

wholesale and retail basis. On the basis of audit visit report received in form VAT-306, a proceeding u/s.42 of the OVAT Act was initiated against the appellant-dealer. On being noticed, the appellant-dealer appeared and produced the books of account. On examination of the books of account, the learned STO found that, during the tax period under assessment the appellant-dealer firm had effected intrastate purchase of goods worth Rs.23,02,487.00 and interstate purchase of goods worth Rs.53,63,140.00 by claiming ITC for Rs. 7,18,428.00 as per his returns and AVR. On the contrary, during the same period the appellant-dealer had effected total sales amounting to Rs.63,27,313.00 including sale of 13.5% sale worth Rs.56,34,384.00, 4% sale worth Rs.2,45,388.00 and 5% sale worth Rs.4,47,541.00 and had collected output tax of Rs.7,92,838.00. He had paid VAT of Rs.74,411.00. The learned STO (Audit) during physical stock verification found stock shortage of 12.6 MTs of limestone powder amounting to Rs.42,237.34 and on confrontation the appellant-dealer failed to substantiate the suppression. So the learned STO determined the GTO at Rs.71,62,388.34 and TTO at Rs.8,07,799.06 (after allowing deduction of Rs.7,92,838.00). The tax due was calculated at Rs.89,371.00 against which the dealer had paid Rs.74,411.00. So, the appellant-dealer was liable to pay tax of Rs.14,960.00 and two times penalty u/s.42(5) of the OVAT Act which came to Rs.29,920.00. Tax and penalty together came to Rs.44,880.00. Being aggrieved by the order of the learned STO, the appellant-dealer had preferred an appeal before the learned JCST, wherein the learned JCST confirmed the order of the learned STO.

3. The appellant-dealer has come up with this second appeal on the ground that the appellate order confirming the assessment is arbitrary and unwarranted.

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

5. The Revenue filed the cross objection stating that there is no reasonable merit in the second appeal filed by the appellant-dealer which is not sustainable in the eye of law. The learned assessing officer and the learned first appellate authority completed the assessment/appeal basing on the provisions of law and factual position.

6. Perused the orders of both the fora below, materials available on record, grounds taken in the appeal so also the submissions made in the cross objection. On perusal of the materials available in the record it is seen that the sale invoices with respect to purchase of lime stone powder of 49.5 MT were verified by the learned STO. The learned STO had also verified the sale register. It was found by the learned STO that except 8 invoices the appellant-dealer had not issued any invoice till 27.11.2013. There was also no physical stock of lime stone powder on the date of visit. It has been rightly held that the appellant-dealer had sold the balance stock of lime stone powder of 12.6 MT without issuing sale bill. As per the audit report the appellant-dealer had suppressed the sale value of lime stone powder of 12.6 MT amounting to Rs.42,237.34. The appellant-dealer failed to explain with any satisfactory reason against such suppression. It is pointed out by the learned JCST that the appellant-dealer during first appeal stage had failed to produce any sale bill against the sale of lime stone powder except the 8 invoices. The appellant-dealer has also failed to produce any such document before this Tribunal for consideration. Hence the assessment order passed by the learned STO is proper. The appellant-dealer had suppressed the real sale value of lime stone powder for which penalty u/s.42(5) of the OVAT Act has been rightly imposed. The learned JCST has given the finding that lime stone powder does not find place in Part-I and Part-II of the Schedule-B of rate chart under OVAT Act and treated the same as unspecified goods which are to be taxed @ 13.5%. The learned JCST

has rightly upheld the calculation of tax @ 13.5% on the sale value of lime stone powder. The imposition of penalty twice the amount of tax calculated is justified in view of Sec.42(5) of the OVAT Act. Hence I do not find any infirmity in 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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