

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 59(V)/2015-16

(From the order of the Id.DCST (Appeal), Sambalpur Range, Sambalpur,
in Appeal No. AA.11/Bgh/VAT/2013-2014, dtd.23.03.2015,
modifying the assessment order of the Assessing Authority)

**Present: Sri S. Mohanty
2nd Judicial Member**

Sri Binod Kumar Agrawal,
Prop. M/s. Maa Traders,
At- Canal road, P.O. Barpali,
Dist. Bargarh.

... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. U. Behera, Advocate
For the Respondent : Mr. S.K. Pradhan, ASC (CT)

(Assessment period : 01.04.2010 to 31.03.2011)

Date of Hearing: 01.08.2018 Date of Order: 01.08.2018

ORDER

This appeal is directed against the order of learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) by the assessee-dealer as appellant challenging the determination of sale suppression, escaped turnover and imposition of tax with penalty by the FAA in the impugned order to be unsustainable.

2. In the case in hand, the instant dealer was engaged in trading of rice, cement, M.S. rod, asbestos, kodappa stone and other

goods on retail basis. It was subjected to assessment u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) basing on fraud case report submitted by the Enforcement Range, Sambalpur covering tax period from 01.04.2010 to 31.03.2011. The allegation against the dealer was, on the date of visit to the dealer's unit by the Enforcement Range, they could detect suppression to the tune of Rs.8,02,110/- out of which, sale suppression was of Rs.5,94,935/-, suppression due to discrepancy in stock was to the tune of Rs.1,93,025/- and sale suppression for non-issuance of invoice was of Rs.14,150/-. The Assessing Authority/Sales Tax Officer, Bargarh Circle, Bargarh (in short, AA/STO) on confrontation of the escapement under three counts as against the dealer, proceeded with the assessment. The dealer's plea like, discrepancy in stock due to damaged goods and incorrect weighment were turned down. Similarly the dealer's plea like there was no unaccounted for sale, was also rejected as the Enforcement Wing had seized some loose slips showing clandestine business transaction by the dealer. As a result, the suppression as suggested by the Enforcement Wing was found to be proved. However, on verification of the records and documents, the AA found that the Enforcement has wrongly calculated the value of goods as per the rate of tax. Accordingly, it determined the tax liability of the dealer at Rs.67,455/- with penalty twice of it calculated to Rs.1,34,910/- leading total demand of Rs.2,02,365/-.

3. Being aggrieved with such assessment, the dealer preferred appeal before the FAA, who in turn, accepted the argument of the dealer to the extent that, the discrepancy regarding AC sheets about 95.9 mt was due to damaged sheets and the damage was within the permissible limit. As a result, the addition of Rs.19,180/- in 4% tax

group was deleted and in consequence thereof, the tax liability became reduced to Rs.66,688.24. Penalty twice of it when added, the total due became calculated at Rs.2,00,065/-.

4. Still not satisfied, the dealer has preferred this second appeal almost on the same grounds which are taken before the fora below. It is contended that, the visiting officials had wrongly taken into consideration of some estimation slips towards suppression of sale. The officials had not done proper weighing and calculated the stock suppression on eye estimation applying the sampling method, which laid to a wrong figure as determined. The officials had over-valued the Doctor Fixit 477.50 Kg at a rate of Rs.200/-. They have also taken into consideration of the oxygen cylinders, which were kept empty for replacement. So, the entire suppression as detected is to be deleted as not accurate.

5. The Revenue has contested the appeal by filing cross objection in support of the order of the FAA.

6. On careful perusal of the order of FAA, it is found that, the appellate authority has taken into consideration of the dealer's plea before him. The Enforcement Wing and thereafter the AA has considered the loose slips seized from the premises of the dealer in support of the charge of sale suppression. The estimation of the weight was as per the sampling method in presence of the dealer's representative. Further the dealer's claim to the extent of possible damage caused to the AC sheets in stock was accepted by the FAA. The findings of the AA basing on fraud case report, which was submitted on spot verification and thereafter the findings of the FAA on the self-same evidence regarding the sale suppression/stock discrepancy and thereby the determination of escapement of turnover

are pure question of fact. No materials produced before this forum to disbelieve the findings of the fora below. No discrepancy or irregularity or illegality noticed in the impugned order as the impugned order is based on subjective satisfaction on factual side, which calls for no interference in absence of any believable rebuttal evidence. Accordingly, it is held that, findings of the fora below regarding the suppression as per the impugned order should not be disturbed basing the bald submission of the dealer. Resultantly, the tax liability and penalty as imposed by FAA is confirmed. Hence, it is ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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2nd Judicial Member