

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

S.A. No.1783 of 1999-2000

(Arising out of the order of the learned ACST,
Odisha, Cuttack-I Range, Cuttack in Appeal Case
No. AA-158/VUIW/98-99 disposed of on 31.08.99)

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

M/s. K.M. Enterprise,
Jachak Lane, Cuttack.

..... Appellant.

-Versus -

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

..... Respondent.

For the Appellant : : None
For the Respondent : : Mr. D. Behura, S.C. (C.T.)
: Mr. S.K. Pradhan, Addl.S.C.(C.T.)

Date of Hearing : 07.11.2023 * Date of Order: 06.12.2023**

O R D E R

The dealer is in appeal against the order dated 31.08.1999
of the Assistant Commissioner of Sales Tax, Odisha, Cuttack I
Range, Cuttack (in short, 'ld. FAA') passed in Appeal Case No. AA-
158/CUIW/98-99 confirming the order of assessment passed by the
Sales Tax Officer, Cuttack-I West Circle, Cuttack, Ward-A (in brevity,

referred to as Id.STO) under Section 12(4) of the Orissa Sales Act, 1947 (in short, 'OST Act').

2. The gist of the case is that M/s. K.M. Enterprise, Jachak lane, Cuttack, Kalinga Nagar, Duburi, Jajpur, RC No.CUIW-3555 is a partnership firm carrying on business in electrical goods like super aluminium wire, copper wire, DPC wire and strip, presspone board, insulating paper, press paper and transformer parts etc. on wholesale basis. The dealer-appellant was assessed under Section 12(4) of the OST Act for the assessment year, 1994-95 raising extra demand of ₹8,19,890.00 basing on purchase and sale suppression alleged in a Fraud Case Report. The Id.FAA confirmed the order of assessment in the first appeal as preferred by the dealer-appellant. Aggrieved, the dealer-appellant preferred this second appeal for relief.

3. The dealer-appellant has filed grounds of appeal holding that the impugned demand has been raised in assessment enhancing the GTO by ₹60,00,000.00 basing on the purchase and sale suppression contained in the Fraud Case Report. It is submitted that the Inspector of sales Tax (IST) who visited the business premises had seized the Exercise Khata and loose sheets maintained in the business premises primarily to note down the transactions of

the day which were eventually noted in the proper Registers. The IST is alleged as having not verified the seized Khata and loose sheets with the statutory Register before submission of the Fraud Case Report. It is also submitted that determining total suppression by clubbing the purchase and sale suppression together by the forums below is illegal and arbitrary.

There is no cross objection filed by the State.

4. For hearing of this second appeal, the dealer-appellant was noticed to appear. Neither the dealer-appellant nor the learned counsel representing him appeared despite several intimations. There is no alternative but to adjudicate the case ex-parte on the basis of the materials available on record.

The Inspector of sales Tax visited the business premises of the dealer-appellant on 14.07.1995. During the course of inspection, 23nos of loose hand written documents, 4 nos. of exercise khata, and 8 nos. of books and registers were seized. On cross verification of the entries in the seized documents with the regular books of accounts, the inspecting officer could detect purchase and sale suppression respectively to the tune of ₹21,80,812.49 and ₹35,52,720.47. The dealer-appellant is reported to have admitted the aforesaid transactions out of account. During the course of

assessment taken up under Section 12(4) of the OST Act, although the dealer-appellant on confrontation of the Fraud Case Report admitted the alleged transactions to have taken place out of account, he sought for filing a written statement. As he failed to do so, the learned STO completed the assessment enhancing the GTO by ₹60,00,000.00 and raised extra demand of ₹8,19,890.00. The ld.FAA carefully verified the statements recorded from the dealer-appellant. There was clear admission of transaction out of account by the appellant in the statement. Further, on the date of assessment, although the dealer-appellant promised to file a detail statement of purchase and sales effected by the firm to rebut the allegations in the fraud case report, he did not turn up before the ld. STO for which, the ld. STO enhanced the GTO by ₹60,00,000.00 and raised extra demand of ₹8,19,890.00. Under this premises, the ld. FAA considered it appropriate not to interfere in the present case and as such the impugned order of assessment was confirmed.

5. The orders of the forums below along with the materials on records are gone through. The stand taken in the grounds of appeal is also looked into. We could observe on perusal of the records that the dealer-appellant has unequivocally admitted the entries in the seized documents as out of account. The ld. STO is seen to have

minutely analysed the allegations contained in the fraud case report and the statements recorded from the dealer-appellant and raised extra demand on best judgment basis. The ld. FAA has confirmed the order of assessment. We find no justification to interfere in this regard.

6. Resultantly, the appeal filed by the dealer-assessee is dismissed and the order of the ld. FAA is upheld.

Dictated & Corrected by me

Sd/-
Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

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