

containing sale particulars of the dealer covering period for 2006-07 and 2007-08 upto by 22.06.2007. The managing partner of the dealer one Sri Routray present during the surprise visit could not explain the incriminating documents, as a result, the vigilance team suggested for escaped assessment of the goods for Rs.82,479.00. In the assessment, the learned ACST, Cuttack I Range, Cuttack as assessing authority found the allegation as brought in by the vigilance report established. Accordingly, the assessing authority hold the suppression during the period 01.04.2006 to 30.06.2007 for Rs.82,479.00. However, applying best judgment assessment principle, he enhanced the GTO by Rs.8,24,790.00 i.e. ten times of the actual suppression detected. Ultimately, the dealer's tax liability was calculated and the dealer was found liable to pay balance tax of Rs.70,731.00 and penalty u/s.43(2) at Rs.1,41,462.00. Thus, a total demand of Rs.2,12,194.00 was raised against the dealer.

As against the assessment above, the dealer preferred appeal before first appellate authority. Learned Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack as first appellate authority turned down the claim of the dealer before him and as a result the assessment and demand raised by the assessing authority became confirmed.

Against such confirming order of the first appellate authority, the dealer has preferred this appeal. The main contention of the appellant is, it was maintaining books of account properly. The Vigilance Wing has detected and suggested for escaped assessment arbitrarily. The enhancement by the assessing authority to the escaped turnover is arbitrary. The recovered slips were not related to the dealer's business concern. It is prayed for deletion of the escaped assessment and demand thereupon.

3. The appeal is heard with cross objection from the side of the Revenue. In the cross objection, the Revenue has contended that, on due verification the fora below has found the allegations of suppression established. Hence, there is no reason to interfere with the order of the both the fora below.

4. From the rival contentions, the questions raised for decision in this appeal are-

- (i) whether the first appellate authority is wrong in confirming the order of assessing authority regarding the determination of suppression?
- (ii) whether the first appellate authority is wrong in confirming the order of assessing authority by enhancing the escaped turnover by ten times?
- (iii) what order?

5. At the outset, it is pertinent to mention here that, this is an assessment u/s.43 of the OVAT Act. The Vigilance Wing had recovered certain slips depicting unaccounted for sale by the dealer. One of the managing partner of the dealer present in the business premises during the visit could not properly explain the slips. In a later period, the dealer tried to explain the discrepancy by producing the books of account and connected documents. The first appellate authority on due verification of the books of account and documents has held that, these entries are afterthought and prepared at a subsequent period to explain the detection of suppression. The first appellate authority has rejected the explanation of the dealer. It is the dealer's managing partner has given statement before the Vigilance Team admitting the guilt. The question of escaped turnover is an inquiry by the Vigilance Wing and thereafter by two fact finding authorities below. The vigilance team had made spot visit, the incriminating documents were seized, the documents were not duly explained by the dealer instantly. So, the explanation of the dealer in a later period was found to be afterthought. In the totality of the circumstances above, I am of the considered view that, there is no reason to interfere with the order of both the fora below on this question of fact like, suppression as detected.

6. So far as the enhancement of suppression amount by ten times, it is found that, as per the vigilance report the suppression covering the entire period of escaped assessment is Rs.82,479.00. As per the order of assessment, the assessing authority has also categorically mentioned in the

assessment order that, the suppression as detected covering the entire period was Rs.82,479.00. But, in the same paragraph he has enhanced the suppression by ten times whimsically without assigning any reason. The first appellate authority has mechanically accepted the findings of the assessing authority on this question of enhancement. Enhancement must have some basis. But, here in this appeal it is found that, both the authorities below have not formed any basis of such enhancement.

Learned Counsel for the dealer vehemently argued that, when books of account was accepted by both the fora below and when the authorities below have accepted that, the escaped turnover covering entire period at Rs.82,479.00, then there was no reason for enhancement of the escarpment by ten times. The argument for the learned counsel for the dealer is quite conceivable. There is no reasonable cause found behind the enhancement as determined by the authority below in this case. So, I am of the firm view that, though the findings of the fora below regarding escaped turnover as detected and suggested by the vigilance wing is correct but enhancement of the escaped turnover by ten times is whimsical and arbitrary, as such cannot withstand in law. If that be, the impugned order calls for interference and need to be modified accordingly. Thus, it is ordered.

7. The appeal is allowed in part. The suppressed turnover is determined at Rs.82,479.00. Tax liability and penalty be determined accordingly.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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