

“On verification of books of accounts of dealer it was noticed that the dealer claims closing ITC of Rs.5,51,064.00 at the end of the audit period. On thorough analysis of ITC and its corresponding stock value, it was noticed that closing stock disclose in the Trading, Profit & Loss Account for the period ending 31.03.2013. The detail of discrepancy noticed is worked out as follows:

Closing stock as per ITC = ITC/Rates of tax × 100

Which is = 5,51,064.00/13.5 × 100 = 40,81,956.00

Gross Profit as disclosed in P/L Account = Rs.10,45,184.00

Total value of Closing Stock as per ITC = Rs.51,27,140.00

Closing Stock disclose in P/L Account Rs.45,58,500.00.

Discrepancy noticed = Rs.5,68,640.00

From above presentation it clearly proves that the dealer has made purchase suppression of Rs.5,68,640.00, Tax @13.5% on suppression amount stands at Rs.76,766.00 which may be demanded along with penalty at the time of assessment.”

Accepting the findings of the AVR the Ld. STO passed the order raising an extra demand of Rs.2,31,285.00 covering the tax demanded to the tune of Rs.76,766.00, interest levied to the tune of Rs.987.00 and penalty of Rs.1,53,532.00 imposed U/s.42(5) of the OVAT Act. This led the dealer to come in first appeal against the demand raised by the Ld. STO.

3. At the first appeal stage, on careful consideration of the contentions advocated by the Ld. Advocate on behalf of the dealer appellant, the Ld. FAA considering the necessary papers and documents produced, allowed the appeal in part and reduced the demand to Rs.16,525.00. The Ld. FAA taking into account the explanations of the dealer, grounds of appeal submitted and written submission furnished at the time of hearing and relevant paper and

documents produced came to the conclusion that the dealer has made the calculation of stock account amounting to Rs.45,58,500 disclosing Profit and Loss Account showing freight at Rs.20,000/-, insurance, entry tax and other charges at Rs.36,544/-. But the dealer could not furnish claim in respect of insurance and ET and other charges amounting to Rs.36,544/- for which the Ld. FAA disallowed such claim as not acceptable and made calculation of stock in the following manner.

Closing ITC as on 31.03.13		Rs.5,51,064.00
Closing stock assessable value =ITC × 100/Rate of Tax		
i.e. Rs.5,51,064 × 100/13.5% it comes to		Rs.40,81,956.00
Outside Purchase (Value	Rs.4,20,000/-	
Freight	Rs. 20,000/-	Rs.4,40,000.00
(A) Total Closing stock as per above calculation		
comes to		Rs.45,21,956.00
(B) Closing Stock disclosed in P & L Account		Rs.45,58,500.00
Discrepancy of Purchase suppression(A-B)		Rs. 36,544.00
Add Profit @ 5% on purchase suppression i.e. to		Rs. 1,827.00
Total sale suppression		Rs. 38,371.00

In the manner the Ld. FAA determined the gross turnover and taxable turnover of the dealer by adding Rs.38,371.00 towards sales suppression.

4. Being aggrieved with the order of the Ld. FAA the appellant-Revenue preferred this second appeal before this Forum on the grounds that calculation has to be made in one way i.e. opening balance ITC on 01.04.12, ITC on inside purchase from 01.04.12 to 31.03.14, total ITC due to the dealer's total sales made during the period of assessment for which the output amount due, the net balance ITC (i.e. total input, total output) i.e. carried over

ITC. Here both the fora have calculated from reverse order i.e. Closing Balance of stock with P & L Account stock which is misnomer, because it will not cover price fluctuation. Secondly, the profit margin in every year end differs from other year. Calculation of stock basing on last year profit margin will not substantiate. So, reverse calculation will not be a full proof calculation and as such the order of the fora below may be set-aside and it should be calculated as shown above.

