

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK**

**S.A.No.54(V)/2015-16**

(Arising out of the order of the learned JCST (Appeal), Ganjam Range,  
Berhampur in First Appeal Case No. AAV-45/2013-14,  
disposed of on 13.02.2015)

**Present: Shri A. K. Panda**  
**Judicial Member-I**

**Shri P.C. Pathy**  
**Accounts Member-I**

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

**-Versus-**

M/s. Sree Alankar,  
At- Big Bazar, Berhampur  
Dist- Ganjam. ... Respondent.

For the Appellant: : Mr. M. L. Agarwal. S.C. (C.T.)  
For the Respondent: : Mr. J. Sahoo & Miss K. Sahoo Advocate.

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Date of Hearing: 25.04.2018 \*\*\*\*\* Date of Order: 07.05.2018  
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**ORDER**

The State is the appellant. Order dtd.13.02.2015 passed by the learned Joint Commissioner of Sales Tax (Appeal), Ganjam Range, Berhampur (in short, 'the Ld. JCST) in first appeal case No. AAV-45/2013-14 in modifying the demand of Rs.2,42,280.00 raised by the Ld. Assistant Commissioner of Sales Tax, Ganjam-I Range, Berhampur (in short, 'the Ld. ACST') under section 43 of the Odisha Valued Added Tax Act, 2004 (in short, 'the OVAT Act') for the period 01.12.2009 to 31.12.2009 to Rs. 13,714.00, is under challenge.

2. The brief facts of the case are that the dealer-appellant deals in gold and silver jewellery, gold and silver bullion effecting purchases of goods both from inside as

well as outside the State. The dealer-appellant was provisionally assessed under section 39 of the OVAT Act for the period. Consequent upon receipt of tax evasion report submitted by the Sales Tax Officer, Enforcement Range, Bhubaneswar bearing No.6/10-11 dated 30.11.2010 alleging suppression of sales to the tune of Rs.77,34,213.00, proceeding under section 43 of the OVAT Act was initiated against the dealer-appellant. The allegation levelled against the dealer are as follows:-

- (i) Sales suppression of 4235.763 grams of gold detected from recovered Slip no.23 dated 18.12.2009.
- (ii) Sale suppression of 265.368 grams of gold detected due to shortage in physical stock on 21.12.2009 i.e. on the date of inspection of the Enforcement Official to the place of business of the instant dealer.
- (iii) Sale suppression of 3428.820 grams of silver ornaments detected, by the inspecting officer with reference to stock accounts maintained and quantity of physical stock noted on the date of visit.

As the dealer-appellant could not convincingly explained the suppression alleged against the business, the Ld. ACST completed assessment under Section 43 of the OVAT Act estimating the sale suppression to the tune of Rs.81,52,323.00 raising demand of Rs.2,42,280.00 including penalty amounting to Rs.1,61,520.00 imposed under section 43 (2) of the OVAT Act.

3. Being aggrieved, the dealer-appellant preferred first appeal before the Ld. JCST. The Ld. JCST after careful consideration confirmed the suppression

noted above against serial nos. 2 and 3 but in respect of recovered slip No. 23 appearing against sl. No. 1 his finding was that the mention of sale of gold of 80488.521 grams during the period from 01.04.2009 to 18.12.2009 and the purchase of gold 87295.401 grams during the very period written on the recovered slip no.23 dated 18.12.2009 are less than the disclosed sale of gold of 87895.807 grams and purchase of gold of 90220.978 grams in the books of accounts maintained. The contention taken by the authorised representative on behalf of the dealer-respondent that the slip No.23 belongs to the firm and the opening balance of gold of 79116.012 grams as on 01.04.2009 written on the slip is correct but the other figures like purchase, sale and closing balance written on the recovered slip No.23 have been written mistakenly. Accordingly the Ld. JCST passed order reducing the demand from Rs.2,42,280.00 to 13,714.00. This led the State to come in second appeal before this forum.

4. The State has filed appeal with the grounds that the order of the Ld. ACST appears to be unjust and improper. The State has taken grounds that it is not understood as to why the Ld. JCST had drawn ratio between slip No.23 and books of accounts. The slip No.23 may be related to a definite source, whereas books of accounts depicts purchase from all source. So there is need of detail verification of accounts with respect to all purchases because the concerned dealer had already admitted before the reporting authority that the figures written on slip No.23 excepting opening balance are written mistakenly. So in that case

credibility of the dealer is totally doubtful. It has been contended that though the Ld. JCST had upheld the sale suppression yet accepted misleading figure in respect of slip No.23 so far as purchase suppression is concerned, which is illegal. In the ground it was urged to restore the order of the Ld. ACST and to quash the order of the Ld. JCST.

