



Channels etc effecting purchases of goods both from inside and outside the State. Assessment order in respect of the dealer for the period 01.04.2005 to 31.05.2008 was passed on 26.09.2008 u/s. 42 of the OVAT Act taking into consideration one Audit Visit Report, one fraud case report against the dealer which was reported by STO, Enforcement Range, Balasore on 24.01.2008 on the basis of a report received from Assistant Commissioner of Sales Tax, Enforcement Range, Cuttack and one Vigilance Tax Audit Report of STO Vigilance, Balasore Division, Balasore which resulted in demand of Rs.1,39,060.00 including penalty imposed u/s. 42(5) of the OVAT Act. In course of visit to the place of business of M/s. Rana Sponge Limited an integrated manufacturing plant of MS Angle channel, billet and sponge iron located at Kulei, Parjang in Dhenkanal District, the Asst. Commissioner of Sales Tax, Enforcement Range, Cuttack seized a register at the gate as well as a Rokad from which it was revealed that the dealer has sold different items of iron and steel valued Rs.55,51,920.00 covering 14 transactions (five transactions during 2006-07 and nine transactions during 2007-08) in favour of M/s. Parbati Steel, Balasore, the dealer-respondent of this appeal on out of account. On receipt of such information from the ACST, Enforcement Range, Cuttack, the STO Enforcement, Balasore confronted the matter to the dealer-respondent on 26.12.2007 and noticed that the dealer-respondent had purchased and accounted for 122.460 MT. of MS Angle & MS Channel worth Rs.28,48,005.00 during 2006-07 and MS Angle and MS Channel of 62.950 MT. worth Rs.16,75,344.00 during 2007-08. Thus the dealer-respondent had effected purchase of goods worth

Rs.45,23,349.00 covering the period 2006-07 and 2007-08. But on cross-verification of the transactions reported/informed by the Id. ACST, Enforcement Range, Cuttack it was observed that MS Channel and Angle weighed 218.250 MT. (76.390 MT. on five occasions in 2006-07 and 141.860 MT. on nine occasions in 2007-08) valued Rs.55,51,920.00 as reported by the Enforcement Range, Cuttack had not been accounted for in the regular books of accounts. The STO Enforcement, Balasore Division, Balasore concluded in his report that the instant dealer is a regular customer of the manufacturing dealer hence both have manipulated their books of accounts with mutual connivance and has intentionally suppressed the reported purchases which are established.

On scrutiny of the assessment of the dealer with reference to the observations made in the above three reports the AG Audit reported short levy of tax on the ground that the Id. DCST incorrectly levied tax only on differential turnover of Rs.10,28,571.00 (Rs.55,51,920.00-Rs.45,23,349.00) instead of levying tax on the entire suppressed turnover of Rs.55,51,920.00 which was not accounted for by the dealer. It has been observed by the AG Audit that as the suppression of purchases as reported by the Enforcement Range, Cuttack was in addition to the purchases accounted for by the instant dealer, levy of tax on differential value is not correct inasmuch as it resulted in short levy of tax of Rs.1,80,934.00 @4% on Rs.45,23,349.00 apart from levy of penalty amounting to Rs.3,61,868.00 as per the provisions of the Act.

3. In consideration of the observation of the AG Audit the ld. DCST assessed the dealer-respondent u/s.43 of the OVAT Act for the period on 20.06.2012 raising demand of Rs.5,72,801.00 including penalty imposed u/s. 43(2) of the OVAT Act. Being aggrieved with the order of the ld. Assessing Authority the instant dealer preferred first appeal before the ld. JCST, Balasore Range, Balasore. The ld. JCST carefully considering the contentions of the instant dealer allowed the appeal in full with the observation that “the assessment completed by the ld. Assessing Authority is now reduced to the return figure of the appellant”. The findings of the ld. JCST as per the appeal order are as follows:-

