

The dealer-assessee who is the appellant before this forum, is a trader and he deals in trading of Gopal zarda, panmasala, gutkha, agarbati and safety matches on wholesale distribution basis. The business establishment of the dealer was inspected by the STO and Asst. STO of the Balasore Circle at 3.30 PM on 03.11.2007. At the time of their verification, the dealer-assessee could not produce the books of account of his establishment for which the STO noted down the physical stock of goods in his three godowns with a direction to him to produce the books of account before him in his Office on 28.11.2007. Accordingly, the dealer-assessee appeared before the assessing officer and produced his books of account. On verification of the said books of account, the assessing officer could detect anomalies in maintenance of purchase and sale account in the said establishment as well as total non-maintenance of stock account including the stock register for the purpose of proper verification of his business transaction. In the result, the assessing officer after due calculation in respect of the business transactions of the dealer-assessee determined that he (the dealer-assessee) was to pay a sum of `7,00,000.00 as well as penalty amounting to `14,00,000.00 in terms of the demand notice as per the OVAT Act.

Being aggrieved with the said order, the dealer-assessee preferred appeal before the first appellate authority. However, as he remained absent before the first appellate authority, his appeal was heard exparte and the order of the assessing officer was confirmed by the order which is now under challenge before this forum.

3. The dealer-assessee came up with his second appeal on the grounds that he was not afforded with sufficient opportunity to adduce evidence as no notice was received by him to appear before the first appellate authority for hearing. The exparte order dated 20.03.2010 was passed by the first appellate authority without his knowledge and he received the same on 25.08.2011. The dealer-assessee also contended that the assessing officer took the purchase value of scheduled goods which came in the month of November, 2007 to the fold of relevant assessment period i.e. from 01.04.2007 to 31.10.2007 while visiting his business premises on 03.11.2007 at 3.30 PM. No statutory notice was given to the dealer-assessee before taking up the assessment in respect of his business establishment by the assessing officer. The dealer-assessee had disclosed all his inter-State purchase of goods and admitted his tax liability in respect of sales for the years 2005-06 and 2006-07 under the OVAT Act which had been rightly reflected in the periodical returns filed by him. Therefore, there was no discrepancy of stock with him on the date of visit i.e. on 03.11.2007 by the STO and the excess stock were carried forward from the last financial year. His transactions were duly reflected in the returns for the subsequent months and also assessed under the OVAT Act. Further, his returns to that effect covering this period i.e. 01.04.2007 to 31.10.2007 were accepted as correct by the authority concerned. Thus, the dealer-assessee urged for setting aside the order of first appellate authority as well as the assessing officer consequently.

4. In course of hearing the argument advanced by the learned Counsel for the dealer-assessee as well as State respectively, learned Counsel for the dealer-assessee placed some documents with a prayer to accept those as additional evidence alongwith additional grounds of appeal before this forum after duly notifying about those documents to the State. Those documents include assessment order passed u/S. 42 of the OVAT Act as well as first appeal order for the period commencing from 01.04.2005 to 31.08.2011.

5. Learned Addl. Standing Counsel (CT) appearing on behalf of the State contended in terms of cross-objection that the statement of the dealer-assessee (available at page-6 of the assessment record) clearly revealed that he had admitted before the assessing officer about his not having stock account pertaining to the relevant period under assessment i.e. from 01.04.2007 to 31.10.2007 since he had not maintained the stock register for his business establishment. Such admission by the dealer-assessee clearly reveals that he had manipulated the stock account and books of account at a later date to escape his tax liability accrued during the relevant period.

6. However, on perusal of the documents filed by the dealer-assessee, it could be gathered that tax dues on the dealer-assessee in respect of his business covering the period from 01.04.2005 to 31.08.2011 had already been determined by the assessing officer in his assessment order dated 20.01.2012 which was subsequently reduced by the first appellate authority in his order dated 28.07.2018. It could be

gathered from record that the tax dues on the dealer-assessee in respect of his business covering the period from 01.04.2005 to 31.08.2011 had already been determined by the Dy. Commissioner of Sales Tax, Balasore Circle u/S. 42 of the OVAT Act vide his order dated 20.01.2012 and then by the Addl. Commissioner of Sales Tax (Appeal), Balasore on appeal before him by the dealer-assessee. Therefore, the period of assessment u/S. 43 of the OVAT Act from 01.04.2007 to 31.10.2007 having already been considered with the assessment period from 01.04.2005 to 31.08.2011, lost its significance in the present appeal preferred by the dealer-assessee.

7. In the aforesaid circumstances, as discussed in the foregoing paragraphs, this appeal has to be allowed to the extent of setting aside the impugned order passed by the first appellate authority and consequently the order of the assessing officer (Sales Tax Officer) so far as tax liability of the dealer-assessee for the period from 01.04.2007 to 31.10.2007 vide their respective orders are concerned. This appeal and the cross-objection are thus disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

I agree,

Sd/-
(Ranjit Kumar Rout)
Accounts Member-II