

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

**S.A. No.420 of 2008-09**

**&**

**S.A.No.454 of 2008-09**

(Arising out of the order of the learned ACST, Appellate Unit,  
Bhubaneswar, in First Appeal case No. AA-255/BHI/05-06  
disposed of on 05.03.2008)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,  
Chairman. Judicial Member-II Accounts Member-I.**

**S.A. No.420 of 2008-09**

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

... State.

**- V e r s u s -**

M/s.Shree Jagannath Distributors,  
100, Budheswari Colony, Bhubaneswar.

... Dealer.

**S.A.No.454 of 2008-09**

M/s.Shree Jagannath Distributors,  
100, Budheswari Colony, Bhubaneswar.

... Dealer.

**- V e r s u s -**

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

... State.

For the State  
For the Dealer

... Mr.M.L.Agarwal, SC(CT).  
... None.

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Date of hearing: **21.11.2022** \* \* \* Date of Order: **06.12.2022**  
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**O R D E R**

Both these appeals one filed by the State and the other by  
the dealer are directed against the same order passed by the Asst.  
Commissioner of Sales Tax (Appeal), Bhubaneswar (First Appellate

Authority) and hence being heard together, are disposed of by this common order.

**S.A.No. 420 of 2008-09**

The State has filed this appeal assailing the order dated 05.03.2008 passed by the aforementioned first appellate authority in first appeal case No.AA.255/BH-I/05-06 allowing the appeal in part thereby reducing the amount of suppression from Rs.8,82,737.00 to Rs.6,38,762.00 and allowing the set off of entry tax at Rs.8,06,431.19 which was allowed at Rs.5,59,822.00 by the learned assessing officer vide order of assessment dated 20.01.2006.

**S.A.No.454 of 2008-09**

The dealer has challenged the same order as above.

2. The facts leading to the present appeals in a nutshell are that the dealer in the name and styled as M/s. Jagannath Distributor, Bhubaneswar was engaged in purchase and sale of sanitary wares and ceramic tiles on wholesale cum retail basis. Pursuant to the notice issued under Section 12(4) of the OST Act, one representative of the dealer appeared and produced the books of account, purchase and sale memos which were examined before the assessing officer for the year under assessment. On examination of books of account, it was detected that the dealer had effected total purchase of goods to the tune of Rs.68,48,555.57 out of which he had shown purchase of glazed tiles to the tune of Rs.5,81,310.18 from inside the State of Odisha on which OST had been suffered and the balance being of Rs.8,19,345.00 and Rs.54,47,900.39 of goods like sanitary wares and glazed tiles from outside the State respectively. The dealer had utilised 44 sets of Govt. way bills to import the goods outside the State amounting to Rs.62,64,523.90 and balance of Rs.2,721.00 had been imported outside the State without way bills. Against these purchases, the dealer disclosed its sale turnover at Rs.77,19,828.28 and claimed deduction at Rs.10,75,206.00 towards sale of first point goods and Rs.7,53,907.76 towards STC and shown taxable turnover as Rs.5,25,753.00 towards transaction relating to sale of sanitary wares and Rs.53,64,961.50 towards transaction relating to

sale of glazed tiles. There was also a fraud case report (in short, FCR) relating to purchase suppression and sale suppression. It was detected that the purchase suppression was of Rs.1,83,870.00 and sales suppression was Rs.1,31,467.00. So on the whole on verification, the assessing officer determined the entire suppression amounting to Rs.82,737.00 and enhanced the turnover by Rs.19,81,127.50 which after being taxed at the appropriate rate resulted in an additional demand of Rs.2,86,597.00.

3. Being aggrieved, the dealer carried the matter in first appeal wherein the first appeal was allowed in part and the dealer appellant was entitled to get refund of Rs.52,911.00. The State on the other hand challenged the same order by preferring S.A.No.420 of 2008-09. In S.A.No.454 of 2008-09, the State being the respondent has filed cross objection. On the other hand, in S.A.No.420 of 2008-09, the dealer being the respondent has not filed any cross objection.

4. Despite due service of notice on dealer, neither the dealer appellant appeared during the hearing of these appeals nor engaged any one on his behalf to remain present during hearing. So finding no other alternative, this Tribunal proceeded to dispose of these appeals on exparte basis on merit hearing the counsel for the State.

5. Learned Standing Counsel for the State during course of argument contended that the reduction of amount of suppression of Rs.8,82,737.00 to Rs.6,38,762.00 by the learned first appellate authority is not justified and that allowing of set off of entry tax of Rs.8,06,431.19 by the first appellate authority is not justified when the same was allowed at Rs.5,59,822.00 by the learned assessing officer.

In both these appeals two issues are to be adjudicated upon which are :

- (i) Whether reduction amount of suppression of Rs.8,82,737.00 to Rs.6,38,762.00 by the learned first appellate authority is justified?

- (ii) Whether allowing of set off of entry tax of Rs.8,06,431.19 by the first appellate authority is justified when the same was allowed at Rs.5,59,822.00 by the learned assessing authority.

6. On perusal of the case record, it reveals that relating to the import of 1107 boxes of bell brand glazed tiles from M/s.Beli Ceramic Ltd. , Bharuch, the dealer appellant had produced utilisation of way bill bearing No.BC 0524752 which was reflected in the way bill utilization statement submitted at office and duly checked at the check post and entered into the electronic purchase register dated 23.08.2003. Apart from this, furnishing of 'C' form relating to lorry receipts to the consignor and the customer ledger wherein reflection of transactions from 01.04.2003 to 31.03.2004 were reflected and such transaction also found place. The verification of these documents revealed that such transaction was not out of account purchase. Relating to the sales suppression, the dealer appellant had himself admitted that the same was out of account sale and also could not explain properly the amount detected by producing relevant sale memos of previous days. It is revealed from the observation of the learned first appellate authority with regard to the materials kept in the undisclosed go down at Bhudheswari Colony. So the contention raised by the dealer that the house was taken on rent w.e.f. 01.09.2003 was not accepted since no documentary evidence could be produced. The purchase suppression and sales suppression established by the assessing officer to the tune of Rs.8,82,737.00 was reduced by Rs.2,43,975.00 by the learned first appellate authority with the observation that the purchase of bell ceramic tiles was found to be reasonable. So the total suppression was determined at Rs.6,38,762.00 which was enhanced by two times of the amount of suppression established. From the order of the learned first appellate authority, it also reveals that the dealer appellant was indulged in such type of fraudulent activities and such enhancement was also further supported by other evidence and such purchase and sale were not tallied with each other and the dealer appellant used to disclose taxable item in the category of sale of first point tax paid goods without any basis. In view of such, the tax liability of the dealer appellant was determined as mentioned by the first appellate authority in his order.

7. So in view of above analysis, to our considered view, the matter has rightly been appreciated and analysed by the learned first appellate authority for which the same needs no interference.

8. For the foregoing reasons, therefore, both the appeals are found to be devoid of merit and are, therefore, dismissed and the order of the learned first appellate authority passed on dated 05.03.2008 in first appeal case No.AA.255/BHI/05-06 is hereby confirmed.

Accordingly, the cross objection filed by the State is disposed of.

Dictated and Corrected by me,

Sd/- Sd/-  
**(Shri S.K.Rout)**  
**Judicial Member-II**

**(Shri S.K.Rout)**  
**Judicial Member-II**

**I agree,**

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

**I agree,**

Sd/-  
**(Shri M.Harichandan )**  
**Accounts Member-I**