

2. The brief facts of the case are that, the respondent-dealer was a proprietorship concern dealing in wholesale/retail distribution of earthen clay tiles, floor tiles, glazed tiles, granite slab, granite tiles, grout admixture, tiles adhesive, kuddapa stone, marble chips, etc. Consequent upon Audit Visit Report (in short, the AVR), the learned STO initiated assessment u/s.42 of the OVAT Act and determined the GTO and TTO of the respondent-dealer at Rs.7,95,21,630.00 and Rs.7,01,11,598.00 respectively. The learned STO allowed ITC of Rs.78,876.00 and determined the output tax at Rs.93,51,875.00. As the respondent-dealer had paid Rs.93,31,155.00 towards admitted tax, the balance tax was computed to Rs.20,722.00. The learned STO imposed two times penalty on the computed tax i.e. Rs.41,440.00 and interest of Rs.226.00 for delayed payment of admitted tax. Therefore, tax, interest and penalty together came to Rs.62,386.00.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned DCST who reduced the demand to Rs.29,032.00. Being aggrieved by the order of the learned DCST, the Revenue as appellant has preferred this second appeal.

4. Cross objection has been filed by the respondent-dealer focusing the wrong entry of Rs.2,72,66,725.00 instead of correct figure of Rs.2,72,60,725.00 and the mistake was not intentional but due to wrong entry made by the Chartered Accountant which was reasonably considered by the learned DCST. Accordingly, it was urged to dismiss the appeal. Thus the respondent-dealer supported the order of the learned DCST.

5. Heard both the sides. Perused the case record and the grounds of appeal. I also perused the materials available on record and the plea taken in the cross objection.

6. The main point of dispute in the grounds of appeal taken by the appellant-Revenue is regarding the stock discrepancy of

Rs.6,000.00. It is seen that the audit team audited the firm of the respondent-dealer for the period 2012-13 and 2013-14. For the year 2012-13, the Audit Team found that, as per return the sale value was Rs.2,72,60,725.00, whereas as per audited balance sheet the sale value was Rs.2,72,66,725.00. So, the discrepancy of Rs.6,000.00 was due to wrong entry of Chartered Accountant which was detected by the learned DCST and rightly deleted by him. The learned DCST on verification of the sales statement for the year 2012-13 found that the total sales as per the books of account and also reflected in the periodical returns was to the tune of Rs.2,72,60,725.00 and the purchase figure in the balance sheet tallied with the books of account as well as in the periodical returns. So, the learned DCST rightly held that the above mistake had been inadvertently made and therefore the treatment of the differential amount of Rs.6,000.00 as sale suppression without gathering any additional evidence was not correct. So the ground taken in the appeal that the Chartered Accountant cannot commit such mistake is baseless. The learned DCST after taking into consideration the audited accounts also rightly held that if there would have been purchase suppression of Rs.76,355.00 then the differential amount could not have matched with the input tax paid by the respondent-dealer during the period. Thus the figures of suppression without corroborating the factual evidence were found as not correct for which the learned DCST deleted the same. So, I find no infirmity in the order of the learned DCST.

7. In the 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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