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

S.A. No. 142 (V) of 2017-18

(From the order of the ld. JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in First Appeal Case No. AA-106221622000278, disposed of on dtd.25.04.2017)

Present: Sri S. Mohanty
2nd Judicial Member

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

- V e r s u s -

M/s. Vertex Communication
& Technology Pvt. Ltd.,
Plot No.64, 1st Floor, Surya Nagar,
Bhubaneswar. ... Respondent

For the Appellant : Mr. M.C. Agarwal, S.C.
For the Respondent : Mr. P.K. Mohapatra, A/R.

Date of Hearing: 19.01.2019 *** * *** Date of Order: 19.01.2019

O R D E R

When the denial of input tax credit (in short, ITC) as assessed by the assessing authority in a proceeding u/s.42 of the Orissa Value Added Tax, 2004 (hereinafter referred to as, the OVAT Act) was reversed by the First Appellate Authority, Bhubaneswar Range, Bhubaneswar (hereinafter referred to as, the FAA) in the impugned order, at the instance of the dealer-appellant, the Revenue being aggrieved challenged the same in this second appeal.

2. It is the dealer who was subjected to audit assessment u/s.42 of the OVAT Act for the tax period from 16.01.2014 to 31.03.2015 basing on the audit visit report received from STO, Bhubaneswar I Circle. The audit team had suggested for no ITC balance in favour of the dealer as there was mismatch of ITC appeared in the return and there was no proof that the selling dealer had deposited the tax collected. In course of the assessment, the dealer produced the original tax invoices but on verification it is found that the same was not duly reflected in the return of the selling dealer. It is also found that the selling dealer had not filed return in time showing the collection of tax from instant dealer, as a result the instant dealer was found to have not complied with the provision u/s.95(1) of the OVAT Act and the ITC was denied to him. In ultimate analysis the dealer was asked to pay balance tax due at Rs.9,72,000.00 and penalty at Rs.19,44,004.00. The assessment as aforesaid was challenged before the first appellate authority who in turn allowed the ITC as claimed by the dealer with a view that, when the dealer could produce the original tax invoice, it is for the fault of the selling dealer, the instant dealer should not have penalized, as a result the tax due from the dealer was reduced to Rs.2.00 only. When the tax became was reduced to this extent, the Revenue being aggrieved has filed this appeal.

3. It is contended by the Revenue that the dealer is duty bound under the provision of Sec.95(1) of the OVAT Act to disclose the details of tax payment by his selling dealer unless he is not entitled to claim ITC as admissible to him.

The appeal is heard without cross objection. However, the dealer in the hearing filed the documents like tax invoice and the statement of deposit of tax before the Government treasury by the selling dealer in xerox.

4. Provision u/s.95(1) of the OVAT Act speaks of burden of proof on the dealer who establish that input tax in respect of any purchase of goods made by him is part of the input tax credit admissible to him.

Perused the impugned order, it is found that, the first appellate authority has reversed the findings of the assessing authority with the reasonings that once the dealer has discharged the liability by adducing documents like invoices in that case, it is the duty of the taxing authority to verify if the selling dealer has deposited the tax or not. In the event, it is found that the selling dealer has not paid the tax collected then, the taxing authority should have proceeded against the selling dealer but not against the instant dealer. When there is ample evidence in record that, the instant dealer has paid tax to his selling dealer and it is also evident that the selling dealer had also deposited the same before the Government but in late. In that event, the instant dealer cannot be held liable for any mistake like delay committed by his selling dealer. Moreover, in the failure or mischief of selling dealer in no case the instant dealer can be denied ITC admissible to him. In support of the view above, reliance can be placed in the matter of **Shanti Kiran India Pvt. Ltd. v. Commissioner of Trade Tax Department 2013 (2) TM 180**, wherein it is held as follows:-

"This Court is of the opinion that in the absence of any mechanism enabling a purchasing dealer to verify if the selling dealer deposited tax, for the period in question, and in the absence of notification in a manner that can be ascertained by men in business that a dealer's registration is cancelled (as has happened in this case) the benefit of input credit, under SEction 9(1) cannot be denied. Furthermore, this Court notices that the cancellation of both selling dealer's registration occurred after the transactions with the appellant. The VAT authorities observed that the

scanty amounts deposited by the selling dealers was in commensurate with the transactions recorded, and straightway proceeded to hold that they colluded with the appellant. Such a priori conclusions are based on no material, or without inquiry, and accordingly unworthy of acceptance."

From the discussion above here in the case, it is found that, no illegality is committed by the fora below while allowing the ITC to the assessee-dealer on the basis of original tax invoice and payment statement of the selling dealer. Hence, the impugned order calls for no interference. Resultantly, it is ordered.

5. The appeal stand dismissed as of no merit.

Dictated & corrected by me,

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

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