

2. The brief facts of the case are that, the respondent-dealer in the instant case was a manufacturer of corrugated boxes out of crafts paper, stitching wire, gum, ink etc. On receipt of a fraud case report submitted by the Sales Tax Officer, Investigation Unit, Jajpur Road, the learned STO initiated assessment proceeding u/s.43 of the OVAT Act. In response to notice, one of the partners of the respondent-dealer firm appeared and produced the books of account for verification. The sales suppression of Rs.2,73,828.00 and Rs.62,854.00 totaling to Rs.3,36,628.00 was detected. Against this the respondent-dealer stated that, the visiting officials had calculated the stock wrongly and had ignored the fact of moisture and wastage. The learned STO calculated the GTO at Rs.66,91,233.00 and TTO at Rs.64,09,728.00 after adding sales suppression of Rs.3,36,628.00. Tax @ 5% on Rs.3,36,628.00 was calculated to Rs.16,831.00 and penalty two times u/s.43(2) of the OVAT Act was calculated to Rs.33,662.00, which together came to Rs.50,493.00.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST who reduced the tax demand to Rs.9,429.00. Being aggrieved by the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. The respondent-dealer has filed cross objection with a plea to dismiss the appeal.

5. Due to non-appearance of the appellant-dealer the appeal is heard exparte but on merit.

6. Heard the learned Standing Counsel appearing for the Revenue. Perused the case record, grounds of appeal, cross objection and the written submissions. I have also carefully gone through the orders of both the fora below. The respondent-dealer had filed before the learned JCST a statement of wastage which was accepted by him, wherein the average shortage has been shown @ 12.56% out of total

production. The learned JCST also accepted the plea of the respondent-dealer that the wastage papers were used as fuel in manufacturing. Because of such reasons the demand on sale suppression of Rs.2,73,828.00 was deleted. However, on the facts and circumstances of the case such acceptance of the plea and deletion of sale suppression by the learned JCST is erroneous. The learned STO has substantiated the suppression on the basis of accounts which should not have been discarded. The learned JCST was wrong in accepting the plea of the respondent-dealer and not imposing tax by reversal of ITC u/s.20(9)(b) of the OVAT Act which postulates reversal of ITC on account of wastages. The learned JCST should have imposed purchase tax u/s.12 on the purchases of goods effected from unregistered dealers for use in manufacturing and converted to fuels on wastages. Therefore, the deletion of suppression without any verification of books of account is illegal and contrary to law. The learned JCST simply basing on the statement furnished by the respondent-dealer acted upon it which is erroneous. This indicates that the learned JCST has committed error in reducing the enhancement without any cogent reason. Hence the impugned order of the learned JCST suffers from infirmity.

7. In the result, the appeal is allowed and the impugned order is hereby set aside. Accordingly, the order of assessment is restored. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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