

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 74 (ET) of 2012-13

(Arising out of order of the learned DCST (Appeal), Cuttack-I Range,
Cuttack in Appeal No. AA-(ET) 22/CUIW/2011-12,
disposed of on 13.07.2012)

Present: **Shri G.C. Behera, Chairman**

M/s. Shree Fabrics,
Banka Bazar, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri D.S. Jethi, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 17.07.2023 *** Date of order : 02.08.2023

ORDER

This remand appeal is against the order dated 13.07.2012 of the Deputy Commissioner of Sales Tax (Appeal), Cuttack-I Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA-(ET) 22/CUIW/2011-12 confirming the assessment order of the Sales Tax Officer, Cuttack-I West Circle, Cuttack (in short, 'Assessing Authority').

2. This appeal was disposed of earlier by this forum on 28.11.2013 *ex parte*. The Dealer challenged the said order before the Hon'ble Court in **STREV No. 28 of 2014**. Hon'ble Court was pleased to remit this appeal for disposal afresh.

3. The facts of the case, in brief, are that –

M/s. Shree Fabrics carries on business in cotton fabrics on wholesale-cum-retail basis. The assessment period relates to 01.04.2007 to 30.06.2010. The Assessing Authority raised tax and penalty of ₹3,31,144.00 u/s. 9D of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of New Case Report.

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer preferred second appeal before this Tribunal. This forum in *ex parte* order dated 28.11.2013 dismissed the appeal and confirmed the impugned order. Hence, this appeal.

The State files cross-objection challenging the additional grounds of appeal of the Dealer.

4. Learned Counsel for the Dealer files additional grounds of appeal and submits that the Dealer had started its business in individual capacity w.e.f. 01.04.2009 and the business of the Dealer has already been assessed and taxed by the State being partnership concern. So, he submits that the State cannot impose double taxation on the self-same turnover of the same firm. Therefore, he submits that the orders of the First Appellate Authority and Assessing Authority are otherwise bad in law and need interference in appeal.

5. On the other hand, the learned Addl. Standing Counsel (CT) for the State submits that the burden lies on the Dealer to prove the fact the Dealer alleges and in case of failure, the appeal is bound to fail. He further submits that the Dealer has not filed any documents or material evidence in support of his plea, rather admits the allegation of the State regarding visit of Vigilance Team to its business premises. The Dealer does not disclose details of the partnership business or any material regarding prior

assessment and payment of tax by the said business concern. So, he submits that the appeal is liable to be dismissed *in limine*.

6. Heard the rival submissions and gone through the materials on record vis-a-vis the orders of the First Appellate Authority as well as Assessing Authority. The Dealer challenged the impugned order with the following additional grounds :-

(i) The entire turnover in question has already been assessed and taxed in the hands of the registered partnership firm under the OET Act, so double taxation is unsustainable in law; and

(ii) Individual assessment of the partnership firm is in violation of rules of the OET Act.

7. The ground reveals that the Dealer claims that the business of the Dealer was a partnership concern and the same has already been assessed by the taxing authority. Burden lies on the appellant to prove the same by filing relevant documents thereof and in the event of failure to file any document to that support, the Dealer pleas must fail. The Dealer has filed copies of statement regarding basis of income from business and profession for M/s. Shree Fabrics signed by Sankarlal Pariwal. The Dealer has not filed any document relating to previous payment of tax against earlier assessment proceedings for the partnership concern. He is also not able to file any document regarding partnership firm or previous assessment of the partnership firm. Unless, the Dealer is able to show that this business is a partnership business, tax has already been assessed and paid, the Dealer is not entitled to any relief. Moreover, the impugned order reveals that the Dealer himself admits before the Assessing Authority in his written submission that the Dealer is doing business in his individual capacity w.e.f. 01.04.2009. The said written submission is also available in LCR which reveals that the Dealer is doing his business in individual capacity at Banka Bazar. He has not whispered a single word in the said submission that the

business of the Dealer is of a partnership concern. The Dealer has taken a specific plea in such submission that the Dealer-petitioner is an uneducated person and is ignorant about the taxing statute and he had applied for registration after knowing the same. So, the plea of the Dealer merits no consideration.

8. On merit, the Dealer is not able to file any RC of the said individual concern. The Dealer admits in the written submission filed on 31.01.2011 that the Addl. Commissioner of Commercial Tax (Vigilance) visited the premises on 17.06.2010. The Dealer further admits in such written submission that M/s. P.R. Synthetics sold goods to the Dealer and the Dealer had received the goods in the month of September & November, 2010 vide Bill Nos. 6631 & 6632 on 25.08.2010 for ₹25,272.00 and ₹32,103.00 respectively and Bill Nos. 7164 & 7165 dated 22.11.2010 for ₹32,529.00 and ₹28,599.00. The Dealer does not dispute the visit of the Vigilance Team or running of the business. Besides the said fact, the Dealer also admits in the memo of grounds of appeal that the appellant has started the business in the individual capacity w.e.f. 01.04.2009, but fails to adduce any evidence to that effect in any stage including before this forum. So, the appeal of the Dealer is bound to fail.

9. Resultantly, the appeal stands dismissed and the impugned order of the First Appellate Authority confirming the assessment is hereby upheld. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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Chairman**