

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

**S.A. No. 191 of 2008-09**

(Arising out of order of the learned ACST, Puri Range,  
Bhubaneswar in Appeal No. AA – 119/BHII/06-07,  
disposed of on 28.12.2007)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri B. Bhoi, Accounts Member-II**

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

... Appellant

-Versus-

M/s. Syndicate Jewellers,  
5- Janapath, Bhubaneswar

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)

For the Respondent : Sri D.K. Mohanty, Advocate

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Date of hearing : 18.07.2023      \*\*\*      Date of order : 11.08.2023  
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**ORDER**

State assails the order dated 28.12.2007 of the Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA – 119/BHII/06-07 reducing the demand raised in assessment order of the Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (in short, 'Assessing Authority').

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

M/s. Syndicate Jewellers is engaged in trading of gold, silver and diamond ornaments. The assessment relates to the year 2002-03. The Assessing Authority raised tax of ₹7,27,929.00 u/s. 12(4) of the Odisha

Sales Tax Act, 1947 (in short, 'OST Act') on the basis of Fraud Case Reports (FCR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹2,22,722.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files additional cross-objection challenging the order of the First Appellate Authority to be unjust and improper.

3. The learned Standing Counsel (CT) for the State submits that the First Appellate Authority went wrong in dropping the charges of purchase and sale suppression of old gold, purchase suppression of 'Mangal Sutra' and 'Bangle', sale suppression basing cash available and reduction of price of diamond. He further submits that the finding of the First Appellate Authority is otherwise wrong and contrary to the provisions of law and fact involved. So, he submits that the impugned order requires interference thereby restoring the order of assessment being just and proper in the facts and circumstances of the case.

4. Per contra, the learned Counsel for the Dealer submits that the First Appellate Authority rightly dropped the charges of sale and purchase suppression of old gold and others charges as the same were based on documents and the opening balance and closing balance were not disputed by the authorities. He further submits that the First Appellate Authority went wrong in enhancing the figures returned, which is excessive and arbitrary. So, he submits that such finding of the First Appellate Authority needs interference in appeal.

5. Heard the rival submissions of the parties and gone through the materials on record vis-a-vis the orders of the First Appellate Authority and Assessing Authority. Despite repeated direction, the Revenue failed to

submit the LCR. The Dealer filed computerised ledger copy of statement of gold showing receipt and issue including gross and net weight for the period 01.04.2002 to 28.08.2002. The assessment order reveals that the Dealer had produced the computerized statement before him and he had verified the fact and figures disclosed in the computerized statement while making the assessment. So, the appeal is being disposed of basing on the materials available before this forum without LCR.

The order of the Assessing Authority reveals that there was a total sales suppression was for ₹54,92,332.28 as per the allegations made in two FCRs. Accordingly, the Assessing Authority enhanced the GTO by a sum of ₹6,59,07,987.36 and calculated the tax liability of the Dealer for the period under assessment.

6. The State assails the impugned order on the following grounds :-
- (i) The old gold should have been 5507.499 gms. instead of 1772.079 gms. as per ground No. (3);
  - (ii) There was purchase suppression of old gold 3571.741 gms. for ₹17,32,294.38 as per ground No. (4);
  - (iii) Purchase suppression of 28 nos. fo 'Mangal Sutra' and 46 nos. of 'Bangle' as per ground No. (5);
  - (iv) Sale suppression of total cash of ₹11,77,410.00 as per ground No. (6); and
  - (v) Unreasonable reduction of the value of diamond from ₹15,61,000.00 to ₹3,10,200.00 as per ground No. (7).
7. As regards sale suppression of old gold weighing 3735.420 gms. for ₹19,05,064.20, the stock statement of the Dealer as on 04.01.2002 was 1709.251 gms. (gross/net weight). The Dealer received by way of purchase of old gold weighing 3798.248 gms. in between 04.01.2002 to 28.08.2002. The Dealer had not issued the old gold to the 'Karigar'. The Dealer ought to

have in possession for 5507.499 gms. of old gold as on the date of visit. But, the physical stock of the old gold was shown as 1772.079 gms. The representative of the Dealer could not furnish any plausible explanation, rather took evasive stand. So, the Assessing Authority detected sales suppression of 3735.420 gms. of old gold. The First Appellate Authority observed that on verification he found the opening and closing stock at 1709.251 gms. and 1772.079 gms. respectively. The Dealer had received old gold on purchase weighing 3798.248 gms. The Dealer should have in possession of 5507.499 gms., but the Dealer was in possession of 1772.079 gms. The First Appellate Authority observed that the Dealer had issued the old gold to karigar for making new ornaments on different dates.

