

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

S.A.No. 31(V)/2015-16

(From the order of the Id.DCST (Appeal), Sambalpur Range,
Sambalpur, in Appeal No. AA.35/SAII/VAT/2014-15,
dtd.28.02.2015, 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. Debakinandan Agrawal,
Dist. Sambalpur.

... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (C.T.)
For the Respondent : None

(Assessment period : 01.04.2012 to 31.03.2014)

Date of Hearing: 31.07.2018

Date of Order: 31.07.2018

ORDER

This appeal is directed against the order of learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) whereby the FAA has reversed the order of Assessing Authority, Deogarh Circle, Deogarh (in short, AA) passed in a audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) raising demand of tax and penalty together to the tune of Rs.86,641.62.

2. The assessee-dealer in this case was engaged in trading of grocery goods. He was also a consignment agent of M/s. K.B. Products Pvt. Ltd., Bhivandi, Thane and M/s. Balan Natural

Foods Pvt. Ltd. and accordingly he was receiving goods as consignment agent against 'F' form. Basing audit visit report, the AA took up audit assessment for the assessment period relating to the tax period from 01.04.2012 to 31.03.2014. The audit team had reported six numbers of allegations such as :

(a) For the quarter ending December, 2013 the dealer has declared output tax collected is of Rs.25204.00 and carried forward ITC of Rs.897.00 to the next tax period. However, on verification of sale invoices and sale register it is noticed that no purchase or sale is effected during the said period. Further, last sale is effected on dt.31.03.2013 and onwards no transaction are made during 2013-14. Thus, output tax reflected may be reduced by Rs.25,204/- and ITC carried forward to next tax period be taken as Rs.26,101.00.

(b) The dealer has not filed return for the quarter ending June, 2013. On confrontation it is revealed that during the said period one way bill is utilized bearing no.21w13101701891 for return of Ghee to the consigner i.e. M/s. K.B. Products Pvt.Ltd., Bhivandi, Thane and debit note for Rs.82,803/- is issued against such sales return. However, no Cr. Notes is received from the consiger.

(c) The dealer has reduced output tax collected by Rs.9,092.00 against issue of Cr. Notes. However, one Cr. Note issued in favour of M/s. Hariom Agency vide Vch.No.4 dt.31.11.2012 for Rs.90,948.00 (including tax of Rs.4,401.31). However, the sale is effected during the month of Apr, 2012 and the Cr. Note issued after 3 months. Thus, the Cr. Note issued may be rejected the creditable reduction of output tax against issue of Cr.Note may be reduced to Rs.4609.69.

(d) As per the P/L account (certified by the CA) the closing stock of goods stands at Rs.6,75,000.00 (as on dt.31.03.2013) while, as per

the stock register the value stands at Rs.4,13,292.83. Thus, there is short stock (stock suppression) of Rs.2,61,707.17. The profit margin as disclosed in the audited report stands at 3.2%. Therefore, the sale value of goods comes to Rs.2,70,082.00. The ratio of 5% taxable goods to 13.5% taxable goods stands at 52.5:47. Thus, the sale ratio comes to Rs.141931.70 : Rs.126902.5 for 5% taxable goods to 13.5% taxable goods and the output tax suppressed comes to Rs.7096.58 and Rs.17131.80 respectively.

(e) The closing stock of goods dtd.31.03.2013 stands at Rs.4,13,292.83. The dealer has not effected any transaction during 2013-14. Thus, the closing balance of goods stands as such on dt.31.03.2014 at Rs.4,13,292.83. Further on dt.22.05.2014 (date of filing for cancellation) the value of goods stands as such and the carried forward ITC remained at Rs.26,101.00. The fact may be taken into account during cancellation of it.

(d) The dealer had one additional place of business located at Ainthapali, Sambalpur. However, the additional place had been closed. The dealer unable to produce the amendment copy of the additional place of business which may be verified from the records. If not found due penalty may be imposed as per provision of law.

In course of assessment proceedings the Lao is found to have confronted the above charges to the appellant-dealer and the argument advanced before him were turned down and after verification of books of account vis-à-vis AVR ascertained the total purchases made during the tax period at Rs.1,50,69,607.00 and corresponding to it the input tax at Rs.11,48,265.02. ITC carried forward from the previous tax period by Rs.41,882.00 and ITC carried forward to the next period at Rs.26,101.00. Hence, the net

ITC creditable to the dealer has been calculated at Rs.11,64,026.02. The total sale has taken at Rs.1,67,63,493.00 and the output collected stands at Rs.13,45,328.83 reducing output of Rs.4,690.69 against credit note, the conditions which were not complied within time. Accordingly, the output tax collected by the dealer has been taken at Rs.13,40,638.14. Beside, the LAO has quantified the suppressed sale of 5% taxable goods leading to suppressed output liability of Rs.7,096.58 and 13.5% taxable goods involving output tax due of Rs.17,131.84. Accordingly, the total output tax has been calculated at Rs.13,64,866.56 and VAT payable thereon has been calculated at Rs.2,00,840.54, against which the appellant-dealer having deposited a sum of Rs.1,71,960.00 for the audit period has resulted in extra tax demand of Rs.28,880.54. Further levy of penalty of Rs.57,765.08 imposed u/s.42(5) of the OVAT Act has resulted in demand of Rs.86,645.62, under appeal.

3. Being aggrieved with the above assessment, the dealer had preferred appeal before the FAA whereby, the FAA deleted the demand of tax and penalty imposed by the AA accepting the dealer's claim that, the dealer had additional place of business. So there was shortage of stock as determined by the AA. Further, it has also allowed the output tax collected by the dealer against credit note issued after 3 months with a view that, there was no restriction for the dealer to issue credit notes within the same financial year.

4. When the matters stood thus, State being aggrieved with such deletion of tax due and penalty in the impugned order has preferred this appeal. It is contended by the State that, once the credit notes were issued after three months, the dealer output

tax should have reduced by that amount as claimed. Similarly, the FAA has failed to appreciate the fact that, the dealer had no additional place of business. Accordingly, the appellant has prayed for restoration of the assessment order by setting aside the order of FAA.

5. On careful perusal of the impugned order, it is found that, by an in-depth analysis the FAA has held that, there is no provision under law restricting the dealer to issue credit notes after three months. Provision relating to return of goods within three months is there but that does not restrict issuance of credit notes. In the case in hand, the dealer had issued credit notes in the same financial year and accordingly filed his VAT return after adjusting the same against the output tax. The dealer had disclosed the transaction and issuance of credit notes in the return. So, there is no irregularity or illegality committed by the dealer. As a result, the findings of FAA on this count calls for no interference. The FAA on verification of the documents, stock summary etc. came to know that, the dealer had additional place of business besides Sambalpur at places like Jamankira. The stock of goods at Jamankira was established from the correspondence between the dealer and principal dealer M/s. K.B. Product Pvt.Ltd., Bhivandi. This factual aspect was scrutinized by the FAA, who is an extended forum of assessment. His satisfaction about the additional place of business of the dealer at Jamankira on verification of the document cannot be overturned basing the claim of the Revenue that too without supported by any cogent evidence. Hence, it is also held that, the FAA has not done any wrong in accepting the fact that, the dealer had an additional place of business having

stock of goods. Accordingly, the stock suppression was also duly explained and finally not established.

In view of the discussion above, it is held that, the impugned order by the FAA suffers from no illegality, hence calls for no interference. Accordingly, it is ordered.

The appeal preferred by the State is dismissed as of no merit.

Dictated and Corrected by me,

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

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