5. The dealer-respondent has filed cross objection as follows:-

i) The Second Appeal as filed by the appellant is misconceived and not sustainable or tenable in the eye of law.

ii) The head of audit team verified all the books of accounts and closing stock available at the place of business of the appellant at the time of audit visit and the audit team found all the books of accounts and stock are in order but surprisingly the audit team raised allegation of purchase suppression of Rs.5,68,640.00 without any valid reason.

iii) The Ld. Assessing Officer without making any further verification simply relied upon the AVR and accordingly completed the assessment proceeding by raising demand of Rs.2,31,285.00 which includes penalty of Rs.1,53,532.00 which is beyond the provision of law. That the Ld. Assessing Officer neither asked any question nor recorded any statement regarding the discrepancy which is not tenable in the eye of law.

iv) As per Section 19 of the OVAT Act which provides that the net tax payable by a registered dealer for a tax period shall be the difference between the output tax and the input tax. If the amount calculated under sub-section 1 is negative, the same shall be carry forward for the next tax period. Following the same formula the dealer has correctly discharged his tax liability. That the excess ITC is based on the purchase value of the goods and not the sale value of the goods but the Ld. STO has calculated the closing stock by

adding gross profit, which is not permissible under the statute of law.

v) The Respondent/dealer has audited her accounts with a qualified Chartered Accountant as per the Finance Act and filed the Income Tax return accordingly disclosing the said closing stock amounting to Rs.45,58,500.00 and the department of Income Tax assessed the respondent dealer as Nil. The Profit and Loss Account and Balance Sheet are accepted by the Income Tax Department as true and correct.

vi) The Ld. First Appellate Authority rightly examined the books of accounts of the Respondent and passed a speaking order by partly allowing the case, which required to stand confirm.

6. At the time of hearing before this Bench Mr. M. Agarwal, the Ld. Standing Counsel (C.T.) appearing on behalf of the Revenue has filed petition for acceptance of following additional grounds.

a) That the determination of turnover by the forum below is not in accordance with the disclosed figures by the dealer and the same is on lower side, which is to be re-determined. The order of the forum below be set-aside being unreasonable de hose the figures and records. He also filed a petition for enhancement of turnover and demand for the tax period from 1.4.12 to 31.3.13 under the OVAT Act raising the following points and submits a calculation sheet.

b) That the respondent dealer has assessed to tax by LAO, by add back on account of suppression of Rs.5,68,640.00 and determined the TTO at Rs.3,03,57,507.00 and assessed to tax thereon @13.5% at Rs.4,09,88,276.00. The Ld. FAO, re-determined the TTO at Rs.2,98,27,328.00 and assessed the tax @13.5% amounting to Rs.40,26,689.28.

c) That from the materials available on record, as disclosed and admitted by the dealer-respondent it is seen that the tabulation of the taxable turnover and tax is in the lower side. Both the forums

below have failed to assess and determine the TTO correctly taking the figures disclosed by the dealer. Therefore, less tax has been assessed which is to be enhanced by the Hon'ble Tribunal in the second appeal.

d) That according to the materials the TTO comes to Rs.3,08,34,147.00 and tax @ 13.5% comes to Rs.41,62,610.00 which is prayed to be adopted.

e) That on the facts and circumstances of the case this petition has been filed by the Revenue-State in its bona fides for enhancement of the demand and it is prayed before this Hon'ble Tribunal to accept this petition and enhance the tax and the consequent penalty demand and determine the same in accordance to law, as the order of the forum below is prejudicial to the revenue creating loss to the State Exchequer.

CALCULATION SHEET

Admitted figures:-

Inside purchase	Rs.3,14,55,024.00
Sales	Rs.2,97,88,957.00
G.P. Disclosed (as per P&L A/c.)	Rs. 10,45,184.00
OB ITC	Rs. 3,26,164.00
ITC on purchase	<u>Rs. 42,46,428.00</u>
Total ITC	Rs. 45,72,574.00
Less : ITC Carry forward	<u>Rs. 5,51,064.00</u>
ITC adjusted during the year	<u>Rs. 40,21,510.00</u>

COMPUTATION OF TTO

Purchase value of ITC	
of Rs.40,21,510.00	Rs.2,97,88,963.00
(ITC/RATAE OF TAX × 100)	
<u>Add : G.P as above</u>	<u>Rs. 10,45,184.00</u>
- TTO	Rs.3,08,34,147.00
Tax @ 13.5% on above comes to Rs.41,62,610.00	

