



officer') u/S.42 of the OVAT Act for the tax period from 01.04.2006 to 31.10.2008.

2. The facts relevant to the context are that the dealer being a proprietorship concern trades in footwear. The assessment for the relevant period was based on the Audit Visit Report (AVR). Learned assessing officer in course assessment considered the AVR and in absence of books of account accepted the observations made in the AVR regarding stock discrepancy leading to sale suppression of `3,21,750.00, addition of transportation charges worth `5,168.00 and non-adjustment of VAT to the tune of `2,717.73 on failure to furnish the credit notes. As such, he (assessing officer) determined the GTO and TTO and thereafter calculated the VAT liability of the dealer at `59,33,832.00 including penalty u/S. 42(5) of the OVAT Act for the relevant period under assessment. Challenging the order of assessment, the dealer preferred appeal before the first appellate authority. On scrutiny, defects with regard to non-payment of 20% of the tax dues (`3,95,589.00) and want of Court-fee of `20.00 were found. Responding to the notice, learned Counsel appeared and affixed Court-fee of `20.00 only and so far as non-payment of 20% the tax due, he submitted that the same was not due on the dealer and as such, the deposit of the said amount by the dealer did not arise. However, learned first appellate authority found the appeal defective and as such, summarily rejected the same vide the impugned order.

Against such order of the first appellate authority, the dealer-appellant preferred the present appeal before this forum. State has not filed cross-objection in this case.

3. It is, inter alia, contended by the learned Counsel appearing for the dealer-assessee that learned first appellate authority is not justified in rejecting the appeal petition summarily for the relevant

period by issuing notice vide No. 897/CT dated 09.03.2010 fixing the date to 17.03.2010 only for hearing of the application for stay. No notice or opportunity of being heard was provided to it as per proviso to Rule 88(2) of the OVAT Rules. It is further contended by him that this forum is empowered under the statute to decide the facts and law involved in the matter. By furnishing a xerox copy of challan dated 31.03.2010 showing payment of 20% (₹3,95,600.00) of the disputed demanded tax, learned Counsel for the dealer pleaded that in alternative the matter may be remanded for fresh adjudication by setting aside the impugned order. On the contrary, learned Addl. Standing Counsel (CT) appearing for the Revenue though not resisted the deposit of 20% of the disputed tax, but submitted that this forum is precluded from entering into the merit of the case and the finding, if any, should be confined to the impugned order of summary rejection of the first appeal only.

4. Before delving into the case, it is felt proper to refer the statutory provisions under the OET Act and Rules thereof in this regard which are as follows :-

Quote : **"Sec. 77.** Appeals –

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- (4) No appeal against any order shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute."

**"Rule 88.** Summary rejection of appeal –

- (1) If the memorandum of appeal is not in the prescribed form or if all the requirements of the form are not fully complied with, the appellate authority may reject the appeal summarily, after giving the appellant such

opportunity, as it may think necessary to rectify the defects.

- (2) The appeal may also be summarily rejected on other grounds for which an order in writing shall be passed by the appellate authority :

Provided that before an order rejecting an appeal is passed, the appellant shall be given a reasonable opportunity of being heard.”

In the present case, there is no dispute that initially the dealer-appellant had not complied the pre-condition of depositing 20% of the disputed tax for entertainment of its appeal. The first appeal order reveals that notice vide No. 897/CT dated 09.03.2010 was issued to the dealer-assessee to rectify the defects including non-deposit of 20% of the disputed demand by 17.03.2010 and since the dealer-assessee did not admit such 20% of the disputed demand, learned first appellate authority rejected the appeal summarily on the same day. However, from the xerox copy of challan filed by the dealer-assessee before this forum, it goes to show that payment of `3,95,600.00 as per the challan dated 31.03.2010 was duly acknowledged by the concerned assessing officer. Considering the facts and circumstances of the present case, we deem it proper to remit the matter to the first appellate authority for fresh disposal in accordance with law in the ends of justice after taking note of the payment of disputed demand as per the challan.

Next so far as disposal of appeal on merit is concerned, this Tribunal should not go into the merit of the case since the first appeal

has been rejected summarily due to some defects which were purely technical in nature.

5. In the result, the appeal is allowed and the impugned order of first appellate authority is set aside. The matter is remanded to him for fresh disposal as per law keeping in view the observations made supra within a period of four months from the date of receipt of this order.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**2<sup>nd</sup> Judicial Member**

I agree,

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