

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 147(V)/2017-18

(From the order of the Id.JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in Appeal No. AA/106221622000220/OVAT/BH-IV, dtd.29.04.2017, setting-aside 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. Shree Laxmi House,
Bhubaneswar. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

For the Respondent : None

Date of Hearing: 28.06.2018 Date of Order: 28.06.2018

ORDER

Revenue has challenged the sustainability of the impugned order by learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) remanding thereby the matter to the Assessing Officer/Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, AO/STO) for assessment afresh.

2. The assessee-dealer is a trader of cement on retail-cum-wholesale basis. It was subjected to Audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) on the basis of allegation in Audit Visit Report (AVR). The 1st point of allegation in the Audit Visit Report (AVR) is, the dealer was guilty of sale suppression against the purchase amount for Rs.8,68,172/-. The AO in course of the proceeding discarded the theory advanced by the dealer that the cement of Rs.8,68,172/- purchased by him was utilized otherwise than sale as he had utilized the same for construction of his house etc. Thereafter, the AO added 1% of profit margin to this purchase amount and calculated the sale

suppression at Rs.8,76,854/-. The other allegation in the AVR regarding suppression of Rs.1,16,138/- i.e. without purchase invoice, the AO also did not accept the theory advanced by the dealer such as it was not shown in the VAT return by the dealer. Thereafter, the AO re-determined the GTO and TTO. The total tax due after deduction of ITC was calculated to Rs.1,56,916/-. After adjustment of the tax already paid, the dealer was found liable to pay balance tax of Rs.1,16,138/-. Penalty u/s.42(5) of the OVAT Act at the rate of twice of the balance tax due was imposed and thereby the total demand raised to Rs.4,02,162/-.

3. The dealer carried the matter before the FAA, who in turn, accepted the plea of the dealer that the allegation of purchase suppression leading to sale suppression of Rs.8,76,854/- was the value of the amount of cement purchased by the dealer but used for personal purpose i.e. otherwise than sale. Hence, the FAA deducted the same from the GTO. However, without disturbing the findings on suppression of Rs.1,16,138/- without purchase invoices, he remanded the matter to the AO for assessment afresh.

4. Being aggrieved by this modification and deduction of the tax demand, State has preferred this appeal on the contentions like, the value of cement of Rs.8,68,172/- should have been treated as suppression by the dealer and the FAA has gone wrong in deleting the suppression to that extent.

5. The appeal is heard without cross objection. Here the point for determination in this appeal is, whether the FAA was wrong in deleting the allegation of suppression of Rs.8,68,172/-.

6. In the case in hand, the Audit team had brought allegations on two points. One is, the dealer had shown purchase of cement of Rs.8,68,172/- in his register. But he has not shown the same in his sale register. The other allegation is, the dealer had not accounted for purchase of Rs.1,16,138/- for wanting of invoice. The AO had discarded the explanation of the dealer inasmuch as the cement of Rs.8,68,172/- was used for personal use, whereas the FAA has held that, when the dealer had not claimed ITC on that amount, the dealer's contention should be accepted. Mere mentioning of fact of purchase register

entered inadvertently, it does not attract tax liability on the dealer. This is a subjective satisfaction of the FAA, as an extended forum of assessment. This finding on question of fact basing the connected documents is not illogical for the reason that, the dealer had not claimed ITC against that purchase in his return. In that event, this Tribunal is in its' considered view that, the findings of the FAA suffers from no illegality, hence, calls for no interference. Since the matter is already before the AO, the AO is requested to dispose of the matter at the earliest. Accordingly, it is ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

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

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