“Considering the facts discussed supra it is convinced that the objection raised by the AG Audit is without any base because as per the report submitted by the Enforcement wing the appellant has effected total purchase amounting to Rs.55,51,920.00 from M/s. Rana Sponge Limited for the total period under assessment, out of which he has disclosed the purchase at Rs.45,23,349.00 leaving a balance of Rs.10,28,571.00 and the ld. DCST has also assessed accordingly under section 42 of the OVAT Act. But the AG Audit has wrongly suggested suppression of the total transaction which is quite illegal. However the contention taken by the appellant is quite convincing as whatever the transaction made with M/s. Rana Sponge Limited, he has accounted for in his regular books of account and disclosed in his periodical returns. If any discrepancy found both the reporting Officer as well as the Ld. DCST might have properly confronted to the third party with reference to his books of account. But both the forum did not do so. The selling dealer

might have manipulated his books of account intentionally to avoid payment of tax as a manufacturer. As the discrepancy found with the selling dealer, he will be responsible for the fault detected at his end, not the purchasing dealer further the purchasing dealer has purchased the products of an inside the State manufacturer by paying due tax at the time of purchase and only availed the ITC on sale. Hence the appellant will not get such benefit by suppressing the inside the State purchase hence the allegation made in the assessment is only on presumption and not supported with any material evidence. In view of the above facts the allegation made and demand raised in the assessment on the basis of the audit objection is deleted for the sake of natural justice and fair play". This led the State to come in second appeal before this Tribunal with the following grounds:

- (i) The order as passed by the ld. first appellate authority appears to be unjust and improper.
- (ii) Both the fora have not discussed that the report submitted by the Enforcement Range is not applicable in this case. The ld. STO had upheld that the explanation submitted by the Authorized Advocate is implausible whereas the ld. first appellate authority has written the report without any proof or confronted at our end charging the tax and penalty is totally illegal and beyond the provision of law, hence the demand raised on the same is dropped. For fairness of justice, being an extended forum he could have done the same at his own level instead of deletion of demand in order to give proper justice in the interest of public. So this should be set-a-side for further re-assessment.

(iii) The order of the ld. first appellate authority may be set-aside for detail verification.

4. Per contra, the ld. Advocate on behalf of the dealer-respondent filed memorandum of cross objection as follows:

I. The filing of second appeal by the State is not just and proper without going through the facts of the case, so the order of the ld. DCST (Appeal) is totally justified and be restored in the interest of justice.

II. The ld. STO at the time of assessment u/s.43 of the OVAT Act raised the demand mechanically without going through the merits of the report submitted by the AG audit, neither confronting nor proving the same simply passed the order giving an remark "implausible" totally reprinting the report without taking into consideration their contention and going through the facts of the report which is totally arbitrary and not in accordance to the provisions of law, but the ld. first appellate authority passed the order after going through the report as well as the assessment order which was totally erroneous, so the order passed by the ld. first appellate authority deleting the illegal demand is totally justified and needs no intervention.

III. The report so submitted by the AG audit on the assessment made u/s.42 of the Act is totally erroneous and basing on the same reopening and assessment u/s.43 of the Act is not according to the provisions of law, as the report so submitted was not authenticated, confronted or proved at any point of time, so the order passed by the ld. JCCT (appeal) after verification of

books of accounts, documents, assessment order passed under both the sections, is totally justified and filing of second appeal by the State is unjust and improper so be dropped in the interest of justice.

IV. The report so submitted by AG audit and subsequent assessment on that basis is totally defective without looking in to the previous assessment order, in which there is total discussion of the report which is a third party hypothetical report not based on concrete findings and basing on the same the demand so raised is totally illegal and not tenable in the eyes of law, so the order passed by the ld. JCST (appeal) considering all the facts and figures and basing on the material facts on record is totally justified and needs no intervention for sake of natural justice.

