

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A. No.88(V)/2017-18

(Arising out of the order of the learned
Addl.CST(Appeal), South Zone, Berhampur in Appeal
Case No.AA(VAT) 21/2014-15 disposed of on
28.04.2017)

Present: **Shri S.K. Rout, 2nd Judicial Member**
&
Shri B. Bhoi, Accounts Member-II

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack. Appellant.

-Vrs. -

M/s. Sri Krishna Marbles,
At/Po- Plot No.-33 &75, Rudrapur,
Bhubaneswar. Respondent.

For the Appellant : : Mr. N.K. Rout, A.S.C.(C.T.)
For the Respondent : : None.

Date of Hearing : 24.07.2023 * Date of Order :23.08.2023**

O R D E R

The State is in appeal against the order dated 28.04.2017 of the Additional Commissioner of Sales Tax(Appeal), South Zone, Berhampur (in short, 'Id. FAA') passed in Appeal Case No. AA(VAT) 21/2014-15 reducing the demand to ₹23,82,110.00 as against demand of ₹30,37,953.00 raised by the Deputy Commissioner of Sales Tax, Bhubaneswar-III Circle, Bhubaneswar (in short, 'Id. assessing authority') under Section 43 of the OVAT Act.

2. The summary of the case in nutshell is that M/s. Sri Krishna Marbles, Plot No.33 & 75, Rudrapur, N.H.-5. Bhubaneswar, a partnership firm is said to have been engaged in doing business in ceramic and verified tiles, marbles and granites on wholesale-cum-retail basis. The learned assessing authority avers that the returns so filed for the tax periods 01.04.2013 to 31.08.2013 being found to be in order, they are accepted as self assessed under section 39 of the OVAT Act. A Tax Evasion Report was in receipt with allegation of sale suppression whereupon, assessment proceeding under section 43 of the OVAT Act was framed and assessment completed carrying demand of ₹30,37,953.00 which including penalty of ₹20,25,302.00 under section 43(2) of the OVAT Act. The dealer-assessee on being aggrieved preferred first appeal which resulted in reduction of demand to ₹23,82,110.00 including penalty of ₹15,88,073.46.

3. The State became dissatisfied with the impugned order of the Id. FAA in reducing the demand raised at assessment. It is contended by the State that the Id. FAA while admitting establishment of sale suppression has lessen the price of per sq. ft. of marble at ₹2.50 discarding the price of ₹150/- as determined at assessment without any reasonable justification. The State has therefore appealed for restoration of the order of the Id. assessing authority setting aside the order of the Id. FAA.

4. There is no cross objection filed by the dealer assessee. The notices meant for the dealer assessee to defend the second appeal filed by the State were rather served through affixture owing to

unavailability of the dealer assessee on the declared place of business. With no other alternative available, this case is disposed off ex-parte basing on the materials on record.

5. The orders of the learned assessing authority and the ld.FAA are gone through at length. Besides, other materials on record are also perused. From the facts as merging from the record, it transpires that the learned assessing authority has dwelled upon the findings of the Investigating Team. The learned assessing authority on due examination of the allegation of suppression contained in the Tax Evasion Report has established shortage of ceramic tiles as much as 11937 boxes and marbles as much as 1,26,390.27 sq. ft. 11937 boxes of ceramic tiles costing ₹205.00 per box calculated to ₹24,47,085.00. Whereas 1,26,390.27 sq. ft of marbles @Rs.40.00 per sq. ft. arrived at ₹50,55,611.00. Hence, the total sale suppression on the aforesaid shortages worked out to ₹75,02,696.00.

6. The ld.FAA, on the other hand, relies partly on the submission made by the ld. Advocate that appeared on behalf of the dealer-assessee. The ld. Advocate contended that the cost of ceramic tiles ought to be in the range of ₹150.00 to ₹160.00 per box whereas that of the marbles within ₹19.00 to ₹22.00 per sq. ft. With nobody either the dealer assessee or the ld. Advocate having been appeared on 25.03.2017, the ld.FAA disposed of the appeal applying price of one box of ceramic tiles at ₹175.00 and sq. ft. of marble at ₹30.00. In consequence, the total sale suppression has been dragged down to

₹58,80,683.10 as against ₹75,02,696.00 established by the learned assessing authority.

7. From the above discussion, it is brought to fore that the ld. FAA has not disputed the sale suppression alleged in the order of assessment. He has on the other hand assumed the sale price of ceramic tiles and marbles of his own accord basing on the suggestion of the learned Advocate of the dealer assessee. There was no authentic material to rely on as to derivation of such prices on record. It is rather a guess work adopted by the ld.FAA in determination of sale prices. It is not sustainable in law. The order of the ld.FAA is subjected to nullity under the facts and the circumstances of the case. The contention of the State in this regard is acceptable and the order of the learned assessing authority acquires justification for restoration.

8. It is, therefore, ordered that the appeal filed by the State is allowed. The order of the ld.FAA is set aside and the order of the learned assessing authority passed under section 43 of the OVAT Act thereby stands restored.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**