

and thereafter by the first appellate authority being not covered under the grounds in appeal are not mentioned in detail, however the claim of ITC as against the branch transfer and inter-State sale became not resolved to the satisfaction of Revenue by the order of first appellate authority being subject matter of this appeal are discussed in detail below.

3. The contention of the dealer as per the ground of appeal is quite confusing, vague but the reading of the grounds in appeal memo as it revealed, the first appellate authority has allowed ITC at a higher rate so the dealer should be asked to reverse the ITC and should be visited with penalty u/s.42(5) of the OVAT Act are the prayer.

4. The appeal is heard with Cross Objection. The dealer stood by the order of first appellate authority in the averments in the cross objection but remained absent in the final hearing, as such the appeal heard and decided setting him exparte.

5. At the outset, learned Standing Counsel drawn the attention of the Bench to the relevant portion of the impugned order, where the first appellate authority has calculated the claim of ITC taking account of the sale value of the dealer including profit margin @ 20%. It is argued by the learned Standing Counsel that, as the profit margin is taken as 20% which is in higher side the dealer was accordingly allowed higher amount of ITC. He has drawn the attention of the Bench to the calculation chart available in the LCR and also drawn the attention to the assessment order and argued that, as per the Chartered Accountant. report and the profit margin shown by the dealer was 9%, whereas the assessing authority has allowed profit @ 10%. But, the profit @ 20% as allowed by the first appellate authority has no basis so because of the higher amount of profit margin allowed, the purchase price became calculated at a higher rate, thereby the dealer has availed ITC of higher amount which is more than his entitlement.

6. The profit margin as determined by the assessing authority or by the first appellate authority are purely the question of fact.

Gone through the orders of assessing authority and of the first appellate authority. Both the authorities below have not dealt with this question in detail with necessary documentary evidence. So, without hesitation it only can be said that, both the authorities have gone in a slipshod manner and calculated the profit margin as per their sweet whim. It is not disputed that, depending on the profit margin purchase value will be determined and as per the purchase value the ITC should be determined.

7. In the circumstances above, when the factual aspect of the case in relation to the disputed question needs further inquiry, it is held that, this is a fit case where the matter should be remitted back to the assessing authority for assessment afresh on this limited question so as to ascertain the admissibility of the ITC to the dealer taking consideration of the profit margin on the basis of books of account and other documents

Accordingly, it is ordered.

The appeal allowed in part. The matter is remitted back to the assessing authority for assessment afresh with regard to the admissibility of ITC to the dealer as per the observation hereinabove.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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