5. At the time of hearing the ld. Addl. Standing Counsel (C.T.), Shri. S. K. Pradhan appeared and reiterated the grounds already filed. He took the contention that the deletion of tax and penalty and reducing the assessment to the return figure of the appellant is unjust, improper and illegal. He argued that the figure of purchase of goods to the tune of Rs.45,23,349.00 accounted for in the books of accounts in the instant dealer is not covered under the figure reported at Rs. 55,51,920.00 as suppression of purchases for which sales were not accounted for by the manufacturing selling dealer. He also took the contention that for the sake of natural justice the ld. JCST himself could have taken step for third party confrontation instead of coming to the conclusion that both the reporting officer as well as the ld. DCST have not properly taken step for confrontation with the

third party with reference to the books of accounts. He further took the contention that the order of the ld. JCST may be set aside for detail verification.

6. The ld. Advocate appearing on behalf of the dealer-respondent vehemently argued that the order of the ld. JCST is totally justified and be restored in the interest of justice as the second appeal filed by the State is not just and proper being not based on facts. He is permitted to furnish written note of submission wherein he further took the following contentions:

a. The A.G. Audit submitted an objection on the assessment order passed by the STO, Balasore, basing on the report of M/s. Rana Sponge Limited which was earlier submitted by Enforcement Range, Balasore on the basis of findings of Enforcement Range, Cuttack, who found the name of the respondent from a Register detected by them at the time of investigation in the premises of M/s. Rana Sponge Limited

In this context the respondent had already produced the books of accounts and also the transactions made with the Rana Sponge Limited during the time of investigation and assessment. The allegation so raised by the enforcement wing is neither, confronted, confirmed nor proved at our end but totally hypothetical having no basis and nexus to the material facts and books of accounts on record and after considering all these matters the ld. STO passed the order u/s. 42 of the OVAT Act.

But, subsequently the A.G. raised the objection to enforce the report and to raise the entire reported demand, the ld. DCCT, Balasore without applying his own mind and provisions of law reopened the

proceeding and passed the order u/s. 43 of the OVAT Act raising Tax and Penalty as per the objection of the A.G. Audit, which is totally arbitrary and bad in law.

- b. The report submitted by the Enforcement Range is totally ambiguous and unreliable as the same is not supported with any conclusive evidence having no value and invoice nos. rather only vehicle No. and quantity is there and subsequently the value has been worked out by the reporting authority on the basis best known to them and subsequently a report being submitted on that basis with a observation that “As the dealer is a customer of the selling company, they both have manipulated their books of account with their connivance” and on the basis of the report the Ld. DCST passed the order U/s. 43 of the Act after our explanation and submission with a remark “implausible” without substantiating the same, which is totally arbitrary and illegal and the Ld. JCST(A) after going through the books of accounts and records and discussing all the matters in the order deleted the illegal demand, which is totally just and proper and liable to be restored for the sake of justice.

7. Heard the rival contentions, gone through the impugned orders of the ld. forums below, grounds of appeal filed, cross objection filed, written submission filed by the ld. Advocate Shri J. Bal at the time of hearing and the assessment record with reports and appeal record. It is a matter of fact that the observation of the AG Audit has considerable force inasmuch as while assessing the dealer u/s. 42 of the OVAT Act the ld. Sales Tax Officer has not taken pain to come to a definite finding that the purchases

shown in the books of accounts by the dealer-respondent is same with that reported by the Enforcement Official to the extent of Rs.45,23,349.00. No where attempt was made to establish that out of the alleged suppression of purchases to the tune of Rs.55,51,920.00 levelled against the dealer, transactions to the tune of Rs.45,23,349.00 recorded in the books of accounts of the dealer-respondent are same and linked to the alleged purchases. Without proper verification the ld. STO has deducted Rs.45,23,349.00 out of the alleged suppression amount of Rs.55,51,920.00. It is not out of place to State that being informed by the ld. Assistant Commissioner of Sales Tax of Enforcement Range, Cuttack, the STO, Enforcement, Balasore had conducted verification and arrived at a conclusion that the dealer-respondent has not accounted for the transactions reported by the ld. ACST, Enforcement Range, Cuttack. We do not agree to the findings of the ld. JCST that the AG Audit has wrongly suggested suppression of the total transactions reported by the Ld. ACST which is quite illegal. Neither the ld. JCST in his first appeal order nor the ld. STO in the order passed u/s. 42 of the OVAT Act has come to the definite finding that the purchases of goods to the tune of Rs.45,23,349.00 effected from M/s. Rana Sponge Limited covering two years are same with the reported purchases to the extend allowed by the ld. STO u/s. 42 of the OVAT Act. The observation that the reporting officer as well as the ld. Assessing Authority might have confronted to the third party with reference to the books of accounts as made by the Ld. JCST is considered improper. This confrontation could have been made by the ld. JCST at his level as well. The desirability of confrontation is ruled out

