BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. Nos. 1087 to 1089 OF 2003-04

(Arising out of order of the learned ACST, Puri Range,
Puri in Sales Tax Appeal Nos. AA. 159/160/161 (PUII)/02-03,
disposed of on dated 28.01.2003)

Present: Shri R.K. Pattanaik, Chairman,
Smt. Sweta Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. Padmaja Traders,
At/PO- Balugaon, Dist .Khurda ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri M.L. Agarwal, Standing Counsel (CT)

Date of hearing: 03.03.2020 ***** Date of order: 18.03.2020

O R D E R

Assailing the impugned order dated 28.01.2003 promulgated by the Assistant Commissioner of Sales Tax, Puri Range, Puri (in short, 'the FAA') in Sales Tax Appeal Nos. 159/160/161 (PUII)- 02-03 confirming the assessment orders dated 11.07.2002 of the Sales Tax Officer, Puri-II Circle, Jatni (in short, 'the AA') for the years 1995-96, 1996-97 and 1997-98 under Section 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'the Act'), the appellant has preferred the instant appeals by

knocking the portals of the Tribunal under Section 23(3)(a) of the Act on the grounds inter alia it is unjust, illegal and untenable in law.

2. According to the appellant, the FAA failed to appreciate various aspects of the matter and ignored the explanations offered and consequently, committed a grave error of law by not annulling the assessment orders. It is further contended that the assessments under Section 12(8) of the Act were set in motion without intimating the reasons for issuing notices to him, in spite of the repeated requests made in that behalf, which is apparent on the face of the record and as such, the proceedings itself stand vitiated. The appellant out rightly denied to have received any such intimation from the AA in terms of Section 12(8) of the Act, as has been understood by the FAA. Rather, as per the appellant, a request dated 28.01.2003 was made to the FAA to verify the assessment record in order to ascertain, if at all the AA, before initiation of the proceedings under Section 12(8) of the Act, communicated or intimated him of the reasons or basis about the conclusion vis-a-vis the escapement of assessments, which has not been acceded to. Again, it is contended that the assessment was ante dated by the AA, even though, the proceedings were posted to 17.7.2002 for production of books of account for the purpose of hearing, the fact, which was completely lost sight of by the FAA. It is further revealed that for the assessment years with respect to the alleged transactions, 'D' forms issued by the purchasing dealers were submitted to the AA at the time of hearing of the original assessments under Section 12(4) of the Act which were respecting assessment year 1995-96, had been accepted to and

confirmed in Sales Tax Appeal No. 167 (PUIIB)/97-98 and under the above circumstances, the reassessment on the ground of fake/forged or obsolete 'D' forms so directed and again confirmed by the FAA is absolutely unjustified. Lastly, it is contended that the impugned order dated 28.01.2003 is arbitrary, baseless and, therefore, deserves to be nullified.

3. On the contrary, the State justified the impugned order dated 28.01.2003 on the ground that the reassessments commenced under Section 12(8) of the Act were on account of reliance of obsolete 'D' forms submitted by the appellant. It is contended that so far as compliance of notices under Section 12(8) and the reasons there for with regard to escaped assessment is concerned, no wrong or error has been committed by the AA and as such, the claim of the appellant in this regard is liable to be rejected outrightly.

4. In fact, none appeared for the appellant and in presence of the learned Standing Counsel (CT) appearing for the State the matter is heard ex parte for disposal on merit.

5. There is no denial to the fact that initial assessments were held for the years 1995-96, 1996-97 and 1997-98 under Section 12(4) of the Act. The escapement of assessment was considered to be the cause of action for the proceedings under Section 12(8) of the Act. A fundamental objection has been raised by the appellant contending that since there is no due compliance of issuance of notice indicating reasons for the proceedings under Section 12(8) of the Act, the action of the AA, for that matter, cannot be sustained. On perusal of the

lower Appellate Court record, it is revealed that the appellant appeared to have requested the AA to intimate him of the reasons/basis for the notices under Section 12(8) of the Act which is alleged not to have been attended to. Before the FAA, the appellant referred to an order of the Tribunal dated 30.01.1999 in S.A. Nos. 6-9 of 1994-95 and instances before the ACST, Puri Range, Bhubaneswar, while disposing of Sales Tax Appeal Nos. 286-287 (BHII)/94-95 and one more i.e. S.A. Nos. 3348-3351 of 1995-96 by the Tribunal itself so as to suggest that the proceedings under Section 12(8) of the Act cannot be justified for having no reasons assigned for reopening of the assessments. The question which is to be answered is, whether such compliance under Section 12(8) of the Act, as is contended by the appellant, is really required under law?

