

**BEFORE THE JUDICIAL MEMBER: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 312 (V) of 2017-18

(From the order of the Id. JCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in First Appeal Case No. AA-106221722000038,
disposed of on dtd.24.08.2017)

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

M/s. Sri Chandan Agency,
Plot No.798, Badagada,
Bhubaneswar.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. P.K. Patnaik, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 25.01.2019 **** Date of order: 25.01.2019

ORDER

This second appeal is against a confirming order of the First Appellate Authority, Bhubaneswar Range, Bhubaneswar (hereinafter referred to as, the FAA) passed in First Appeal Case No. AA-106221722000038, whereby the assessment u/s.42 of the Orissa Value Added Tax, 2004 (hereinafter referred to as, the OVAT Act) by the assessing officer and raising tax due as well as penalty thereby confirmed.

2. The dealer was subjected to audit assessment u/s.42(4) of the OVAT Act on the basis of Audit Visit Report (in short, the AVR) with the allegation of wrong claim of ITC and mismatch of ITC. In absence of the due

explanation when the ITC mismatch was detected from the VATIS of the selling dealer, the assessing authority denied the claim of ITC to the tune of Rs.1,32,358.00 against purchases from M/s. Lafarge India Ltd., M/s. Ultratech Cement Ltd., M/s. Ramco Cements etc. (as it is evident from the assessment order). The assessing authority determined the GTO at Rs.2,44,30,663.00 and TTO at Rs.2,17,94,462.00 whereby, the tax demand, interest and penalty comes to Rs.3,91,302.00.

3. The matter was carried in appeal before the first appellate authority by the dealer who in turn vide the order impugned, which is an exparte order confirmed the order of the assessing authority. Felt aggrieved, the dealer has preferred this second appeal. The claim of the dealer is the learned first appellate authority has not provided the dealer proper opportunity of being heard. The learned first appellate authority disallowed the ITC mechanically even though the bills and invoices were produced before him, so it is prayed for deletion of demand of tax and penalty.

The appeal is heard with cross objection by the dealer, whereby the Revenue has supported the findings of both the fora below.

4. The essential questions raised for decision in this appeal are: whether the exparte order passed by the first appellate authority is against the principle of natural justice and whether the first appellate authority committed wrong in not accepting the bills and invoices in support of the claim of dealer.

5. In hearing, the learned Counsel for the dealer has drawn the attention of the forum to the LCR. The LCR as it revealed the petition for adjournment from hearing filed by the dealer on the ground of illness was not considered and the first appellate authority has abruptly closed the hearing and passed the impugned order. Bare perusal of the orders passed by the first appellate authority, it is evident that the dealer has not been provided with sufficient opportunity to produce the proof of sale/purchase transactions between the dealer and has selling dealers, hence it is said that

the principle of natural justice has not been duly extended to the dealer by the first appellate authority.

6. In course of hearing, the dealer has produced the copy of the letters, bills issued by the selling dealers. The documents are accepted and on perusal of the documents it is found that the selling dealers have given the details of the sale transaction with the assessee-dealer. Learned Counsel for the dealer argued that these documents if considered, the mismatch of ITC will be duly explained and the dealer will be found entitled to the disallowed ITC. Learned Addl. Standing Counsel appearing for the Revenue strenuously argued that the genuineness of the documents need to be verified if the submission of the counsel for the Addl. Standing Counsel is accepted then, the irresistible conclusion is the matter need to be remitted back to the assessing officer for verification of the genuineness of the bills and connected documents reflecting the dispute sale/purchase between the selling dealers and assessing dealers. The authority is also at liberty to examine the selling dealer in necessary case. It is only thereafter the disputed entitlement of the dealer on the disputed amount of ITC can be properly ascertained. If that be, it is held that, this is a fit case where the matter should be remitted back to the assessing authority for assessment afresh taking consideration of the documents furnished by the dealer. Accordingly, it is ordered.

7. The appeal is allowed on contest. The matter is remitted back to the assessing authority for assessment afresh in the light of the observation as above.

Dictated & corrected by me,

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

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