.00, he considered the same to be purchase/sale suppression and after addition of the total suppression determined the GTO and TTO and levied tax at the appropriate rates of 4%, 12.5% and 13.5% on different transactions, which came to be Rs.3,34,094.99 in total. In view of the claim of destruction of goods amounting to Rs.10,00,000.00 due to fire by the respondent-dealer and in view of its failure to substantiate that, it has not availed ITC on such goods, the learned STO reversed the ITC amounting to Rs.25,065.89 as per the provisions of Sec.20(9) of the OVAT Act read with Rule 14(4)(ii) of the Orissa Value Added Tax Rules, 2005. Then, after allowing the admissible ITC and after consideration of the payment of tax amounting to Rs.1,72,815.00 made earlier, the learned STO raised the balance tax demand of Rs.57,177.21 and also imposed a penalty of Rs.11,354.00, equal to twice of the balance tax demand u/s.42(5) of the OVAT Act and as such both the balance tax demand and penalty came to be Rs.1,71,531.00, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA-106111211000231. On hearing and on consideration of the materials on record, though the learned DCST agreed to the finding of the learned DCST relating to the stock discrepancy, did not agree to the addition of profit margin @ 7% on consideration of the same to be high and excessive and then after addition of the profit margin @ 5% of the value of the goods, re-determined the sale suppression. Similarly, after consideration of the percentage in interstate and intrastate purchases effected by the respondent-dealer, he re-determined the reversal of ITC amounting to Rs.14,512.45 instead of Rs.25,065.89 as determined earlier by the learned STO and as such the final order passed by the learned DCST resulted in reduction of the balance tax demand and penalty to Rs.1,15,359.00 from Rs.1,71,531.00 as raised earlier by the learned STO. Thus, being aggrieved with the order of the learned DCST, the appellant-Revenue has preferred this second appeal.

4. In its grounds of appeal, the appellant-Revenue has taken the following grounds:-

- (i) That, the order of the learned DCST appears to be unjust and improper.
- (ii) That, the order of the learned DCST may not be accepted as he has reduced the profit of margin from 7% to 5% without any basis.
- (iii) That, the formula devised for calculating the reversal of ITC is unscientific and without any basis. How he had reached to the conclusion that the damaged goods maximally relates to interstate purchases.

5. No cross objection has been filed by the respondent-dealer.

6. When the matter was taken up for hearing, none appeared on behalf of the respondent-dealer and as such it was heard exparte and is disposed of on merit.

7. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned DCST has not considered the matter in its proper perspective and has reduced the profit margin erroneously to 5% from 7% as determined earlier by the learned STO. He further submitted that, the formula for calculation of the reversal of ITC adopted by the learned DCST is unreasonable and without any basis and as the order passed by the learned DCST in both the count is totally erroneous, the same is liable to be set aside and the order passed by the learned STO being proper and justified, the same is liable to be restored.

8. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, after determination of the stock discrepancy, the learned STO added 7% of the value of the goods, as profit margin and after consideration of the total value of the goods determined the sale suppression accordingly. But, at the first appeal stage, on consideration of the fact that, the respondent-dealer is a retailer of plastic goods and the addition of 7% of the value of the goods as profit margin is high and excessive, the learned DCST reduced the profit margin to 5% of the value of the goods and re-determined the sale suppression accordingly. On consideration of the entire materials available on record, the determination of the profit margin @ 5% of the value of the goods by the learned DCST appears to be quite reasonable and justified in the facts and circumstances of the present case. Similarly, so far as the reversal of ITC is concerned, after a detail examination of the interstate and intrastate purchase effected by the respondent-dealer which constitute 82.20% and 17.80% of the total purchase, the learned DCST has reversed the ITC relating to the goods destroyed due to fire and as such the order passed by the learned DCST in this regard can never be considered to be unreasonable and without basis as pleaded by the appellant-Revenue. As the order passed by the learned DCST is totally based upon the materials available on record and as the same appears to be reasonable and justified in the facts and circumstances of the present case, the same needs no interference of this forum.

9. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

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

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