As regards purchase suppression of old gold weighing 3571.741 gms. for ₹17,32,294.38, the assessment order reveals that the Dealer had received old gold weighing 14871.445 gms. from 04.01.2002 to 28.08.2002 and the Dealer could have issued 9363.946 gms. to different karigars, but the Dealer was found to have issued 12935.687 gms., so the Assessing Authority found that the Dealer has suppressed purchase of 3571.741 gms. The First Appellate Authority deleted the alleged purchase suppression in the impugned order.

Both the issues of purchase and sale suppressions of FCR No. 13 dated 16.09.2002 appear to be inter-related as the same relate to old gold. The record reveals the following figures :-

Opening Balance	-	1709.251 gms.
Purchase shown	-	3798.248 gms.
<b>Closing Balance must be-</b>		<b>5507.449 gms.</b>

But, the Dealer was in possession of old gold weighing 1772.079 gms..

**Detected purchase suppression - 3735.420 gms.**

Received old gold	-	14871.445 gms.
(-)Detected closing balance	-	5507.449 gms

Issue of gold to karigar must be-	9363.996 gms. <b>(9363.946)</b>
The Dealer shown issue to karigar -	12935.687 gms
<b>Alleged sale suppression -</b>	<b>3571.741 gms.</b>

In this regard, the Dealer has filed a ledger copy showing opening, receipt of old gold, issue of old gold to karigars and closing balance to that effect for consideration of this Tribunal. The assessment order reveals that the Assessing Authority considered the opening balance at 1709.251 gms. and made the assessment. The assessment order further reveals that the Assessing Authority computed the sale suppression of 1035.708 gms. of old gold value at ₹5,28,211.08 by considering the book balance of the Dealer at 1935.758 gms.

Before this forum, the Dealer has filed the copy of the ledger statement showing opening balance of 1709.251 gms. of gold (gross/net weight) and closing balance at 1935.753 gms (gross weight) and 1772.079 (net weight). So, the State never disputes the opening and closing balance of gold disclosed by the Dealer as per the ledger statement. At the same time, the Dealer also does not dispute the total receipt figure of gold of 14871.445 gms. and had claimed before the Assessing Authority regarding issue of old gold of 12935.692 gms. (gross weight) to the 'Karigars'. The copy of ledger statement depicts the total figure of old gold of 12935.692 gms. (gross weight) corresponding to 11838.741 (net weight) issued to the 'Karigars'.

It reveals from the impugned order that the First Appellate Authority specifically dropped the allegation of sale suppression of 3735.420 gms. valued at ₹19,05,064.20 and purchase suppression of old gold weighing 3571.741 gms. for ₹17,32,294.38 on the ground that the Investigating Officer as well as the Assessing Authority accepted the opening and closing stock as disclosed by the Dealer as correct. The First Appellate Authority also observed that the Assessing Authority and the

Investigating Authority recorded finding to the effect that the net weight is the same as gross weight, which is not at all correct. The First Appellate Authority found on verification that the Dealer had disclosed the opening and closing balance of 1709.251 gms. and 1772.079 gms. respectively and issue of old gold to 'Karigars' for making new ornaments on different dates. The First Appellate Authority dropped the charges of suppression by accepting the contention of the Dealer, which was supported with documentary evidence.

The copy of the ledger statement for the period 01.04.2002 to 28.08.2002 filed by the Dealer reveals that the opening balance stands at 1709.251 gms. (gross/net weight). The Dealer had received old gold weighing 13290.234 (gross) corresponding to 12017.598 (net). It further reveals that the Dealer had issued old gold weighing 12935.692 (gross) corresponding to 11838.741 (net) on various dates to different "Karigars" such as on 01.04.2002 old gold weighing 92.013 gms. (gross) / 84.210 gms. (net), likewise on 08.04.2002 to Deepak Samanta, Alok, Kusa Mandal, on 12.04.2002 to Babla Sahoo etc. When the Dealer had produced the fact and figures before the Assessing Authority, the Assessing Authority should not have calculated the discrepancy/sale suppression on hypothetical basis. The Assessing Authority ought to have tried to examine the allegations of suppression as per the documentary evidence and completed the assessment as per law. The ledger statement depicts the opening balance, closing balance and the quantum of old gold issued to different 'Karigars' on different dates. Therefore, we do not find any illegality in the finding of the First Appellate Authority who had dropped the charges of suppression on this score after verifying the documentary evidence filed before him.

