

2. The brief facts of the case are that, the respondent-dealer runs a partnership firm in trading of hardware goods including M.S. rods, angles, flats, sheets, pipes, cement, paints and fabrication work of different furniture and fixtures. In course of visit by a team of Deputy Commissioner of Commercial Taxes (Vigilance), Koraput Division, Jeypore, the team had found certain documents relating to the business transactions of the respondent-dealer. On examination of the books of account, the team found that none of the transactions reflected in those documents had been accounted for in the books of account. The audit team estimated the value of such transactions at Rs.32,77,000.00 and treated the same as unaccounted sale which was arrived at 4.42% profit margin. By this process, the learned DCST determined the escaped GTO and TTO at Rs.32,77,000.00. The learned DCST levied tax @ 13.5% which was at Rs.4,42,395.00, imposed two times penalty of Rs.8,84,790.00 u/s.43(2) of the OVAT Act and Rs.1,000.00 u/s.62(6) of the said Act which altogether came to Rs.13,28,185.00.

3. Being aggrieved by the order of learned DCST, the respondent-dealer preferred an appeal before the learned JCST who reduced the total demand to return figure. Being aggrieved by the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. Cross objection has been filed by the respondent-dealer supporting the order of the learned JCST.

5. Heard both the learned Counsels. Perused the case record, the grounds of appeal, cross objection and the LCR. I also perused the materials available on record. I have also carefully gone through the orders of both the learned fora below. On perusal of the order of the learned DCST it is seen that in the stock analysis report both the opening stock in the beginning of the year and closing stock in the end of the year have been reflected as Rs.23,26,968.00. But the same

has been rectified by the learned JCST. The learned Standing Counsel also fairly conceded that there was mistake in calculation on the part of the learned DCST which was rectified by the learned JCST. The closing stock should have been Rs.63,41,332.00 which has not been taken into consideration by the learned DCST while estimating the profit margin. If the closing stock of the said amount of Rs.63,41,332.00 will be taken into consideration then the profit margin will be around 7.61% which has been rightly calculated by the learned JCST. From such discussion it is clear that the order of the learned DCST is based on a wrong calculation for which the demand raised by him cannot sustain in the eye of law. The learned JCST has rightly allowed the appeal by reducing the assessment to the returned figures. In view of such observation I find no infirmity in the order of the learned JCST and as such I am not inclined to interfere with the impugned order.

6. 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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