

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

S.A. No.222(V) of 15-16

(Arising out of the order of the learned JCST,
Bhubaneswar Range, Bhubaneswar in first appeal
case No. AA 106221422000062/BHI/13-14,
disposed of on 21.07.2015)

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

M/s. Maheswari Marble & Granites,
Rasulgarh, Bhubaneswar,
TIN-21152600971. Appellant.

-Vrs. -

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

For the Appellant : : None.
For the Respondent : : Mr. N.K. Rout, Addl. S.C.(C.T.)

Date of Hearing: 22.08.2023 * Date of Order :21.09.2023**

O R D E R

The dealer-assessee is in appeal against the order dated 21.07.2015 of the Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (in short, 'ld. FAA') in first appeal case No. AA 106221422000062/BHI/13-14 confirming the order of assessment passed by the Sales Tax officer, Bhubaneswar-I Circle, Bhubaneswar (in short, 'learned assessing authority') under Section 43 of the Odisha Value Added Tax Act (in short, 'OVAT Act').

2. The dealer-assessee's case in short is that M/s. Maheswari Marble & Granites, Rasulgarh, Bhubaneswar, TIN-21152600971 is a partnership concern trading in marble, tiles, granites and marbles structure etc. on retail-cum-whole-sale basis. Basing on the Tax Evasion Report (TER) submitted by the Sales Tax Officer, Vigilance, Cuttack Division, Cuttack, the ld. assessing authority initiated proceeding under Section 43(1) of the OVAT Act for the tax period 01.04.2013 to 31.05.2013 and assessed the dealer-assessee to tax for ₹32,44,406.00 which includes penalty of ₹21,62,937.00. The ld. FAA has confirmed the order of assessment in the first appeal as preferred by the dealer-assessee.

3. The dealer-assessee without being satisfied with the order of the ld. FAA preferred second appeal at this forum endorsing the grounds of appeal that the stock of goods worth ₹65,79,560.00 kept in the basement of the additional place of business at Plot No-657 in Cuttack-Puri Road, Bomikhal, Bhubaneswar was not taken into account by the Investigating Team. The statement recorded by the Investigating Team from the partner of the firm was got signed without he being read over the contents of the statement. The determination of sale suppression as well as imposition of penalty under Section 43(2) of the OVAT Act is illegal and arbitrary. The State while filing cross objection supports the orders of the forums below.

4. The dealer assessee was issued with notices to appear to defend the case. Neither the dealer assessee nor the representative of the firm appeared despite service of several intimations. There is no alternative but to dispose of the case ex-parte basing on the materials on record. The grounds of appeal, the orders of the forums below and the materials on record are gone through. The allegation contained in the Tax Evasion Report submitted by the Sales Tax Officer, Vigilance, Cuttack Division, Cuttack in respect of

purchase suppression of ₹72,82,624.00 that led to consequential sale suppression of ₹80,10,886.00 is examined with reference to the grounds of appeal and the observation of the ld.FAA in the first appeal order. It is observed that the physical stock noted by the Investigation Team is not commensurate with the sale invoices resulting shortages of stock. Stock of goods such as Leo tiles 16x10 sizes, Ocent tiles and Printed tiles are found neither supported with purchase bills nor sale bills. The grounds of appeal do not portray any satisfactory explanation to the alleged purchase suppression. The ld.FAA has rightly substantiated the allegation of purchase suppression that resulted in sale suppression and has affirmed the order of the learned assessing authority. We find no reason to interfere in this case under the facts and circumstance of the case.

5. Hence, it is ordered as under:-

The appeal filed by the dealer assessee is dismissed and the order of the ld.FAA in the impugned case is confirmed. Cross objection is accordingly disposed of.

Dictated and corrected by me.

**Sd/-
(Bibekananada Bhoi)
Accounts Member-I**

I agree,

**Sd/-
(Bibekananada Bhoi)
Accounts Member-I**

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

I agree,

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