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

S.A.No. 192(V)/2015-16

(From the order of the ld.DCST (Appeal), Bhubaneswar Range, Bhubaneswar, in Appeal No. AA-106221422000185, dtd.13.04.2015, 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. Sri Ram Drinks, Plot No.56, Mancheswar I.E., Bhubaneswar. ... Respondent

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

Date of Hearing: 10.07.2018 Date of Order: 11.07.2018

ORDER

Against a reversing order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/DCST) whereby the tax demand raised by the Assessing Officer, Bhubaneswar-III Circle, Bhubaneswar (in short, AO) is deleted, the taxing authority preferred this appeal on the sole question i.e. whether the amount shown under the head of "miscellaneous income" in the audited balance sheet is to be treated as transportation charge and if yes, whether it should be included in sale price amenable to Value Added Tax.

2. In the case in hand, the assessee-dealer was subjected to audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) by the Sales Tax Officer as AO for the assessment period from 01.04.2011 to 31.03.2013 of the dealer. The audit report

which formed the basis of this assessment proceeding u/s.42 of the OVAT Act discloses four numbers of irregularities like, (i) the dealer was guilty of irregular filing of returns (ii) the dealer was found to have not paid tax on the amounts shown under the heading of "miscellaneous income" for Rs.6,83,450/- during the assessment year 2011-12 and Rs.2,57,166/- for the assessment year 2012-13, (iii) the dealer was found to have committed sale suppression of Rs.23,100/- and (iv) the dealer had wrongly claimed ITC on the loss of materials consumed in the manufacturing process. The AO on confrontation of all four number of allegations to the dealer, has found the dealer guilty of sale suppression, non-payment of tax on miscellaneous income i.e. the transportation charges received by the dealer. Thereafter, on re-determination of TTO, he raised demand of balance due of Rs.44,401/. Penalty u/s.42(5) of the OVAT Act at two times of the tax due was also imposed and thereby the total demand became raised to Rs.1,33,203/-

3. As against the assessment order, the dealer preferred First Appeal No.AA-106221422000185. Learned DCST(Appeal) as FAA vide impugned order confirmed the findings of sale suppression but reversed the finding of levy of tax on the amount shown under 'miscellaneous income' accepting the dealer's contention that, the said amount was transportation charges received by the dealer as independent of the sale of the goods. As such the amount was not a part of sale price, hence not liable for VAT.

4. Being aggrieved, Revenue has preferred this second appeal on the ground like, without any verification of the type of vehicle used by the dealer and without any supporting documents from the dealer, the FAA has mechanically accepted the explanation of the dealer that, the income under miscellaneous income is not a part of the sale price.

Appeal is heard with no cross objection by the Respondent.

5. Advancing the claim of the Revenue, learned Addl. Standing Counsel, Mr. Pradhan argued that, the transportation charges received by the dealer from the purchasing dealer is nothing but a sum charged by the assessee-dealer in respect of the goods sold and thus it is a part of the purchase price as per the definition u/s.2(46) of the OVAT Act. In consequence thereof, the transportation charges being a part of sale price is necessarily comes under the ambit of taxable turnover for the purpose of raising VAT. On the other hand, learned Counsel for the dealer vehemently argued that, the transportation charges received by the dealer was not in consonance to the term "sale price". It is an amount received by the dealer against transportation of goods and the amount received towards such transportation was only reflected in the balance sheet. The audit team has wrongly taken that amount as transportation of the goods from the dealer's business house to the purchasing dealer and treated the same as sale price. Learned Counsel further argued that, in all case of sale there was no occasion of transportation charges received by the dealer. It is the customers make their own arrangement of transportation but in some cases, they also hire the vehicle of dealer giving transportation charges separately. Learned Counsel has placed reliance in the matter of **Dyer Meakins reported in (1970) 26 STC 248 and D.C. Johar & Sons reported in (1971) 27 STC 120** and **State of Karnataka and Another Vrs. Bangalore Soft Drinks Pvt.Ltd.** reported in **(2000) 117 STC 413 (SC),** which were relied by the FAA in the impugned order and then argued that, the transportation charges is a post-sale expenditure and as because it is incurred for outward journey of the goods, the same should be deducted from the sale price.

On the contrary, learned Addl. Standing Counsel, Mr. Pradhan capitalized his argument on the authorities in **M/s. Black Diamond Beverage & Another Vrs. The Commercial Tax Officer (SC) (1997)**

107 STC Page 219 and argued that, when the assessee-dealer is under the obligation to deliver the goods to his customer at his premises, then the transportation charges is a part of sale price.

6. The crux of the dispute lies in a narrow compass i.e. whether the transportation charges in the case in hand received by the dealer is a part of sale price or not ? Provision u/s.2(46) of the OVAT Act defines sale price as under :

> "***SALE PRICE*"** means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount at the time of delivery or before delivery of such goods but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof and the expression **"PURCHASE PRICE"** shall be construed accordingly;
>
> xxx xxx xxx "

The relied decisions by the respondent-dealer, speaks of non-inclusion of freight since it is a post-sale expenditure. The provision U/r.9(f) of the Kerala General Sales Tax Rule which was taken care of by the Hon'ble Apex Court in **Dyer Meakin (supra)** contemplated that the freight should be deducted from the total turnover of the dealer. However, the provision u/s.2(46) has not stated about such exclusion of freight. But in all eventuality the fact remains, the provision contains any sum charged for anything done by the dealer in respect of the goods at the time or before delivery thereof and the expression purchase price shall be construed accordingly. Explanation to the provision under Clause (a) says :

> "Where any sum charged for freight, delivery, distribution, installation or insurance at the time of delivery or before delivery of such goods which shall be included in the sale price".

Thus, the provision itself mandates sum charged towards freight at the time of delivery or before delivery shall be included in the sale price.

Adverting to the case in hand, here it is not the case that, the tax invoices carries sum charged for freight. The plea of the dealer is, the transportation charges received is independent of the sale transaction. It was an independent arrangement and the dealer had only shown the same in his balance sheet for income tax purpose. Further, the said sum was not collected as part of sale price i.e. before or at the time of delivery of goods. The Revenue has failed to establish that, the freight charges was raised before the delivery of the goods or at the time of delivery of goods. The tax invoice does not reflect such amount. To put it in another way, the AO could have scrutinized the returns of customers (purchasing dealer) to cross verify the sale price shown by the instant dealer and the purchase price shown by customers (purchasing dealer) and the same could have indicate when and under what head of account the transportation charges was shown or considered. So, in the case in particular, it cannot be said that, the sum charges as freight/transportation is relatable to sale price as envisaged u/s.2(46) of the OVAT Act. The reported decision in **M/s. Black Diamond Beverages (supra)** relied by the Addl. Standing Counsel speaks of the fact and circumstances under which the dealer was under obligation to incur the expenses towards delivery charges because the dealer was to make the goods available for sale to the customers at their place. Here the sale point is the dealer's unit that means when the delivery point is at the dealers end, then any sum charged for any purpose thereafter, is an independent arrangement cannot be part of sale price. With the observation above, it is held that, the authorities relied by the FAA are squarely applicable to the case in hand. Conversely the authority relied by the Revenue relates to a

separate fact and circumstance other than the present case in hand. In the result, it is held that, the impugned order calls for no interference. Hence, ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

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

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