

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

S.A.No. 224(V)/2014-15

(From the order of the Id.JCST, Balangir Range, Balangir, in Appeal
No. AA-04(BP-I) of 2013-14, dtd.04.04.2014, confirming the
assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

M/s. Shankar Cycle Store,
At/P.O. Patnagarh,
Dist. Balangir.

... Appellant

-Versus-

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

.... Respondent

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

(Assessment period : 01.04.2011 to 31.03.2013)

Date of Hearing: 30.07.2018 Date of Order: 30.07.2018

ORDER

The dealer as appellant has assailed the order of learned First Appellate Authority/Joint Commissioner of Sales Tax, Balangir Range, Balangir (in short, FAA/JCST) whereby the FAA has confirmed the order of Assessing Officer, Balangir Circle, Balangir (in short, AO) passed in an assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the period 01.04.2011 to 31.03.2013 relating to the dealer's unit initiated on the basis of Audit Visit Report (AVR) as per Sec.41 of the OVAT Act.

The audit team brought two numbers of allegations in their report against the dealer's unit such as (i) the dealer had not disclosed

correct and complete figure of sale purchase in his return filed for the month of Jan, 2012 and Feb, 2012 leading to extra tax liability from Rs.17,176.55 and (ii) there was delay in filing return by 91 days for the period from 01.01.2012 to 31.03.2012 and 01.07.2012 to 30.09.2012.

2. Basing on the two allegations in AVR, the AO initiated proceeding u/s.42 of the OVAT Act comprising the period of assessment from 01.04.2011 to 31.03.2013 relating to the dealer, who was a trader of cycle, cycle parts and electric goods etc. The delay in filing VAT return was explained as : due to serious road accident, and prolong treatment suffered by the dealer, the return was not filed in time. In consideration of the medical document and in consideration of the relevant provision u/s.34 of the OVAT Act, the AA has held that, it was an inadvertent mistake and the dealer was prevented for sufficient reason from filing periodical return in time. Resultantly, he did not accept the suggestion to impose penalty.

3. So far as the next allegation i.e. incorrect/incomplete figure of sale purchase shown in the return for the month of Jan, 2012 and February, 2012 same explanation of the dealer was not accepted. The dealer's prayer to adjust the tax liability as calculated to the tune of Rs.17,177/- from his carried forward ITC of Rs.64,730/- was also disallowed. As a result, the said amount of tax was charged. In addition to tax due, penalty u/s.42(5) of the OVAT Act i.e. at two times of the tax liability was also imposed. Finally the total due against the dealer was raised at Rs.51,531/-.

4. The dealer carried the matter before the FAA whereby he challenged the calculation of balance tax liability due to irregularity in the return for the two months like Jan, 2012 and February, 2012 as determined by the AO to be illegal and then prayed for adjustment of

the same in his carry forward ITC available during that period. The FAA has just reiterated the findings of the AO and dismissed the claim of the dealer.

5. With this backdrop, being aggrieved by the order of FAA, the dealer has filed this second appeal. It is contended by the dealer that, when the dealer had balance ITC in his hand to the extent of Rs.64,730/, then the tax due calculated at Rs.17,176/- payable during that period should have adjusted in it in accordance to the Sec.21(2) of the OVAT Act. It is also contended that, penalty as imposed u/s.42(5) in the case in hand is illegal.

6. The appeal is heard with cross objection from the side of the Revenue contending thereby the findings of both the fora below to be lawful and binding.

7. To determine this appeal, following questions are struck for decisions :

- (i) Whether the fora below was wrong in not adjusting the balance tax due in the ITC which was carried forward to the next period?
- (ii) Whether the fora below was wrong in imposing penalty u/s.42(5) of the OVAT Act ?

8. As mentioned above, the dealer was subjected to audit assessment basing two numbers of allegations in AVR. There was delay of 90 days in filing of the return and it relates to the tax period from 01.01.2012 to 31.03.2012 and 01.07.2012 to 30.09.2012. The delay in both the cases was condoned and lenient view was taken in favour of the dealer by the assessing authority on acceptance of the explanation that, the dealer was prevented from filing return in time following a road accident and treatment. The dealer has not disputed the findings with regard to detection of wrong in calculation of tax for

that period and determination of tax liability assessed by the AA which was confirmed by the FAA. The only question raised by the dealer is, the balance tax due of Rs.17,176/- as calculated by the AA should be adjusted from the ITC in the hands of the dealer. It is remained undisputed that, the dealer had ITC balance to the tune of Rs.64,730/- during that period which was carried forward to the next assessment period. The provision u/s.21(2) of the OVAT Act reads as follows :

“(2) The excess input tax credit after adjustment under sub-section (1), shall be carried forward as an input tax credit, to the subsequent tax period or periods, till it is fully adjusted:

Provided that no excess input tax credit for a tax period shall be carried forward exceeding a period of twenty-four months from the close of the year to which that tax period relates.”

Capitalising his argument on the above provision, the dealer has filed this appeal with the contention that, the ITC should have been carried forward after adjustment of the tax due. So, the fora below in application of this provision should have adjusted the tax dues in balance ITC accordingly. Learned Addl. Standing Counsel, Mr. Pradhan vehemently argued that, defect was noticed in the year 2013 during audit assessment. If the balance tax due for the month of January and February, 2012 was adjusted in the ITC then, the entire assessment period thereafter and the returns filed by the dealer would have revised. Further the dealer had never filed any revised return in support of his claim by adjusting the balance tax due in the ITC in the credit in hand. There is considerable force in the argument of the learned Addl. Standing Counsel. Thus, if the dealer’s case is accepted, then the entire period thereafter and the return filed time to time should have been revised. The fact remains, the dealer has not given

any revised return. It is noteworthy to mention here that, the returns filed by the dealer in subsequent period reveals, the dealer had shown ITC in hand at Rs.64,730/-. So the claim of the dealer for adjustment of tax in ITC during the previous period of assessment is absurd. Accordingly, this Tribunal is constrained to accept the view taken by the fora below and the calculation of tax due which is adapted by the AA is found to be valid hence calls for no interference.

9. Coming to the question of penalty as mentioned above, the authority had accepted the plea of the dealer to the extent that, the dealer was prevented from filing the return in time because of his prolong treatment after a road accident. In consideration of that, the authority has deleted the penalty imposed u/s.34 of the OVAT Act. Taking cue from that, it is held that, though the dealer is liable to pay the tax due as calculated, he should be exonerated from paying penalty u/s.42(5) of the OVAT Act also. The impugned order should be modified accordingly. Hence, it is ordered.

The appeal by the dealer is allowed in part. The impugned order is modified to the extent that, the dealer is liable to pay balance tax due as calculated by the AO but he is not liable to pay penalty as raised. The demand be raised accordingly.

Dictated and Corrected by me,

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

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

