

2. The brief facts of the case are that, the appellant-dealer carried on business in different sarees, dress materials and imitation jewellery etc. in a large scale without registering itself under the OVAT Act. The officials of Bhubaneswar vigilance division lead with ACST(V) paid a surprise visit to the place of business of the dealer located at Plot No.176/1502, Near Burma Sports, Kalinga Stadium, Bidyut Marg, Bhubaneswar and residence located at Plot No.M-15, Madhusudan Nagar, Bhubaneswar on 06.04.2010. In course of inspection, 123 nos. of purchase bills/invoices relating to purchase of items-in-trade and 5 nos. of sale bill books were recovered and were duly confronted to Smt. Monalisa Mohanty, Proprietor of the business. On verification of the purchase bills, it was noticed that bills marked as slip-1 to slip No.108 contained purchases of different items-in-trade effected by the dealer from different sellers of outside the State of Odisha during the period from 02.05.2009 to 08.03.2010. The total unaccounted sales effected by the dealer assessee detected by the officials of Vigilance Wings, Bhubaneswar Division, Bhubaneswar as per the 5 nos. of seized sale bill books amounted to Rs.7,61,244.00. These sales were effected by the dealer during the period from 18.07.2009 to 04.04.2010 i.e. in 261 days. First purchase from outside the State of Odisha has been effected by the dealer on 02.05.2010, for which the dealer is liable to be registered w.e.f. 03.05.2010. The total number of days, the dealer carried its business from 03.05.2009 to 17.07.2009 (the day preceding the date of first issue of sale bills) came to 76 days. The total days of business till the date of visit was (76+261) i.e. 337 days, which covered the period from 03.05.2009 to 04.04.2010. The total sales as per the sale bills issued during the 261 days came to Rs. 7,61,244.00. So the average sale per day was calculated at Rs.2,916.64. Therefore, sales during 337 days would be Rs.9,82,908.00, which was the actual suppression committed by the dealer.

3. Being aggrieved by the order of the learned STO, the appellant-dealer had preferred an appeal before the learned JCST. The learned JCST without interfering with the order of the learned STO just confirmed the order of the assessment.

4. Being dissatisfied with the order of the learned JCST, the appellant-dealer has preferred this appeal before this forum with a prayer to quash the order of the learned JCST.

5. The Revenue filed the cross objection with a prayer for dismissing the appeal because the appellant evaded tax u/s.3 of the OET Act and correlated VAT Act as defined u/s.10(4), 24, 25, 26, 28(1), 34, 61, 62, etc. The appellant also failed to produce the purchase, sale and stock account at both the assessment stage and appeal stage as stated u/s.67(1)(2)(3) of the OVAT Rules.

6. Heard both the sides. Perused the grounds taken in the appeal so also the submissions made in the cross objection and the materials available on record. On perusal of the available materials it is seen that the learned STO had verified the purchase and sale register of the dealer and found that it was liable to pay tax w.e.f. 18.07.2009 which was the first sale. The appellant-dealer had not registered under the OET Act for which it was liable to pay both tax and penalty under OET Act. The total taxable turnover was determined at Rs.12,65,816.00 and ET payable @ 2% came to Rs.39,316.00 u/s.9D(1) of the OET Act. Being aggrieved by the order although the appellant-dealer had preferred first appeal before the learned JCST but he failed to produce any evidence before the learned JCST. It is seen that the appellant-dealer had failed to produce sale, purchase and stock account before the learned STO at the time of assessment so also before the learned JCST. The appellant-dealer also failed to produce any documents to substantiate the plea taken in the grounds of appeal. Hence, the learned STO had rightly determined the TTO basing on the materials available on record and there is no

irregularity in the said assessment order. Hence I am not inclined to interfere with the impugned order.

7. In the net result, the appeal is dismissed and the impugned order is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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