

in confirmation with the allegation and entry tax @1% on it on the escaped turnover was calculated to Rs.118419.00. Penalty twice of it at Rs.236838.00 under section 10(2) of the OET Act was imposed, thereby the total due became raised to Rs.355257.00.

3. The assessee-dealer challenged such demand of tax in first appeal no.AAE(NGP)09/2015-16, wherein and whereby the first appellate authority in the impugned order did not interfere with the demand of tax as raised by the assessing authority as a result of which the assessment order remained undisturbed. That being so, the dealer challenged the impugned order in this appeal on the plea that the vigilance party had not verified the details of the documents and register, they had not verified the physical stock on the date of visit. The dealer has further contended that the ex-parte order of assessment is against the principle of natural justice and both the fora below have not taken into consideration of the tax paid by the dealer before the orders are passed.

Findings:-

4. At the outset, it is pertinent to mention here that, on the self-same vigilance report the assessing authority in a proceeding under Seciton-43 of the OVAT Act held that, the dealer was guilty of suppression of sale and purchase to the tune of Rs.11841866.00. Such finding confirmed in appeal before the first appellate authority and while disposing the second appeal no.23(V) of 2016-17 this forum has also did not choose to interfere with the findings of both the fora below on this factual aspect. In that event, it can safely be said that hardly there is any scope to interfere with the findings of both the fora below and the findings of this Tribunal while deciding the VAT appeal no.23(V) of 2016-17 has got binding effect to this case. As such it is held that, the suppressed turnover as determined by both the fora below of Rs.11841866.00 is established and calls for no interference. At this juncture the other submission by the learned counsel that, the payment of tax made by the dealer in the meanwhile i.e. before the initiation of

the assessment proceeding under OET Act should have taken into account and after adjustment of the same only balance tax due or penalty should have calculated. This is a purely factual aspect and if the submission of the dealer is found to be correct that the dealer had deposited tax vide challan and the deposit was made before the initiation of assessment proceeding, then, the assessing authority was under obligation to determine the balance tax due and penalty after adjusting deposit of tax as stated by the dealer. Be that as it may, it is held that while confirming the findings of escaped turnover and the rate of entry tax on it as determined in impugned order the matter may be remanded back to the assessing authority for limited enquiry, like, if there was any payment of tax as claimed by the dealer or not and then to raise demand of balance tax due with penalty as per the observation made above. Hence, ordered.

The appeal is allowed in part. The matter is remanded back to the assessing authority with a direction to consider the fact of payment of tax already made by the dealer if any, before the assessment was done under Section 10 of the OET Act and then he be at liberty to raise the demand of tax from the dealer as per the observations above.

Dictated and Corrected by me,

(Shri S.Mohanty)
Judicial Member-II.

(Shri S.Mohanty)
Judicial Member-II.

I agree,

(Shri A.K.Panda)
Judicial Member-I.

I agree,

(Shri S.K.Mishra)
Accounts Member-III.