for the selling dealer has sold goods out of account without issuing invoices hence the selling dealer in order to cover up its clandestine activities would not own the transactions detected from its place of business. We do not agree to the findings of the ld. JCST who is of the view that the discrepancies found with the selling dealer for which purchasing dealer is not responsible as the dealer-respondent has purchased the products of an inside the State manufacturer by paying due tax at the time of purchase and only availed the ITC on sale. He has held that the allegation made in the assessment is only on presumption and not supported by any material evidence. It is queer to mark that ld. JCST has held that the appellant will not get benefit of ITC by suppressing the inside the State purchase. It is found that the findings of the ld. JCST is totally wrong. He has not properly appreciated the things. The selling dealer had not sold the goods to the dealer-respondent by raising invoice in all cases. In the cases where the purchases were supported by tax invoice the dealer has accounted for the purchases. As it is detected that the selling dealer had effected sale on out of account and the facts were gleaned from the authentic sources like Gate register and daily Rokad, the veracity of alleged purchases cannot be doubted. The STO, Enforcement, Balasore has also established the suppression on valid reasons that the dealer is a regular customer of the selling company. As the dealer-respondent is a purchaser of goods of the manufacturing selling dealer and has effected purchases during the period and has accounted for the purchases effected against tax invoices, it cannot be ruled out that the dealer has not accounted for the purchases effected for which

no tax invoices were issued. The confrontation with the selling manufacturing dealer is considered not desirable as its clandestine transactions were unearthed by the Enforcement Officials and the purchasing dealer-respondent is its regular customer and deals in goods manufactured by the selling dealer. Moreover, it is not understood as to why the Ld. JCST has reduced the assessment to the return figure of the appellant.

The view of the Id. JCST that the dealer will not get benefit of ITC on sale by suppressing inside the State purchase is not a correct assessment of things. In the face of facts, the appeal order passed by the learned JCST is set aside being not just and proper as the dealer-respondent is also reported to have indulged in suppression of sales, as evident from the report of the STO, Vigilance, Balasore Division, Balasore discussed in assessment order passed u/s.42 of the OVAT Act. Denial of transactions by the purchasing dealer in the face of facts duly admitted by Shri Rahul Agarwal, the Manager Accounts-Cum-Authorised Representative of M/s. Rana sponge Limited in the statement recorded from him by the Enforcement Officials of Cuttack Range on S.A. on 28.11.2007 that some sales were effected by them out of account were noted in the checklist containing 36 (thirty-six) sheets of paper duly signed by him (Shri Rahul Agarwal) in which sheets the name of the instant dealer appear cannot be ignored out-rightly. Hence, the necessity of third party confrontation is considered not desirable in this case. The matter is remanded to the Id. DCST to properly verify the books of accounts with reference to the reported suppression of purchases so as to come to a definite

conclusion as to whether the purchases disclosed by the dealer-respondent to the tune of Rs.45,23,349.00 are same with that reported by the Enforcement Officials to that extent excepting differential transactions of Rs.10,28,571.00 or the alleged suppression are in addition to the purchases accounted for by the instant-dealer.

8. In the result, the appeal is allowed in part and the matter is remanded to the ld. DCST for disposal in accordance with law keeping in view our observations made above within a period of four months from the date of receipt of this order.

Dictated and corrected by me,

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

I agree,

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

**Sd/-**  
**(Subrat Mohanty)**  
**Judicial Member-II**