

2. The brief facts of the case are that, the appellant-dealer carried on business in ice cream. On the basis of the Vigilance case report, the STO, Vigilance Wing, Berhampur Division recovered written documents from the place of business of the appellant-dealer. The loose written slips vide Sl. No.1 to 26 depicted the sale of 'Ice creams' to different customers during the year 2010-11. On verification of the cash/credit memo copies, the Vigilance Officials found the name and address of the selling dealers which the appellant-dealer had not accounted in the books of account. On further verification of cash/credit memos with that of books of account, the Vigilance Officials found that the appellant-dealer had not incorporated the transactions made in the above cash/credit memos in the sale register. The loose written slips vide Sl. No.38 to 56 contained the sale of ice cream of different dates which were not accounted for in the books of account. The Vigilance Officials established the sale suppression of Rs.87,233.00 against the appellant-dealer. As regards 3 nos. of cash credit memo books, the Vigilance Officials observed that though the same did not form a part of dealers regular books of account but the dealer had used the same for the purpose of sale of goods and established sale suppression of Rs.2,43,952.00. The total suppression of sale altogether came to Rs.3,38,481.00. So, the learned ACST determined the GTO and TTO at Rs.14,70,237.00 and Rs.10,05,936.00. The appellant-dealer was allowed to avail input tax of Rs.1,20,896.00. So, the net tax payable came to Rs.47,156.00 but the appellant-dealer had already paid Rs.4,933.00. Therefore, the appellant-dealer was required to pay Rs.42,223.00 and penalty of Rs.84,446.00. Tax and penalty together came to Rs.1,26,669.00 which was required to be paid by the appellant-dealer.

3. Being aggrieved by the order of the learned ACST, the appellant-dealer preferred an appeal before the learned DCST who

without interfering with the order of the learned ACST just confirmed the order of assessment. Being aggrieved by the order of the learned DCST, the appellant-dealer preferred this second appeal in this forum by way of different grounds of appeal.

4. Cross objection has been filed by the Revenue that both the fora below have rightly completed the assessment and appeal on the statutory provisions under the Act and Rules and the imposition of penalty is justified.

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

6. Perused the case record also perused the grounds of appeal and the submissions made in the cross objection. I have also carefully gone through the orders of both the fora below. It is seen that the learned ACST made assessment on the basis of the Vigilance case report. The appellant-dealer had stated before the vigilance officials that he had not accounted for the transactions with respect to the loose written slips vide nos. 38 to 56. He had not issued sale invoices against the said sales. The appellant-dealer neither at the first appellate stage nor before this Tribunal produced any supporting evidence for the sale worth Rs.87,233.00 as regards the loose written slips. Thus, the appellant-dealer sold ice cream without issuing any sale invoice. Hence there was sale suppression of Rs.87,227.00. The appellant-dealer also failed to produce sale invoices against the alleged sale suppression of Rs.2,43,952.00. The same has also been admitted by the appellant-dealer before the vigilance officials. The appellant-dealer failed to produce any supporting document to substantiate the allegations leveled against him. The appellant-dealer has categorically failed to issue sale invoices with an ulterior motive to evade payment of tax. Thus, the sale suppression of Rs.2,43,952.00 is also well established. The learned ACST has rightly calculated the tax along with twice the amount of penalty upon such tax amount. Thus,

the assessment was proper and hence the first appeal order does not suffer from any infirmity.

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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