

the dealer has purchased machinery worth Rs.4,20,000.00 and paid entry tax to the tune of Rs,8,400.00. The dealer has already been assessed for the period u/s. 42 of the OVAT Act. Considering the closing stock disclosed in the trading, profit and loss account with reference to ITC and its corresponding stock value of goods as on 31.03.2013, purchase suppression of goods worth Rs.5,68,640.00 was determined by the ld. STO. Taking the purchase suppression detected to the tune of Rs.5,68,640.00, entry tax @ 1% suggested along with penalty in the AVR was accepted by the ld. STO. Accordingly demand of Rs.17,059.00 including penalty of Rs.11,372.80 was imposed by the ld. STO. This led the instant dealer to prefer first appeal before the ld. JCST.

On careful consideration the ld. FAA deleted the addition of Rs.5,68,640.00 made on account of detected discrepancies arising out of stock position and treated the same as suppression of purchases by the ld. STO but added Rs.20,000.00 towards freight and Rs.36,544.00 towards insurance and other charges to the taxable turnover of scheduled goods i.e. alignment machine purchased from outside the State worth Rs.4,20,000.00. As the dealer has effected purchases of scheduled goods, excepting the machine from outside the State, from the registered dealers inside the State which have already suffered entry tax has determined the taxable turnover at Rs.4,76,544.00 and taxed the turnover of Rs.4,40,000.00 @ 2% and the balance Rs.36,544.00 @ 1% under the OET Act which resulted in reduction of demand tax from Rs.17,059.00 to Rs.2,296.00.

3. Being aggrieved with the order of the Ld. FAA the State has preferred second appeal before this Forum on the following grounds:

- (i) The order of the ld. FAA appears to be unjust and improper.
- (ii) Both the fora have committed mistake while determining the mismatch. The reverse calculation is not full proof calculation as it has not covered the price fluctuation. Secondly, the

fluctuation margin of each year differs from the year. Calculation of stock basing on the last year profit margin will not be substantive. The determination of suppression basing on above factor will carry some biased figures. So the normal calculation is to be made by way of determining opening stock plus purchase stock on which OET has been already suffered and the stock where OET is to be calculated basing on the price of invoice, freight, insurance & other ancillary charges as per provision envisaged U/s. 2(j) of OET Act.

(iii) The order of the fora below may be set-a-side.

4. 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) Without explaining how the order of the ld. first appellate authority is unjust, illegal and arbitrary, the grounds taken by the appellant in that effect is not sustainable or tenable in the eye of law.

iii) When the appellant purchased the goods inside the State of Orissa on payment of entry tax on such purchases, no further entry tax is leviable in the hands of the appellant and accordingly, when no entry tax is payable on the purchases, it is not understood how levy of entry tax is being made on the said purchases on the entry tax paid goods and therefore, the impugned levy of entry tax is without any jurisdiction and without any authority of law.

iv) When the goods purchased by the appellant, were entry tax paid goods, there would be no further levy of entry tax on such goods and therefore, when the levy of entry tax is not sustainable in the eye of law, the imposition of penalty is without any jurisdiction and without any authority of law.

v) It is admitted fact that all the purchases are made from inside the State on payment of entry tax and no further entry tax

can be levied and there is no discrepancy so far as the turnover under the Entry Tax Act is concerned. Only basing on the allegation regarding stock discrepancy and purchase suppression as made under the OVAT Act, the ld. assessing authority has levied tax and penalty, which has no basis and is liable to be quashed in the interest of justice.

vi) The first appellate authority lawfully and justifiably has allowed appeal in part and reduced the Taxable Turnover and demand was accordingly reduced to Rs.2,296.00.

vii) In view of the above, the grounds taken by the States are all misconceived, fallacious and are not feasible or tenable in the eye of law and as such the appeal of the State may kindly be dismissed in the interest of justice.

The dealer-respondent has also filed written submission which is the same filed for the period under the OVAT Act and is not very relevant so far the appeal under the OET Act is concerned hence needs no elaboration.

5. Mr. M.L. Agarwal, the ld. Standing Counsel (C.T.) appearing on behalf of Revenue reiterated the points raised in the grounds of appeal. He contended that the ld. FAA should have levied entry tax on the suppression of purchase detected basing on the AVR.

6. Per contra, Mr. S.R. Panda, the ld. Advocate on behalf of the dealer-respondent took the contention that the order passed by the ld. FAA is just and proper and the second appeal filed by the Revenue is misconceived and not tenable in the eye of law. He also furnished a copy of the order dated 31.07.2018 passed by the Division Bench of this Tribunal in S.A. No.32(V)/2017-18 confirming the order of the ld. FAA for the very period under the VAT Act deleting the addition made by the ld. STO on the ground of suppression of purchases amounting to Rs.5,68,640.00.

Heard the rival contentions. Gone through the grounds of appeal, impugned orders of assessment as well as the

appeal, cross objections and written submissions filed by the dealer-respondent. The question now for consideration is whether on the facts and circumstances of the case findings of the Id. FAA is sustainable in the eye of law? The Id. FAA has observed that the dealer has brought scheduled goods worth Rs.4,20,000.00 but has not paid entry tax on freight charges of Rs.20,000.00 and expenses incurred to the tune of Rs.36,544.00 towards insurance and other charges etc for which no documentary evidences could be adduced. For other goods there is absence of evidence of entry of scheduled goods brought into local area by the dealer-respondent on which entry tax has not been paid. As per section-3 of the Odisha Entry Tax Act, 1999, tax is levied and collected on entry of the scheduled goods into a local area for consumption, use or sale therein. Provided it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under this Act. Accordingly, as the dealer has effected purchase of scheduled goods dealt in from registered dealers inside the State as entry tax suffered goods excepting the purchase of machine discussed above. As the dealer-respondent has effected purchase of machinery which is subject to levy of entry tax @ 2%, the Id. FAA is not justified in levying tax @ 1% on the taxable turnover of Rs.36,544.00 as the entry tax is leviable on purchase value of scheduled goods and not merely on expenditure incurred towards insurance and other charges. The dealer-respondent has not explained with documentary evidences the expenses incurred to the tune of Rs.36,544.00 hence the same is considered as the expenses relatable to purchase of machinery from outside the State and now made exigible to entry tax @ 2%. Accordingly, the order of the Id. FAA is modified to this extent and the entire taxable turnover of Rs.4,76,544.00 under the OET Act is subjected to levy of entry tax @ 2%. Thus the entry tax @ 2% on Rs.4,76,544.00 is worked out to Rs.9,530.88. The dealer having already paid Rs.8,400.00 as learnt from the order passed by

the ld. STO, the dealer is required to pay the balance tax of Rs.1,130.88. Further, the dealer is imposed with penalty of Rs.2,261.76 under section 9C(5) of the OET Act which is equal to twice the amount of tax assessed under the Act. Thus tax and penalty taken together comes to Rs.4,523.52 rounded up to Rs.4,524.00 which the dealer is now required to pay. Accordingly the demand is now modified to Rs.4,524.00.

7. In the result, the appeal is allowed in part modifying the demand from Rs.2,296.00 to Rs.4,524.00. The cross objection is disposed of accordingly.

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