

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

S.A. No. 244(VAT) of 2015-16

(Arising out of the order of the learned JCCT, Bhubaneswar Range, Bhubaneswar, in First Appeal case No. AA.106221422000025/BH-I/2013-14 disposed of on 06.07.2015)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri B.Bhoi,
Chairman. Judicial Member-II Accounts Member-II.**

M/s.Sai Ply Wood,
Plot No.3206, Room No. 5 & 6,
Lewis Road, Bhubaneswar. ... Appellant.

- V e r s u s -

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

For the Appellant ... Mr.K.R.Mohapatra, Adv.
For the Respondent ... Mr.D.Behura, SC

Date of hearing: **06.01.2023** * * * Date of Order: **13.01.2023**

O R D E R

Dealer prefers this appeal challenging the order dated 06.07.2015 passed by the learned Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (in short, JCST/FAA), in first appeal case No.AA. 106221422000025/BH-I/2013-14 thereby confirming the order of assessment passed by the learned Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar under Section 42 of the OVAT Act raising a demand of Rs.20,07,276.00 including penalty of Rs.13,38,184.00 under Section 42(5) of the Act for tax period from 01.07.2009 to 31.03.2012.

2. The case at hand is that the dealer appellant M/s. Sai Plywood bearing TIN No.2121261103182 is a proprietorship firm and engaged in trading of ply wood, black board, laminated board, laminated board, hardware goods, kitchen ware and gas stove on wholesale cum retail

basis. Pursuant to the AVR, the audit assessment under Section 42 of the OVAT Act was initiated and sales suppression of Rs.58,34,197.00 was detected and the said suppression was added to TTO raising a demand of Rs.20,07,276.00 including penalty of Rs.13,38,184.00.

3. Against such tax demand, the dealer preferred first appeal before the learned JCST, Bhubaneswar Range, Bhubaneswar who confirmed the demand.

4. Further being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection is filed in this case by the State respondent.

6. Heard the contentions and submissions of both the parties in this regard. Even if additional ground is taken by the dealer but later on the same is not pressed by the dealer assessee. Learned Counsel for the dealer vehemently contended that the audit visit report primarily relates to determination of sale value in respect of goods purchased by the dealer by taking into consideration of 10 items as sample check on random basis as per the basis adopted by the audit visit team. The audit visit team has conducted verification in respect of 10 different items out of more than 270 items dealt in by the dealer as sample check on random basis. It is further more contended on behalf of the dealer is that the audit visit team compared statement of purchase value with its corresponding sale value with a specific period and found that the variation between the purchase value and the sale value ranges by 6.26%. So, the audit team submitted a report with a conclusion that the average percentage of hike in sale value is compared to the purchase value is 6.26% in respect of said 10 items of business goods and the learned assessing officer ignoring the submission of the dealer appellant, determined the margin of profit @3.81% on entire goods which has no basis and logic. To support such claim, the dealer has relied upon the decision of Hon'ble Supreme Court decided in the case of

Tata Engineering and Locomotive Ltd. Vrs. Asst. Commissioner of Commercial Tax, Jamshedpur (1970) 26 STC 354 (SC), wherein the Hon'ble Apex Court has very clearly held as follows:

“ It has been suggested that all the transactions were of similar nature and the appellants representative had himself submitted that a subsequent transaction alone need be examined. In our judgement this was a wholly legal proceeding and the Asst. Commissioner, on whom the duty letter of assessing the tax in accordance with law, was bound to examine each individual transaction and then decided whether it constituted an interstate sale exigible to tax under the provisions of the Act.”

7. Per contra, revenue refuted the claim of the dealer appellant and supported the orders of fora below.

8. On perusal of the case record, it becomes quite evident that the audit visit report relates to determination of sale value in respect of the goods purchased by the dealer by taking into consideration of only 10 different items out of more than 270 items dealt in by the dealer. So certainly, it can be told that with reference to a few purchase invoices and without examining all the invoices and accounts produced in course of assessment, the determination of profit margin is illegal and arbitrary and in violation of the rule of law as laid down by the Hon'ble Apex Court. The record clearly entails that the learned assessing officer has referred to only 10 nos. of items to compare the profit margin when the dealer assessee deals in nearly 270 items. So it is not at all lawful and valid to justify suppression of sales under the VAT Act without having any purchase suppression. Moreover, the basis adopted by the learned assessing officer is on hypothetical basis and as such the same is not maintainable in the eye of law.

9. In view of the above analysis, without going to the merit of the case, we are of the unanimous view to remand the case to the learned assessing officer for re-assessment on the basis of entire books of accounts.

10. In the result, the appeal preferred by the dealer is allowed and the orders of fora below are hereby set aside and the case is remanded to the learned assessing officer for re-assessment on the basis of books of accounts. Such reassessment is to be done within three months of receipt of this order after giving the dealer assessee an opportunity of being heard. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

Sd/-
(Shri S.K.Rout)
Judicial Member-II

Sd/-
(Shri S.K.Rout)
Judicial Member-II

I agree,

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

I agree,

Sd/-
(Shri B.Bhoi)
Accounts Member-II