6. Under sub-section (8) of Section 12 of the Act for any reason the turnover of a dealer apparently escaped assessment or has been under assessed, the authority concerned, within the time frame, may proceed to assess the amount of tax due from him, in the manner laid down in sub-section (5) thereof and may also direct that the dealer shall pay penalty in case particulars vis-a-vis the turnover found to have been concealed without sufficient cause. In the instant case, on the strength of obsolete 'D' forms and on additional ground that in respect of some purchasing dealers, no transactions having taken place and in respect of one of the agencies, the registration was cancelled w.e.f. 01.04.1997, the AA, on being prima facie satisfied as to escapement of assessments, as is suggested from the record,

initiated the proceedings under Section 12(8) and raised the extra demands against the appellant.

7. The Hon'ble Apex Court in the case of Sales Tax Officer Vs. Uttareswari Rice Mills reported in [1972] 30 STC 567 held and observed that although the opening words used in Section 12(8) are 'if for any reason' and not 'if the Sales Tax authority has reason to believe', the difference in phraseology should not make much material difference, since a reason cannot exist in vacuum; somebody must form the belief that reason exists and looking to the context in which the words are used, it should be that the Sales Tax authority, issuing the notice ought to have the reason to believe that the turnover of a dealer has escaped assessment or has been under assessed and in this regard, the approach has to be practical and not pedantic and any view which would make such expression unworkable must be avoided. A similar view quoted with approval has been expressed by the Hon'ble Court in the case of Konark Cylinders and Containers Private Limited Vs. STO, Bhubaneswar reported in [1993] 90 STC 280 to the effect that the reasons must be recorded with regard to a proceeding for escaped assessment under Section 12(8) of the Act. In fact, in the case (supra), the Hon'ble Court relied upon the decision of the Hon'ble Apex Court in Uttareswari Rice Mills case. In one more decision of the Hon'ble Court in the case of State of Orissa Vs. Ugratara Bhojanalaya reported in [1993] 91 STC 76, it has been held that the expression 'any reason' appearing in Section 12(8) of the Act certainly cannot construe to mean 'no reason' and while directing such a proceeding, the STO has

to indicate as to why such action was necessary and he must at least mention the basis for his prima facie conclusion as to escapement of assessment or under assessment and the entire exercise cannot be result of any whim depending on the ipsi dixit of the assessing officer. So far as the present case is concerned, whether the AA failed to indicate the reasons, while initiating the proceedings under Section 12(8) of the Act, the same is to be determined.

8. The appellant repeatedly demanded the AA questioning the action and the reasons for the reassessment proceedings. From the lower Appellate Court record, the appellant appeared to have moved the AA supported by affidavits to indicate the reasons to reopen the assessments. In the considered opinion of the Tribunal, there is a subtle difference between issuance of notice on being prima facie satisfied and to indicate the reasons for reopening of assessment under Section 12(8) of the Act. If the provision of sub-section (8) of Section 12 of the Act is read in its proper perspective, it would indicate that if for a reason, reopening of assessment is necessary, then the assessee is required to be noticed. In the Uttareswari Rice Mills case, the Hon'ble Supreme Court of India categorically observed that a prima facie conclusion as to the turnover of the dealer which has escaped assessment or has been under assessed and a belief in that respect is to be formed but that does not necessarily mean, reasons are to be indicated in the notice issued to the dealer, while initiating the proceeding under Section 12(8) of the Act. If the Assessing Authority does not indicate as to what prompted him to reopen the assessment and simply directed initiation of the proceeding under

