

Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, the appellant-dealer is engaged in manufacturing of rice, broken rice and rice bran. On the basis of the Tax Evasion Report, the learned STO initiated assessment proceeding. As per the Tax Evasion Report, the appellant-dealer had filed return upto M.E.06/2006 and thereafter had not filed any return under the OVAT Act. The appellant-dealer stated that due to NPA, transaction on bank account was not possible. It was revealed that different purchasing dealers had claimed ITC amounting to Rs.4,72,030.00 on purchases of Rs.99,12,617.00. The sale suppression was established at Rs.99,12,617.00. The GTO and TTO was determined at Rs.94,40,590.00. Tax was calculated @ 5% which came to Rs.4,72,030.00. One time penalty of Rs.4,72,030.00 was imposed u/s.43(2) of the OVAT Act. So, the tax and penalty altogether came to Rs.9,44,060.00.

3. Being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned JCST who confirmed the assessment order. Being aggrieved by the order of the learned JCST, the appellant-dealer has preferred this second appeal.

Cross objection has been filed by the respondent-Revenue by supporting the impugned order.

4. Heard the learned Counsel for the appellant-dealer so also the learned Addl. Standing Counsel appearing for the Revenue. Perused the materials available on record so also the orders passed by both the fora below. Also perused the

grounds taken in the appeal so also the plea taken in the cross objection. On perusal of the grounds of appeal it is seen that the appellant-dealer has challenged the impugned order on the following four points:-

- (i) The learned STO and the learned JCST have passed the order without considering the point of law that was jurisdiction for escaped turnover assessment without having any return;
- (ii) The initiation of proceeding without fulfilling any mandatory provision/precondition for escaped turnover assessment, such illegal order has been passed and subsequently confirmed by the learned JCST which is illegal and arbitrary and not tenable as per settled principles of law;
- (iii) The section and rule for disallowance of ITC have not been followed by the forums below, the statutory provision should be strictly complied before fixation of tax liability under the Act and not as per the sweet will of the executing authority for which the order of appeal is want of statutory jurisdiction and not tenable in the eye of law;
- (iv) The learned JCST has not given any reason for acceptance and non-acceptance of the grounds and submission, the order amounts to non-application of judicial mind and liable to be quashed.

5. On perusal of the above grounds, it is seen that the appellant-dealer has not come up with any concrete factual aspects challenging the impugned order. On perusal of the record it is seen that basing on the report of mismatch of ITC

the business premises of the appellant-dealer was visited by the officials of Enforcement Range, Cuttack. Basing on the tax evasion report the learned STO initiated reassessment proceeding, issued notice to the appellant-dealer and confronted the contents of the report to the appellant-dealer. The appellant-dealer was given sufficient opportunities to produce documentary evidence in favour of its stand taken in the grounds of appeal for disposal by the learned JCST but the appellant-dealer failed to produce the same. In spite of reasonable opportunities given to the appellant-dealer it could not produce the required documentary evidence in support of its contention. From the record it is clear that the appellant-dealer neither filed return nor paid due tax for which the learned JCST did not accept the contention of the appellant-dealer. In view of such factual position the order of the learned JCST is justified in the eye of law and there is no reasonable merit at all in the second appeal filed by the appellant-dealer. The grounds taken in the appeal are baseless and deserve no merit. Hence it is not necessary to interfere with the impugned order. Hence, it is ordered.

6. The appeal is dismissed being devoid of any merit and the impugned order is hereby confirmed. The cross objection is accordingly disposed of.

Dictated & corrected by me,

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

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