6. On the other hand, Mr. S.R. Panda the learned advocate appearing on behalf of the respondent-dealer reiterated the points raised in the cross objection filed. He stated that the discrepancy on account of stock is not the result of physical stock taking. The inclusion of margin of profit to the stock position is improper. He stated that the Ld. FAA has rightly examined the books of accounts of the dealer respondent and has partly allowed the appeal and reduced the extra demand raised by the Ld. STO. He further took the contention that the instant dealer has effected most of the purchases from registered dealers inside the State. It has not been reported by the lower fora that the dealer-respondent has sold any goods at a lesser price than the purchase price. The Ld. Advocate on behalf of the dealer stated that the instant dealer availed discount from the seller. The audit team has neither indicated any physical discrepancy nor reported the purchase price vis-a-vis the sale price of goods dealt in available in the business premises on the relevant date.

8. Heard the rival contentions. Gone through the grounds of appeal filed, the impugned order of assessment and appeal, cross objection filed by the dealer-respondent, additional grounds and enhancement petition filed by the appellant revenue and the relevant appeal record. Now the question before this bench is to see whether on the facts and circumstances of the case the order of the Ld. FAA is to be sustained or remanded back to the lower fora for enhancement of GTO and TTO as vehemently argued by the Ld. S.C.(CT) on behalf of the Revenue.

During the period from 01.04.12 to 31.03.13 the dealer has effected intra-State purchase of goods exigible to tax @ 13.5% worth Rs.3,14,55,024.00 wherein input tax to the tune of Rs.42,46,428.00 admitted to have been paid. This apart, the dealer-respondent has also disclosed inter-State purchase of goods to the tune of Rs.4,20,000/-. Thus, the total purchase comes to Rs.3,18,75,024.00. The sale of goods inside the State has been

shown at Rs.2,97,88,975.00 with calculation of output tax of Rs.40,21,510.00. The dealer has shown carried forward ITC as on 1.4.2012 at Rs.3,26,146.00. The addition of ITC carried forward to the ITC accrual for 1.4.12 to 31.3.13 comes to Rs.45,72,574.00. The output tax calculation stands at Rs.40,21,510.00 leaving balance ITC of Rs.5,51,064.00 unadjusted and carried forward to the next period.

In course of audit, the audit officials observed that the dealer has carried forward ITC of Rs.5,51,064.00 and the goods dealt in are exigible to VAT @13.5%, its corresponding closing stock should have been Rs.40,81,956.00 by adopting the principle of $\text{ITC/Rate of Tax} \times 100$. However, while determining the estimated available stock, the audit officials have added the gross profit margin of Rs.10,45,184.00 and determined the stock value at Rs.51,27,140.00 and having disclosed closing stock as per P/L A/c. at Rs.45,58,500.00, discrepancies of stock reported at Rs.5,68,640.00. The Ld. STO has failed to appreciate the fact that as against the determined stock of Rs.40,81,956.00 by adopting the principle of $\text{ITC/Rate of Tax} \times 100$, the dealer has duly discharged closing stock at Rs.45,58,500 which is at higher side.

Considering the suggestion of audit officials assessment has been completed mechanically without considering the view of the dealer. Closing stock available at the end of the financial year and its corresponding involvement of ITC is no way related to the gross profit margin disclosed by the dealer for determination of closing stock as suppression of purchase.

The Ld. A.A. has committed an error by adding the gross profit margin with the determined closing stock by applying the principle of $\text{ITC/Rate of Tax} \times 100$. The determination of stock discrepancy and arriving at suppression of purchase without having any valid/cogent evidence is not acceptable. There is no clear cut finding of discrepancy in physical stock. No suppression either of purchase or of sale has been established. No physical stock

discrepancy has been reported by the audit officials. In view of the above, the calculation sheet placed before the bench in course of hearing is not considered proper and appropriate. Hence this forum finds no justification in considering the grounds of appeal filed. There is no incongruity in the finding of the ld. FAA hence the same warrants no interference.

9. In the result, the appeal is dismissed and the order of the Ld. JCST is confirmed. Cross objection is accordingly disposed off.

Dictated and Corrected by me.

(P.C. Pathy)
Accounts Member-I

(P.C. Pathy)
Accounts Member-I

I agree,

(A. K. Panda)
Judicial Member-I