Section 12(8) of the Act, under such circumstances, it can very well be challenged. If some substance or material remained at the disposal of the Assessing Authority which influenced him to reopen the assessment, then such an action cannot be questioned on the ground that the reason(s) not to have been indicated or mentioned in notice received by the assessee. So the conclusion which can be deduced on reading of the aforesaid pronouncements would be that prima facie subjective satisfaction with a belief regarding escaped assessment or under assessment is only to be formed by the Assessing Authority and the law does not mandate that the reasons are to be indicated in the notice issued to the dealer, but if the assessee responds and participates in the proceeding, it would be open for him to seek for the reasons which necessitated such an action under Section 12(8) of the Act. In the present case, the appellant did not appear but merely responded to the notices questioning the proceedings on the ground that it did not carry the reasons. It is affirmed time and again in catena of decisions that notices are not to indicate or carry the reasons, which can well be ascertained, on the participation of the dealer in the proceeding under Section 12(8) of the Act. In the instant case, the appellant remained adamant and consistently, by different means, asked the AA to furnish the reasons for the reassessment for having not been mentioned in the notices issued to him. Notwithstanding the above, from the orders of the AA which have been quoted in the impugned order dated 28.01.2003, it is made to understand that for the assessment years, the reopening of assessments, have been endorsed in view of the defective 'D' forms and adverse reports having been

received against the appellant from different Circles. From the above, it is made to realise that in view of the invalid 'D' forms for the assessment years 1995-96 and 1996-97 and adverse reports received from different Circles vis-a-vis the appellant for the year 1997-98, the AA, initiated the proceedings under Section 12(8) of the Act. So the materials which prompted the AA to form a reasonable belief does appear from the relevant orders dated 29.11.2000 and thereafter, notices have been apparently issued to the appellant. As earlier discussed, in the notices, the AA had no duty enjoined under law to indicate the reasons, which in the present case, could have been elicited and ascertained by the appellant on his appearance and participation in the proceedings initiated under Section 12(8) of the Act. That apart, the appellant having participated and contested the action in appeal, he had all along been well aware of the ground/reason for the reopening of assessments and, therefore, the contention to the effect that notices under Section 12(8) did not assign any reasons, even if assumed for the sake of argument to be one of the requirements under law, pales into insignificance. In any view of the matter, the Tribunal arrives at a logical conclusion that on such a ground the proceedings under Section 12(8) of the Act cannot be challenged and, therefore, the AA as well as FAA apparently did not commit any error or wrong vis-a-vis the escapement proceedings initiated under Section 12(8) of the Act.

9. On to the merits of the case, the AA indicated the details of the agencies in respect of which either the declaration forms to be obsolete and invalid or adverse reports received as to the appellant having no transactions with them

besides cancellation of Registration against an agency w.e.f. 01.04.1997. The law is well settled that burden of proof rests on the dealer to discharge and to prove and satisfy the Assessing Authority as to the genuineness of the declaration forms and the transactions which have taken place with the purchasing dealers. In the case at hand, the appellant did not move the FAA to confront the material documents which are against him, particularly, the 'D' forms and its invalidity and even failed to produce rebuttal evidence. It was the bounden duty of the appellant to agitate such issues before the FAA to contend that the deductions are justified in law. The appellant ought to have produced materials and should have confronted the FAA with regard to first point tax paid goods at the time of determination of taxable turnover. There has been no concerted effort from the side of the appellant either to confront himself to the incriminating materials by moving the FAA or to adduce and produce such rebuttal evidence. No doubt, it was the duty of the AA to bring the adverse reports and such other adverse materials to the knowledge of the appellant, but if that was not allowed, the appellant could have applied for confrontation, while participating in appeal and could not have remained aloof all the years.

10. Having regard to the facts and circumstances of the case and the conduct of the appellant, the Tribunal is of the considered view that the reassessments under Section 12(8) of the Act for the assessment years 1995-96, 1996-97 and 1997-98 have been duly justified by the AA and confirmed by the FAA. Nevertheless, the assessment order dated 11.07.2002 seems ante dated when

the matter was fixed to 17.07.2002 for production of accounts, but on such a lone ground, the reassessment proceedings cannot be set at naught, particularly, considering the fact that the appellant had ample scope and opportunity to defeat the action under Section 12(8) of the Act by confronting to the adverse circumstances and materials appearing against him and also by adducing such other rebuttal evidence. So, the ultimate conclusion of the Tribunal is that the impugned order dated 28.01.2003 does not suffer from any legal infirmity.

11. Hence, it is ordered.

12. In the result, the appeals stand dismissed. Consequently, the impugned order dated 28.01.2003 is affirmed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree,

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

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I