5. At the time of hearing before the bench the learned Standing Counsel (C.T.) appeared and reiterated the grounds taken earlier and vehemently argued that the Ld. JCST is not justified in ignoring the purchase and sale figures mentioned on the recovered slip No.23 on the ground that the dealer has effected more purchase and more sales than the quantity of purchase and sale reflected on the recovered slip No.23. It has been contended that the slip covers transactions which are over and above the figures of purchase and sale disclosed through the books of accounts.

6. The dealer-respondent has not filed any cross objection in response to the notice issued. However, at the time of hearing an application for condonation of delay was filed which was permitted for the cause of delay has been attributed to the failure on the part of Chartered Accountant in taking proper steps to file cross objection which was unintentional. The cross objection filed by the dealer-respondent at the time of hearing has been taken into consideration. The Ld. Advocate appearing on behalf of the dealer-respondent took the contention that the dealer deals in gold and silver jewellery and gold bullion and silver bullion and has filed returns for the impugned period. It has been

contended that the initiation of reassessment under section 43 is illegal, arbitrary and in violation of natural justice. That the appellant has already accounted for higher amount of purchases and sales in his books of accounts for the period 01.04.2009 to 18.12.2009 than the entries made in mistake by the staff on the slip No.23, non-consideration of which is ex-facie illegal, arbitrary and without application of judicial mind. The ld. ACST has not actually verified books of accounts but passed the order basing on tax evasion report only. The contention of dealer that the shortage of gold of 265.368 grams was due to net weight of studded jewellery taken by inspecting officials instead of gross weight, is not proper. In respect of the shortage of gold and silver jewellery not considered by the Ld. ACST and the ld. JCST is the gross violation of principles of natural justice, thus liable to be quashed in the end of justice. It is further contended that the impugned levy of penalty by a mechanical order without assigning any reason in absence of mens rea is illegal, arbitrary and in gross violation of the rule of law set forth by the Hon'ble Supreme court in very many judgments. **(Hindustan Steel Ltd. Vs. State of Orissa 25 STC 211 (S.C.), Commissioner of Sales Tax, UP Vs. Sanjiva Fabricas [2010] 35 VST 1 [SC], Bharjatiya Steel Industries Vs. Commissioner of Sales Tax, UP [2008] 11 SC 617, The Cement Marketing Co. of India Ltd. Vs. The Assistant Commissioner of Sales Tax, Indore and Others [1980] 45 STC 197 (SC).**

7. Considered the rival contentions, gone through the impugned orders of assessment as well as first appeal, ground of appeal, connected records both of appeal as well as assessment and the cross objection filed by the Ld. Advocate on behalf of the dealer-respondent on the date of hearing. So far as the recovered slip No.23 is concerned the partner of the business on 21.12.2009 explained that this paper has been found from our Chartered Accountant's room and he will explain the contents of this paper on 19.01.2010. The Authorised Representative has explained that the slip No.23 was written by the staff of the instant dealer. The opening balance on gold as on 01.04.2009 has been entered perfectly but the staff has wrongly written the purchases and subsequent sales by mistake. It was explained that purchase of gold bullions was effected by paying through banks and they did not purchase old gold except on exchange with new ornaments and for all sales they issued invoices for which the contents of the slip should not be accepted as suppression either of purchases or of sales. Similarly, before the Ld. ACST at the time of hearing the Authorised Representative of the business stated that except opening balance other figures are mistakenly written on recovered slip No.23 dated 18.12.2009. The Ld. JCST has verified the books of accounts and the contents of the report and came to the finding that the allegation of suppression of both purchase and sale are not sustainable on the ground that the dealer has disclosed through its books of accounts figures of purchase and sales up to the period which is more than that mentioned on the

recovered slip No.23. There is no detection of either payment on account of purchases or receipt of amount on account of sales effected and there is no material available in the record or produced on behalf of the State countering the findings of Ld JCST. The contention of the dealer-respondent against establishment of suppression of shortage of gold and silver ornaments and other silver items are not based on material evidence hence not accepted. The contention taken by the Ld. Advocate that the impugned levy of penalty is of mechanical order without assigning any reason in absence of mens rea is illegal, is not a fact for there are definite detection of suppression of sales hence there is presence of mensrea. Hence levy of penalty as held by the Ld. JCST is considered just and proper.

8. In the result, the appeal is dismissed and the order of the Ld. JCST is confirmed. The cross objection is disposed of accordingly.

Dictated and Corrected by me.

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

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

**I agree,**

**Sd/-**  
**(A. K. Panda)**  
**Judicial Member-I**