

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

S.A. No. 56(V) of 2021

(Arising out of the order of the learned
Addl.CST, Koraput Range, Jeypore in First
Appeal Case No. AAV-06/19-20 disposed of on
28.01.2021)

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

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

..... Appellant.

-Vrs. -

M/s. Raas, Near L & T Office,
Raniguda Farm, Rayagada.

..... Respondent.

For the Appellant : : Mr. S.K. Pradhan, Addl. S.C. (C.T.)
For the Respondent : : Mr. S.C. Sahoo, Advocate

Date of Hearing : 29.11.2023 * Date of Order: 28.12.2023**

O R D E R

The State is in appeal against the order dated
28.01.2021 of the Additional Commissioner of Sales Tax,
Koraput Range, Jeypore (in short, 'ld. FAA') passed in First
Appeal Case No. AAV-06/19-20 reducing the demand to
₹41,088.00 as against the demand of ₹1,34,26,885.00 raised by
the Deputy Commissioner of Sales Tax, Rayagada Circle,

Rayagada (in short, 'ld. assessing authority') under Section 42 of the OVAT Act.

2. The facts in nutshell are that M/s. R A A S, Near L & T Office, Raniguda Farm, Rayagada, TIN-2103420076 trades in Cement, Iron rod, Bricks, Stone chips Sand, etc. Basing on the recommendation of the Audit Visit Report, the ld. assessing authority initiated proceeding under section 42 of the OVAT Act for the tax period 01.04.2010 to 07.10.2012. During the course of audit assessment, the ld. assessing authority could find that the dealer-assessee while disclosing purchases of goods at ₹5,61,58,010.00 in the books of accounts during the tax period under appeal, the purchase figure as per returns has been disclosed at ₹3,79,08,426.00 rendering thereby excess disclosure of purchases worth ₹1,82,49,584.00. Similarly, on verification of sales, the books of accounts having borne sale transactions of ₹5,70,18,795.00, disclosure of sale turnover in returns brought out to ₹3,77,03,075.00. There existed thereby discrepancy of ₹1,93,15,720.00 in sales during the material period under appeal. The ld. assessing authority held both the discrepancies in purchases and sales respectively amounting to ₹1,82,49,584.00 and ₹1,93,15,720.00 as sale suppression. This apart, the ld. assessing authority effected reversal of ITC to the tune of ₹28,890.00 against 856 bags of damaged cement

valuing ₹2,14,000.00 dumped in the business premises. The ld. assessing authority determined the GTO and TTO respectively at ₹8,45,80,746.19 and ₹7,52,68,379.00. The ld. assessing authority allowed deduction of ₹49,50,488.78 towards collection of VAT. On levy of tax @5% on ₹99,86,653 and @13.5% on ₹6,52,81,744.00, the amount of tax arrived at ₹93,12,367.19. After adjustment of ITC for ₹49,17,522.07 and tax payment of ₹4050.00, the dealer-assessee was liable to pay tax of ₹43,90,795.00. Penalty of ₹87,81,590.00 under Section 42(5) of the OVAT Act has been imposed. For having not filed returns for the Q.E. 12/2014 and 3/2015 by the dealer assessee in the prescribed time, penalty of ₹20,000.00 has been imposed under Section 34(3) of the OVAT Act. The learned assessing authority has imposed penalty of ₹2,34,500.00 under section 65(2) of the OVAT Act for having not submitted audited report under Section 65(1) of the OVAT Act. In all, the dealer-assessee was demanded ₹1,34,26,885.00.