8. As regards purchase suppression of 28 nos. of 'Mangal Sutra' and 46 nos. of 'Bangle', the Assessing Authority had discarded the labour bill bearing No. 114 dated 28.11.2002 issued by one Jayantilal M. Shrimankar

Jewellers, Mumbai for ₹52,591.00 towards making charges for 28 nos. of 'Kanthi'. Likewise, the Assessing Authority had discarded labour memo issued by Kalyan Jewellers on the ground that the same was issued on 01.12.2002. The First Appellate Authority considered Bill No. 005311 dated 26.11.2002 issued by M/s. Chenaji Narsinghji of Mumbai for 1166.400 gms., voucher No. 114 dated 28.11.2002 issued by M/s. Jayantilal M. Shrimankar Jewellers and other bills and dropped the allegation of purchase suppression of 'Mangal Sutra' and 'Bangles'. The Assessing Authority should have ascertained the veracity of purchase against the bill which was available in purchase-cum-stock ledger. So, we do not find any illegality in the finding of the First Appellate Authority on this score.

9. As regards the allegation of sale suppression against cash available, the Assessing Authority discarded the computerized statement and treated the sale suppression on this score. The Assessing Authority found cash of ₹12,50,507.78 at about 4.00 PM which includes cash of ₹65,947.78 received from sale proceeds and ₹4,300.00 against credit bill No. 244 dated 04.12.2002 and a sum of ₹10,000.00 received on account of order advance. The First Appellate Authority had verified the document with reference to the explanation offered by the Dealer and found that the Dealer was having balance of ₹11,70,666.62 as per the cash book as on 04.12.2002. Besides the same, the Dealer had received sale proceeds of ₹80,247.78 as per the FCR. Therefore, the total cash was found to be ₹12,50,914.40 against the detected cash of ₹12,50,507.78. The First Appellate Authority accepted the explanation of the Dealer regarding differential amount of ₹406.62 as reasonable. So, we do not find any illegality on such detailed finding as per the material evidence.

10. As regards the sale suppression of gold and diamond, the Assessing Authority observed that the Dealer failed to offer any explanation

in this regard. The Assessing Authority has not mentioned the value of diamond per Crt. The First Appellate Authority reduced the amount to ₹3,10,200.00 in respect of price of diamond. The First Appellate Authority accepted the contention of the Dealer and discarded the valuation of the IST, which is wrong. At this stage, the Dealer contended that the prevailing price of gold was ₹525.00 per gram and ₹20,000.00 per Crt. of diamond vide sale memo Nos. 9156 dated 04.12.2002 and 9115 dated 02.12.2002. The Assessing Authority had computed the value of gold of ₹3,30,000.00 by taking into consideration the prevailing market price of ₹525.00 per gram. The Assessing Authority and the First Appellate Authority went wrong in estimating the cost of alleged sale suppression diamond. The Dealer claims that he had filed the sale memo Nos. 9156 dated 04.12.2002 and 9115 dated 02.12.2002 regarding the prices of gold and diamond. Neither the assessment order nor impugned order reflects of filing of such sale memo. So, we feel it proper to remit the matter to the Assessing Authority for due examination of the prevailing price by then and estimate the suppression.

11. As regards the contention of the Dealer on enhancement of turnover of ₹2.00 crore by the First Appellate Authority, it appears from the impugned order that the First Appellate Authority enhanced the figures returned by 17 ½ times approximately especially when the Assessing Authority had enhanced the same by 12 times. Since we are remitting the matter to the Assessing Authority for re-examination of prevailing price of gold and diamond and computation of tax liability on that score, we feel it proper to observe here that the enhancement on this score should not be wild and capricious while adopting best judgment principles.

12. So, for the foregoing discussions, we are of the considered view that the Assessing Authority shall only examine the prevailing market price of gold and diamond as it stood then basing on the aforesaid sale memos and



complete the reassessment as per law keeping in view the observations made on this score.

13. Resultantly, the appeal is allowed in part and the impugned order of the First Appellate Authority stands modified to the extent indicated above. The matter is remanded to the Assessing Authority only on the score of re-examination of prevailing price of gold and diamond by then on the basis of aforesaid sale memo and to compute the tax liability of the Dealer, if any, in accordance with law keeping in view our observation as above within a period of three months from the date of receipt of this order.

*The Dealer is at liberty to produce the copy of sale memo as relied on by him before the First Appellate Authority. The Assessing Authority shall proceed to complete the reassessment on the basis of available materials i.e. the sale memo as relied on by the Dealer without unnecessarily waiting for the LCR in case the LCR is not available as the State failed to produce the same before this forum.*

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)  
2<sup>nd</sup> Judicial Member**

**I agree,**

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