

The appeal preferred by the dealer-assessee vide S.A. No.301 (VAT) of 2013-14 and the appeal preferred by the State vide S.A. No. 308 (VAT) of 2013-14 are directed against the same order dated 30.11.2013 passed by the Deputy Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, "first appellate authority") in First Appeal Case No. AA (V)- 94/2012-13 wherein learned first appellate authority has remanded the matter to the Assessing Authority, Gajapati Circle, Parlakhemundi (in short, "assessing officer") with a direction to allow the dealer to produce the books of account and dispose of the same by making fresh assessment within the stipulated period as given by him.

2. The facts as revealed from the case record are that the dealer-assessee being a partnership concern carries on business of electronic goods and appliances on retail basis and as such purchases as well as sells goods inside the State. On the report of the STO, Audit Team, a notice was issued to the dealer's business concern with a direction to produce the books of account consisting of purchase and sale registers alongwith respective invoices and then it was found that the dealer was not maintaining the stock register. On further verification it was also noticed that the dealer had effected purchases on which he availed ITC for the tax period commencing from 01.04.2007 31.03.2011 while advancing erroneous claim amounting to `21,948.73 against purchase of goods executed through retail invoices. The Audit Team also found the dealer suppressing purchases to the tune of `22,64,516.00 during the period

2008-09 to 2010-11 and also in respect of sale amounting to `30,47,195.00. As all these aforesaid anomalies were detected on verification of the books of account and trading account as well as in the difference noticed on declaration of the dealer towards closing stock as on 31.12.2011, the assessing officer after verification of papers and facts pertaining to the business of the dealer-assessee determined the tax liability of the said business concern at `5,00,360.00 as well as penalty of `10,00,721.00 and thus, in total `15,01,083.00 and accordingly issued a demand notice for deposit of the aforesaid tax.

Being aggrieved with the said order, the dealer-assessee preferred an appeal before the first appellate authority. Learned first appellate authority after considering all the materials before him held that the purchase and sale suppressions of goods amounting to `18,02,755.66 and `56,22,940.11 respectively stood established and at the same time he (first appellate authority) also held that the assessing officer had not followed the provisions of Sec. 38 of the OVAT Act. Therefore, he remanded the assessment done by the assessing officer with a direction to re-examine the case and also re-examine the books of account such as maintenance of accounts and records u/S. 61 and tax invoice u/S. 62 of the OVAT Act and further to scrutinize the returns furnished by the dealer-appellant u/S. 33 in terms of Sec. 38 of the OVAT Act.

Being dissatisfied with the order of first appellate authority, both the dealer-assessee and the State came up with these appeals before this forum.

3. It is contended by the learned Counsel appearing on behalf of the dealer-assessee that when the first appellate authority remanded the matter for fresh assessment, he should not have observed that the purchase and sale suppression of goods worth `18,02,755.66 and `56,22,940.11 respectively stand established and further when the dealer-assessee filed revised returns in consonance with the books of account duly audited by the Chartered Accountant, the first appellate authority should have directed for assessment de novo only without drawing any adverse inference in the matter.

4. In course of hearing the matter, learned Addl. Standing Counsel (CT) appearing for the State urged before this forum that the statement of the dealer-assessee which was recorded by the Audit Team should be taken into consideration while determining his tax liability. In the instant case there was no information before the assessing officer that revised returns were filed before notice for audit served on the dealer-assessee. Therefore, in case the matter would be sent for reassessment then specific directions should be given to the assessing officer to do the same keeping in view the provisions of Sec. 33(5) of the OVAT Act.

5. In the facts and circumstances of the case it seems that the order of the first appellate authority remitting the matter for fresh

assessment by the assessing officer is not at all unjustified but at the same time since the reassessment is to be done afresh because the assessing officer at the first instance had not considered the revised returns filed by the dealer-assessee, we feel it would not be appropriate on the part of the first appellate authority to hold that the purchase and sale suppression of goods worth `18,02,755.66 and `56,22,940.11 respectively stand established. Therefore, while setting aside the order of first appellate authority for that reason only we find it appropriate to direct the assessing officer for making a fresh assessment pertaining to this case keeping in view the terms and conditions as envisaged u/S. 33(5) of the OVAT Act.

6. In the result, the matter is remanded to the assessing officer for de novo assessment in accordance with law within a period of four months from the date of receipt of this order. The appeals filed by the dealer-assessee and the State are 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/-
(Rabindra Ku. Pattnaik)
Accounts Member-III