3. The ld.FAA has observed that the ld. assessing authority has accepted the sale turnover as disclosed in the books of accounts at ₹5,70,18,795.00. Addition of the differential amount of purchase value amounting to ₹1,82,49,584.00 in TTO that was detected between the purchase value disclosed in the books of accounts and the

returns is not genuine. The reason being that the ld. assessing authority has assessed the dealer-assessee basing on the sale turnover disclosed in the books of accounts setting aside sale turnover as returned, as the sale figure was higher in the books of accounts compared to that filed in the returns. Since the ld. assessing authority has accepted the books of accounts with respect to sale turnover, disowning of purchase figure shown in the same books of accounts is not genuine. The ld.FAA on verification of the audited accounts/Trading Accounts vis-a-vis the books of account for the tax period under appeal could find that there existed a discrepancy of ₹1,07,298.00 in purchase value and ₹24,673.00 in sale value. The ld.FAA determined purchase suppression of ₹1,07,298.00 as sale suppression and estimated the same at ₹1,09,450.00. The ld.FAA determined the GTO and TTO at ₹5,71,52,918.00. Levying tax @5% on ₹68,56,152.00 and @13.5% on ₹5,02,96,766.00, the tax liability worked out to ₹71,32,871.00. The ld.FAA on verification of the purchases effected from the registered dealers within the state inclined to allow ITC to the tune of ₹71,15,125.00 after reversal of ITC for ₹28,890.00 as discussed supra. Further, after adjustment of tax payment of ₹4,050.00, the amount of tax due arrived at ₹13,696.00. With penalty of ₹27,392.00 imposed under Section 42(5) of the OVAT Act, the dealer-assessee was

made liable to pay tax and penalty of ₹41,088.00. Penalty of ₹20,000.00 and ₹2,34,500.00 imposed under Section 34(3) and Section 65(2) of the OVAT Act respectively in assessment based on the audit recommendation without service of the statutory notices have been deleted by the ld.FAA.

4. The State being not contended with the order of the ld. FAA preferred second appeal before this forum disputing deletion of purchase suppression detected in audit and penalty imposed under Section 34(3) and Section 65(2) of the OVAT Act by the ld. FAA.

5. The dealer-assessee has not filed cross objection. But, Mr. S. C. Sahoo, ld. Counsel appearing on behalf of the dealer-assessee has filed a written note on 12.12.2023 holding that the order of the ld.FAA in relation of deletion of penalty imposed under Section 34(3) and section 65(2) of the OVAT Act is justified. Further, it is submitted that the ld.FAA is right in disowning the purchase suppression alleged in the order of assessment purportedly on the pretext that the ld. assessing authority while assessing the dealer-assessee as per the sale value disclosed in the books of accounts, allegation of the purchase value shown in the said books of accounts as purchase suppression is illegal and unwarranted.

6. Gone through the rival submissions. The orders of the forums below coupled with the materials available on records are gone through. The dispute hinges on deletion of the purchase suppression and penalty imposed under section 34(3) and 65(2) of the OVAT Act at the first appellate stage. As vividly discussed in the foregoing paragraphs, the Tax Audit Team detected discrepancy in purchases and sales of huge amount while on verification of the books of accounts vis-à-vis the returns filed. The discrepancy in purchases and sales brought out to be at ₹1,82,49,584.00 and ₹1,93,15,720.00 respectively in assessment. The ld. assessing authority assessed the dealer-assessee as per the sale turnover of ₹5,70,18,795.00 disclosed in the books of accounts with the same having been disclosed higher to that disclosed in the returns. Interestingly, the ld. assessing authority assumed the purchase discrepancy as purchase suppression while the sales disclosed therein was taken credence. It is not genuine and accorded illegal out and out. The ld.FAA has genuinely disagreed with the order of the ld. assessing authority in deletion of the alleged purchase suppression. We find no justification in accepting the contention of the State in this regard.

7. As regards deletion of penalty as discussed above, it is of the view that proceedings under Section 34(3) and Section

65(2) of the OVAT Act cannot be initiated along with the proceeding framed under Section 42 of the OVAT Act. Separate penal proceeding ought to have been initiated. The ld.FAA is justified in deletion of the penalty imposed under Section 34(3) and Section 65(2) of the OVAT Act. The stand taken by the State on this score deserves no consideration.

8. Under the aforesaid observation, it is inferred that the appeal filed by the State is dismissed and the order of the ld.FAA is upheld.

Dictated & corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

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