

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 7 (VAT) of 2016-17

(Arising out of order of the learned JCST, Jajpur Range,
Jajpur Road in First Appeal No. AA – 543 KJB 14-15,
disposed of on 28.01.2016)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

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

... Appellant

-Versus-

M/s. Rock Tech Engineers,
Ward No. 7, Mahanta Basti, Barbil,
Dist. Keonjhar

... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri B.B. Panda, Advocate

Date of hearing : 22.11.2022 *** Date of order : 05.12.2022

ORDER

State assails the order dated 28.01.2016 of the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 543 KJB 14-15 reducing the demand in assessment order of the Sales Tax Officer, Barbil Circle, Barbil (in short, ‘Assessing Authority’) to nil.

2. Briefly stated, the facts of the case are that –

M/s. Rock Tech Engineers is a partnership concern and engaged in trading of purchase and resale of earth moving machineries, bearings,

machineries and spare parts in quarry, iron ores, lubricants w.e.f. 12.01.2011 and leasing of tippers (deemed sale) w.e.f. 16.01.2011. The assessment period relates to 01.04.2007 to 31.03.2011. Earlier assessment u/s. 42 of the OVAT Act was completed for the said period. The A.G. (Audit) submitted report regarding sale suppression of ₹57,29,531.00, disclosing less quantity of sale of spare parts in the return and hiring charges.

The Assessing Authority in assessment raised tax demand of ₹21,63,504.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal and reduced the assessment to nil. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection supporting the orders of the fora below to be just and proper.

3. The learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority appears to be unjust and improper. He further submits that the Assessing Authority in the escapement proceeding u/s. 43 of the OVAT Act has established loss of revenue whereas the First Appellate Authority without citing any reason has reached the conclusion that opening of proceeding u/s. 43 basing on the A.G. (Odisha) is illegal. So, he submits that the order of the First Appellate Authority should be set aside and that of Assessing Authority be restored. He relies on the decision of the Hon'ble Court in the case of M/s. *Bindlish Chemicals & Pharmaceuticals Works*, reported in **89 STC 102**.

4. On the contrary, learned Counsel for the Dealer supports the findings of the First Appellate Authority and submits that the First Appellate

Authority has passed a reasoned order and the same needs no interference in appeal.

5. On careful consideration of the materials available on record, it is found that the assessment u/s. 42 of the OVAT Act has already been completed. The First Appellate Authority recorded a finding that there is no sales suppression of ₹57,29,531.00 by the Dealer as the Assessing Authority could not brought any such details of purchase invoice or sale invoice.

The sole dispute involves in this appeal is whether in the facts and circumstances of the case, the First Appellate Authority is justified in holding that there is no sales suppression of ₹57,29,531.00?

6. It transpires from the order of the Assessing Authority that the A.G. (Audit) pointed out that the Dealer has purchased ₹6,96,26,142.81 and total sale of ₹6,03,96,611.96 during the period of assessment. The AVR shows that dead stock of ₹35,00,000.00 on the date of audit visit. So, the A.G. (Audit) reported the sales suppression of ₹57,29,530.85 (purchase value – total sale – dead stock). The First Appellate Authority has verified the yearwise trading account for the years 2007 to 2011 and found no discrepancy in the purchases and sales during the period under assessment. The First Appellate Authority further recorded finding that the report of A.G. (Audit) was submitted without causing proper evaluation and analysis of facts. The reassessment was already completed. The First Appellate Authority categorically recorded finding that the Assessing Authority accepted the A.G. (Audit) report without any supporting purchase and sale invoices. Accordingly, First Appellate Authority observed that the reassessment proceeding u/s. 43 of the OVAT Act is unlawful.

7. Though the State assails the said finding before this forum, but fails to adduce any material evidence to that effect. In absence of any material evidence, we are unable to accede to the contention of the State and

to interfere in the impugned order of the First Appellate Authority on this score. Hence, it is ordered.

8. Resultantly, the appeal stands dismissed being devoid of any merit and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

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

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**