

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

S.A.No. 2607/2003-04

(Arising out of order of the Id. ACST, Appellate Unit,
Bhubaneswar, in First Appeal Case No. AA.506/BH-II/02-03,
disposed of on dtd.04.11.2003)

P R E S E N T :

Sri A.K. Das Sri S. K. Rout & Sri M. Harichandan
Chairman Judicial Member-II Accounts Member-I

M/s. Konark Sanitary,
At- Plot No.730, Nayapalli,
Bhubaneswar.

.... Appellant

-Versus-

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

.... Respondent

For the Appellant : None

For the Respondent : Mr. D. Behura, Standing Counsel (C.T)

(Assessment Period : 1990-91)

Date of Hearing: 22.03.2022 *** Date of Order: 31.03.2022

ORDER

Challenge in this appeal is to the order dtd.04.11.2003 passed by the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (in short, FAA/ACST) in First Appeal Case No.AA.506/BH-II/02-03 wherein the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Bhubaneswar-II Circle, Bhubaneswar (in short, STO/AA) u/s.12(5) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the period 1990-91 raising a demand of Rs.5,24,151/- was confirmed.

2. The case at hand is that, the dealer-appellant M/s. Konark Sanitary deals in sanitary wares and fittings on wholesale and retail basis. Pursuant to notice issued to dealer u/s.12(5) of the OST Act, he appeared before the assessment forum. The learned STO examined the books of account produced by the dealer and also utilised the new case report vide No.11 dtd.31.07.1996 submitted by the IST (Investigation) Unit, Bhubaneswar. The dealer was assessed u/s.12(5) of the OST Act as proceedings were initiated against him as an unregistered dealer. The dealer was granted R.C. No.BH-II-1158 w.e.f. 24.07.1992. The IST of the Intelligence Wing had alleged that the appellant had committed purchase and sale suppression of Rs.39,32,963/-. During course of examination of accounts, learned STO found that on nine different occasions during the period covering 03.07.1990 to 16.08.1990, the dealer-appellant as an unregistered dealer had supplied goods to the tune of Rs.46,73,391/- to the Executive Engineer, CWD, OSEB, Bhubaneswar. In view of such transactions, a raid was organised on dtd.21.12.1995 by the learned STO, Intelligence, Bhubaneswar along with the staff of Bhubaneswar Unit, Jeypore Unit and Berhampur Unit for visiting the business premises-cum-residential office. At the time of visit, the proprietress of the firm M/s. Puja Marketing Company, a sister-concern of the appellant in the instant case was present. The visiting officials detected registers, slips, invoices etc. from her place of business relating to the business of the dealer-appellant. On interrogation, the dealer neither explained about those documents relating to the business nor produced the relevant accounts relating to his business and that of the sister

concerns like M/s. Konark Plaza, M/s. Bath Plaza and M/s. Saniware etc. So, after necessary enquiry and examination of the purchase order numbers shown in the register, the same were tallied with the purchase order number and date issued to the dealer-appellant as per the photocopy of issue register of the period under appeal. After analysing this aspect, the IST (I) concluded that the dealer had actually made transaction with the Government Department as mentioned above during the aforesaid period. At the time of examination of the relevant register, it was found that the dealer had reflected the only sale amount of Rs.7,40,328.09 vide Bill No.838 dtd.29.07.1990 in his books of account. The say of the dealer was that he had not effected any other sale to the above Department. On the contrary, on verification, learned STO accepted the other eight transactions to have been effected by the dealer. As the transactions were reportedly carried with the Government Department and not with any other private concern, learned STO did not prefer to make any enhancement on the suppression estimated and accordingly, completed the assessment by treating the said figures as detected to be both the GTO and TTO determined. The nature of goods being dealt in by the dealer were categorised under 12% tax group, as such the learned STO taxed the entire TTO @12% and imposed surcharge due thereon. Apart from this, he imposed a penalty of Rs.5,000/- u/s.12(5) of the OST Act as the dealer failed to get himself registered under the OST Act.

3. Being aggrieved with such order of assessment, the dealer filed first appeal before the learned ACST, Appellate Unit, Bhubaneswar, who confirmed the order of assessment.

4. Being dis-satisfied with the order of the learned FAA, the present second appeal is preferred by the dealer with the prayer to quash the order of the learned FAA as the same is bad in the eyes of law.

5. No cross objection is filed on behalf of the State-respondent in this case.

6. In spite of service of notice on dealer, neither he appeared nor engaged anybody to defend him before this Tribunal. So, this Tribunal heard the argument advanced by Mr. D. Behura, learned Standing Counsel appearing for the Revenue and proceeded to dispose of the matter on ex-parte basis on merit.

7. Perused the assessment order as well as first appeal order, all the materials available on record, grounds of appeal submitted by the dealer.

8. After have a glance to the evidence elicited on record, it becomes quite evident that the dealer-appellant had supplied materials to the E.E., Civil Works Division, OSEB. This aspect becomes more concrete from the register which was seized from the place of business. With regard to other transactions, even if it was not mentioned in the seized register, but how ld.STO determined that all other transactions were carried on by the dealer-appellant with the governmental department. So, at this juncture, it is to be seen as to what was the basis behind it for which such a conclusion was drawn by the learned STO.

It is only due to the raid jointly conducted by the visiting official for which the real truth came out. So, being a victim to the circumstances, having no other alternative, the dealer

admitted certain transactions which were recorded in the seized register. Bereft of such, noteworthy to mention here that correspondences were also made on this score with the Chairman, O.S.E.B., Bhubaneswar who had issued an office order dtd.03.02.1996 directing the subordinate offices under his administrative control to co-operate in furnishing the required information relating to supplies. After endeavour efforts of Chairman, OSEB, the E.E. furnished some Xerox copies of the bills submitted by the dealer-appellant and its sister concerns. It is obvious that such informations were obtained where payments had already been made to the suppliers. To corroborate this aspect, further correspondence was also made with the Superintendent Engineer, CWD, OSEB, Bhubaneswar. In response to such, the Superintendent Engineer supplied photo copies of different pages of the office issue Register relating to the period from 01.06.1990 to 01.08.1990 which makes it clear that the dealer-appellant had effected necessary supplies. Further it was also ascertained that all the purchase order numbers reflected in the register-in-question were also tallied with the purchase order numbers and dates issued to the dealer as per the photocopy of the issue register 1991. So, the above scenario entails to construe that the dealer-appellant had business transaction with the said Department. When this aspect is well proved, our unanimous view is that no injustice is caused to the dealer when learned STO treated the overall supply as the GTO. Likewise, learned FAA has also rightly appreciated the assessment done by the learned STO and as such, the same needs no interference.

9. In the result, we have no hesitation to disallow the appeal. Accordingly, the appeal filed by the dealer-appellant is dismissed and the order passed by the learned FAA is hereby confirmed.

Dictated and Corrected by me,

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

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

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/
(M. Harichandan)
Accounts Member-I