

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 98(V)/2017-18**

(Arising out of order of the ld. Addl. CST (Appeal), South Zone, Berhampur, in First Appeal Case No. AA(VAT) 195/2013-14, disposed of on dtd.30.03.2017)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. B.T. Sales,
At Mahajanpur, Paga,
Cuttack. Appellant

-Versus-

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

For the Appellant : Mr. B.R. Panigrahi, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.11.06 to 30.11.2010)

Date of Hearing: 19.03.2021 *** Date of Order: 22.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/ Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur in First Appeal Case No. AA(VAT) 195/2013-14 dtd.30.03.2017 in reducing the assessment order passed by the learned Sales Tax Officer/Joint Commissioner of Sales Tax, Cuttack-II Range, Cuttack (in short, STO/JCST) for the assessment period from 01.11.2006 to 20.11.2010 u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case is that :

The appellant in the instant case M/s.B.T. Sales, Cuttack having TIN-21091300719 deals in trading of spare parts and accessories of Cycle, Motor Cycle, Scooter and Tractors on wholesale and retail basis. On receipt of Audit Visit (AVR), the ld.AO initiated proceeding u/s.42 of the OVAT Act and in response to the notice the dealer neither appeared nor filed any time petition for adjournment of time. From the above fact, the ld.AO opined that the dealer has no intention to produce the books of accounts at his forum. Accordingly, the ld.AO completed the audit assessment on exparte basing on the material allegations available in the AVR. As per the AVR, Mr. Satyabratta Mall, the proprietor of the business was present on the date of audit on 15.12.2010 and it was detected that the dealer has suppressed sales amounting to Rs.50,421/- on sale of 16 items of goods. The Audit team after addition of 5% profit margin determined the sale suppression of Rs.52,942.05. Out of which Rs.7,721.50 added to 4% tax group and Rs.45,220.35 added to 12.5% tax group and submitted the AVR for consideration. The dealer has effected total sales at Rs.1,25,93,974.64. After addition of Rs.52,942.05 towards sales suppression, the GTO of the dealer is determined at Rs.1,26,46,916.69. No deductions are allowed by the ld.AO in the absence of production of documentary evidences by the dealer and the audit assessment was completed which resulted in demand of Rs.1,65,232/- including penalty of Rs.1,10,154.92 imposed u/s.42(5) of the OVAT Act.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur, who in turn, allowed the appeal in part and the assessment was reduced to Rs.26,128/-.

4. Being further aggrieved with the order of the learned FAA/Addl.CST (Appeal), South Zone, Berhampur, the dealer has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the ld.FAA/JCST is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the State-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned First Appellate Authority. He has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The impugned orders of appeal and assessment passed by the forums below are not just and proper under the facts and in the circumstance of the case. The dealer maintains all books of accounts as required under the OVAT Act such as purchase register, sales register, stock register, supported with bills/invoices. The dealer files regular return and deposits the tax dues at the time of filing of returns under the Act. The first appeal order has neither been based on fact and circumstances of the case nor on the points of law. The addition of Rs.52,942.05 as sales suppression is highly illegal and not corroborated with the facts and figures, so it deserves to be set-

aside. The imposition of penalty to the tune of Rs.17,418.95 is arbitrary, illegal, unjustified so also excessive and high. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. The learned Assessing Officer and learned FAA have rightly completed assessment/appeal basing on the statutory provisions under the Act and Rules to the extent the dealer has raised the point. When the statute mandates penalty, there is no need proving mens rea, it has been decided by Hon'ble Apex Court as reported in 18 VST 180, i.e. in the case of **Dharmendra Textiles** as well as in **Jindal Steel case** by Hon'ble Orissa High Court as reported in 54 VST 1. The order of learned FAA is crystal clear with respect to the other points raised by the dealer. He has dealt each and every item which is self-explanatory in nature and requires no further interference by this Tribunal. The learned Addl. Standing Counsel has filed one order of this Tribunal bearing S.A.No.41(ET)/2017-18 of the same dealer. Perused the order filed by the learned Addl. Standing Counsel in which it was held that, the sales suppression as determined by the fora below are accepted

(Page-5, Paragraph-2 of the order). So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. B.R. Panigrahi appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, penalty should be levied one time as per the amended provision of the OVAT Act and this is a fit case, where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed in part on contest. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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

