

from its branch situated outside the State of Odisha on stock transfer conditions and after completion of works, the machinery/equipments were dispatched to the sites as and when required at the work site. On being noticed, though the appellant-dealer appeared but could not produce books of account. Hence the learned DCST added 5% freight over the admitted tax of Rs.31,46,91,971.00 which amounted to Rs.1,57,34,599.00. So the total tax came to Rs.44,50,521.73 against which the appellant-dealer had paid Rs.4,55,967.00. Hence, the tax came to Rs.9,11,933.00 and adding two times penalty of Rs.9,11,933.00 u/s.9C(5) of the OET Act, the total tax and penalty came to Rs.13,67,900.00 against which the appellant-dealer paid Rs.1,37,665.00 and the balance tax came to Rs.12,30,235.00.

3. Being aggrieved by the order of the learned DCST, the appellant-dealer had preferred an appeal before the learned JCST who confirmed the order of the learned DCST. Hence being aggrieved by the order of the learned JCST, the appellant-dealer has come up with this second appeal before this forum with a prayer to quash the impugned order.

4. The respondent-Revenue has filed cross objection supporting the order of the learned JCST.

5. 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 appellant-dealer had purchased scheduled goods from outside the State against 'C' forms and through branch transfer. But the appellant-dealer despite the opportunities given to him could not produce any material evidence to determine the turnover under the OET Act. So, the learned STO determined the same by adding 5% of such value. It is seen that the appellant-dealer was granted opportunities several times by the learned STO to defend his case. In the assessment the appellant-dealer had participated and after

hearing him order was passed. The appellant-dealer could not produce the books of account for verification as pointed out by the assessing officer. The assessing officer had verified the returned figure so also the purchase and receipt of scheduled goods from outside the state on the strength of 'C' and 'F' forms and determined the value of such purchases at Rs.31,46,91,971.00. The appellant-dealer could not furnish evidence that the purchase value as per the invoices was inclusive of freight charges. He also could not adduce evidence in support of deposit of admitted tax claimed amounting to Rs.40,07,458.00. The assessing officer has taken into account the value of the scheduled goods and freight and other incidental charges @ 5% of such value which seems reasonable in the facts and circumstances of the case. The appellant-dealer had not disputed the purchases/receipts of scheduled goods on the strength of 'C' and 'F' forms from outside the state. The appellant-dealer before the fora below could not substantiate his claim of excess deposit of admitted tax. The appellant-dealer during the second appeal stage also failed to adduce any satisfactory evidence in support of the pleas taken by him in the grounds of appeal. The learned JCST rightly completed the assessment/appeal basing on the statutory provisions under the Act and Rules with respect to the points raised by the appellant-dealer. Hence, there is no reasonable merit in the second appeal filed by the appellant-dealer which is not sustainable in the eye of law. Hence, the appeal is liable to be dismissed.

6. 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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