

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 202(V)/2015-16

(Arising out of order of the Id.DCST (Appeal), Sambalpur Range, Sambalpur, in
Appeal No. AA.45/JSG/VAT/2014-15,
disposed of on dtd.26.06.2015)

Present: Sri S. Mohanty
2nd Judicial Member

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

-Versus-

M/s. Unique Builder,
Dist. Jharsuguda. ... Respondent

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

For the Respondent : Mr. B.P. Mohanty, Advocate

Date of Hearing: 08.06.2018 Date of Order: 18.06.2018

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) passed in First Appeal Case No.AA.45/JSG/VAT/2014-15 dtd.26.06.2015 whereby the FAA has deleted the tax and penalty raised against the dealer in a proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT) by the AO.

2. The instant dealer is a trader of petrol, diesel and lubricants on retail basis effecting intra-state purchase and sale. The Tax Audit Team in course of regular tax audit, visited the dealer's unit on 17.01.2014 and verified the purchase, sale with profit and loss account for the tax period from 01.04.2011 to 31.03.2013. On verification they found three different amounts are mentioned under the three heads like, return filed by the dealer, the books of account maintained by the dealer and the profit and loss account maintained by the dealer. They found, the dealer has undeclared purchases of Rs.99,329.41

detected in comparison between the return figures and the books of account. Thereafter, they also found the unaccounted for purchase leading to wrong claim of ITC by the dealer by comparing the books of account with the profit and loss account. Basing the allegations above, the AO proceeded with assessment u/s.42 of the OVAT Act. During the assessment proceeding, the AO has taken consideration of the allegations in the AVR, the explanation of the dealer and the periodical return of the dealer, books of account as well as the profit and loss account. The dealer has shown three different figures under three different heads. The dealer has shown purchase of lubricants and HSD of Rs.40,31,97,336/- during the period 2012-13 in his return, whereas in the books of account the dealer has shown the amount as Rs.40,76,177.76 and similarly, the dealer has shown Rs.40,19,03,123.60 in his profit and loss account. The difference between books of account and return was treated by the AO as undeclared purchase. Tax against that undeclared purchase was calculated at Rs.12,190.42. The AO also found that, the dealer was not eligible to ITC of Rs.38,171/-. i.e. in comparison between the return figure and profit and loss account shown by the dealer. As a result, the total tax due raised to Rs.50,633/-. Penalty twice of it as per Sec.42(5) of the OVAT Act was imposed to the extent of Rs.1,00,726/-. Thus the total demand against the dealer raised to Rs.1,51,081/-.

3. Being aggrieved with such demand of tax and penalty, the dealer preferred First Appeal No.AA.45/JSG/VAT/2014-15. The FAA vide impugned order, deleted the demand of tax and penalty. It is held that, when the dealer has disclosed his purchase in his books of account, then it is not an undeclared purchase. Similarly, it is also held that, the calculation of ITC by the AO differs from the ITC suggested in the AVR and both are not correct. Thereafter, the FAA has also accepted the explanation of the dealer that at no point of time the dealer had received any credit notes during the tax period. As a result, there was no question of wrong claim of ITC by the dealer. In ultimate analysis, the FAA deleted the tax and penalty imposed by the AO.

4. Felt aggrieved with deletion of tax and penalty, State has preferred this appeal. The contention of the State in the appeal memo are, the FAA has gone wrong in not accepting the AVR that the dealer is guilty of suppression to the tune of Rs.90,299.46. It is also contended that, the profit and loss account of the dealer clearly shows the net discount received on purchase of lubricants and shortage of HSD. Thus, the FAA has also gone wrong in holding that, the dealer has not received any discount and has not availed any ITC wrongly.

5. Here in this case, the facts remain undisputed are, the dealer had shown three different figures under three different heads. So far as the tax period 2012-13 is concerned, the dealer has shown purchase of lubricants and HSD of Rs.40,31,97.336 in his return but in the books of account the amount mentioned as Rs.40,22,76,177.17. Similarly in profit and loss account the amount under the head is mentioned as Rs.40,19,03,123/-. The explanation of the dealer before the AO is, the difference between the books of account and return is due to the wrong mentioning of amount without deduction of the discount. The books of account contains the gross figure, whereas the figure in return is the net figure after the deduction of the discount. It is a fact that, the amount which was taken consideration into by the AO with regard to the claim of ITC differs from the amount indicated in the AVR. However, it is also found that the FAA has gone in a slipshod way without taking consideration of the discrepancy under three heads and if there was any wrong claim of ITC by the dealer or not ? If the dealer has received any discount on account of purchase of lubricants and for that reason, if there is any discrepancies arised in between the books of account and dealer it can be cured either by filing revised return or if it is found to the satisfaction of the authority it also can be accepted. But at the same time if the dealer has shown higher amount of purchase in his return and less amount in the corresponding profit and loss account, then there is a bona-fide apprehension that the dealer might have availed more ITC in his return, when it is compared to profit and loss account or books o account. So this aspect has not been vividly and meticulously dealt by the FAA. It is also found that, the AO has not vividly enquired into this aspect but has arrived at a

conclusion that the dealer has availed wrong amount of ITC. The calculation of ITC by AO is wrong and apparent on the face of the order. The dealer might have received discount on purchase of lubricants and that should have been taken consideration by the AO. However, the impugned order as it reveals, the FAA has mechanically accepted the plea that the dealer has not received any credit note towards discount. In the circumstances above it is held that, this is a fit case to be remanded back to the AO for assessment afresh with respect to the wrong claim of ITC if any by the dealer basing the discrepancy in the return figure and profit and loss account figure of the dealer. The present case in hand thus, rests completely on exact calculation of the tax due and wrong claim of ITC if any by the dealer taking consideration of the opening balance of ITC and closing balance of ITC in the hands of the dealer.

The appeal by the State is allowed in part on contest. The matter is remanded back to the AO for assessment afresh with regard to the wrong claim of ITC if any by the dealer and to raise demand thereafter.

Dictated & corrected by me,

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

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