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

S.A. No. 142 (V) of 2014-15

(Arising out of the order of the learned DCST (Appeal), Cuttack I Range, Cuttack, in First Appeal Case No. AA-(VAT) 55/CUIC/2013-14, disposed of on dtd.06.06.2014)

P r e s e n t: Shri A.K. Panda,
1st Judicial Member

M/s. Sri Ambica Auto Store,
Mangalabag, Cuttack. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. H.R. Kedia, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 19.04.2018 **** Date of order: 03.09.2018

O R D E R

This appeal is directed against the order dtd.06.06.2014 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Cuttack I Range, Cuttack (hereinafter referred to as, the learned DCST) in First Appeal Case No. AA-(VAT) 55/CUIC/2013-14, wherein and whereby, he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Cuttack I Central Circle, Cuttack (hereinafter referred to as, the learned STO) passed in an assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) in respect of the appellant-dealer for the assessment period from 01.04.2007 to 31.03.2012 raising a tax demand and penalty amounting to Rs.55,761.00.

2. The appellant-dealer bearing TIN-21831201566 is a wholesaler-cum-retailer of automobile tyre, tube, flap, lubricant, battery, inverter and

UPS and in course of business transaction it used to purchase the goods both from inside as well as from outside the State of Odisha. Basing upon an Audit Visit Report (in short, the AVR), the learned STO initiated a proceeding u/s.42 of the OVAT Act against the appellant-dealer for its assessment for the period from 01.04.2007 to 31.03.2012 and issued a notice in form VAT-306 to appear and to produce the books of account and in response to the notice, one of the partners of the appellant-dealer firm appeared and produced the books of account which were duly been examined in the light of the allegation of the AVR. During assessment, when the less payment of output tax amounting to Rs.18,587.04 was confronted to the appellant-dealer, the authorized person appearing on its behalf submitted that, the appellant-dealer has no tax liability in view of the fact that, it has excess ITC of Rs.1,37,213.00, from which the less payment of output tax can be adjusted. Similarly, he further submitted that, the less payment of output tax can also be adjusted from the output tax collected and paid under the CST Act amounting to Rs.10,363.00. But, on examination of the books of account and the other relevant materials including the AVR, the learned STO did not accept the submission advanced by the appellant-dealer on the ground that, it has not calculated the output tax properly as a result of which less payment of Rs.18,587.04 has occurred and at the time of filing the periodical returns, the appellant-dealer could have adjusted the due tax from its excess ITC. Finally, on calculation of all the transactions, the learned STO determined the GTO at Rs.64,55,69,389.78 and after allowing deduction of Rs.7,24,31,235.27 towards collection of output tax, determined the TTO at Rs.57,31,38,154.51 and levied tax at the appropriate rates of 4%, 12.5% and 13.5% on different transactions, which came to be Rs.7,24,31,235.27. After allowing the ITC amounting to Rs.7,24,12,648.23 as adjusted by the appellant-dealer, he raised the tax demand of Rs.18,587.00 and also imposed a penalty of Rs.37,174.00, equal to twice of the tax demand u/s.42(5) of the OVAT Act and as such both the tax demand and penalty came to be Rs.55,761.00 in total, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA-(VAT) 55/CUIC/2013-14. On hearing and on consideration of the materials on record, the learned DCST did not accept the self-same contention of the appellant-dealer that, the learned STO should have adjusted the less payment of tax from the available ITC instead of demanding the same and also should not have imposed penalty at the rate of equal to twice of the said demand and accordingly dismissed the appeal by confirming the order of the learned STO. Thus, again being aggrieved with the order of the learned DCST, the appellant-dealer has preferred this second appeal.

4. Cross objection has been filed by the respondent-Revenue supporting the order of the learned forums below.

5. Heard both the sides. The learned Counsel appearing for the appellant-dealer submitted that, as the appellant-dealer has excess ITC to its credit, the learned forums below should have adjusted the less payment of tax amounting to Rs.18,587.04 instead of raising demand for the same. Similarly, in this background, they should not have imposed penalty at the rate of equal to twice of the said demand u /s.42(5) of the OVAT Act. But, without considering the fact and law in its proper perspective, the learned forums below have passed the orders and as the orders passed by them are totally erroneous, the same are liable to be set aside and the appeal preferred by the appellant-dealer is liable to be allowed. On the other hand, the learned Standing Counsel appearing for the respondent-Revenue supported the orders of the learned forums below and urged for dismissal of the appeal.

6. Perused the orders of the learned forums below and the other materials on record. On perusal of the materials on record, it is seen that, during audit visit, the audit officials pointed out less payment of tax amounting to Rs.18,587.04 by the appellant-dealer and submitted the AVR with such allegation. The appellant-dealer has not disputed the less payment of tax. But, it has raised the contention that, the said less payment

of tax should have been adjusted from the excess ITC available to its credit amounting to Rs.1,18,626.34. Similarly, it has also raised the contention that it has already paid CST to the tune of Rs.10,363.00 during the assessment period in question and the same should have also been adjusted against the alleged less payment of tax. But, both the learned forums below have not accepted the contention of the appellant-dealer on the reasoning that, it has calculated the output tax wrongly and has also not adjusted the due tax from the available ITC by filing proper return or by filing revised return further at a subsequent stage. The less payment of output tax amounting to Rs.18,587.04 by the appellant-dealer has been detected only after an audit visit and the same has clearly been established during the assessment on examination of the materials available on record. Though, it is true that, the appellant-dealer has excess ITC to its credit, it has not adjusted the output tax due upon it by filing a revised return and hence, the contention raised by it bears no substance. On perusal of the order passed by the learned DCST, it appears that, he has considered the matter in a proper perspective by dealing with the contention of the appellant-dealer in great detail and has passed the order in a proper and justified manner. As the finding and order arrived at by both the learned forums below suffers from no infirmity, the same needs no interference of this forum.

7. In the result, the appeal is dismissed being devoid of merit. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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