

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 368(V) of 2015-16

(Arising out of the order of the 1d. JCST, Cuttack I Range, Cuttack, in First Appeal Case No. AA(OVAT)19/CUIW/2013-14, disposed of on dtd.31.08.2015)

P r e s e n t:

**Shri S. Mohanty,
1st Judicial Member**

M/s. Chintamani Sahu,
Nayasarak, Cuttack.

... Appellant

- V e r s u s -

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

... Respondent

For the assessment period: 01.04.2012 to 31.03.2013

For the Appellant ... Mr. S.S. Rout, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 18.06.2019 **** Date of order: 21.06.2019

O R D E R

A confirming order of escaped assessment u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) is called in question in this second appeal by the assessee-dealer with a prayer to set aside the determination of suppression and liability fixed by both the fora below as tax due and penalty.

2. On the basis of report submitted by Vigilance Division, the assessee-dealer was subjected to escape assessment u/s.43 of the OVAT Act for the tax period 01.04.2012 to 31.03.2013. The Vigilance Wing in course of their surprise checking in the godown of M/s. Great India Roadways at Angul on 17.08.2012 detected that, the assessee-dealer had sent a consignment of 26 packets of readymade garments to Bargarh. It was found that, the assessee-dealer had booked 91

packets of readymade garments through the aforesaid transporter to the destination at Bargarh on 14.08.2012, 65 packets of goods were already dispatched and 26 packets of goods were detected at the godown of the transporter on 17.08.2012 as mentioned above. The dealer's representative could not produce the purchase bills against those consignments. However, shown as sale invoices raised only on 17.08.2012 vide invoice No.517 for total 91 packets worth of Rs.7,02,240.00 with VAT value at Rs.35,112.00. As goods were consigned on 14.08.2012 corresponding purchase bill was prepared shown to have prepared on 16.08.2012 issued by the selling dealer of local market M/s. Land Mark, Buxi Bazar. The assessing authority accepted the view of Vigilance Wing that, the documents were afterthought, prepared only after its detection by the Vigilance Wing. Further, the dealer was also failed to furnish the challan issued by the selling dealer M/s. Land Mark before the vigilance team on the day of detection. On verification, the assessing authority found total purchase of goods from M/s. Land Mark on 16.08.2012 by the assessee-dealer was worth of Rs.9,66,084.00. The assessing authority, thereafter determined the suppression at Rs.9,98,944.00, tax on it was calculated at Rs.49,947.20 and penalty was imposed at Rs.99,894.00. Thus, he raised demand of Rs.1,49,842.00 against the dealer.

3. Being aggrieved with such assessment, the dealer knocked the door of the first appellate authority. However, in absence of the dealer, the first appellate authority vide impugned order which was an ex parte order confirmed the order of assessing authority.

4. Felt aggrieved by such confirming order of assessment, the dealer knocked the door of this forum by way of second appeal.

5. The main contention of the dealer is, the ex parte order by the first appellate authority is erroneous as proper opportunity of being heard was not provided to the dealer, whereas the assessment u/s.43 being not preceded by any type of assessment u/s.39, 40 or

42 of the OVAT Act, it is not sustainable in law. There was no suppression by the dealer and calculation of suppression of 91 packets of goods is also otherwise factually incorrect.

6. The appeal is heard with cross objection from the side of the Revenue. In the cross objection, Revenue has supported the impugned order and has contended that, the assessment u/s.43 of the OVAT Act is preceded by self assessment u/s.39(2) of the OVAT Act.

7. The questions raised for decision in this appeal are,

- (i) whether the impugned order of the first appellate authority setting the dealer ex parte is not sustainable as the dealer was not provided with proper opportunity of being heard?
- (ii) if the proceeding u/s.43 of the OVAT Act in the case in hand is not maintainable?
- (iii) if the detection of suppression and the calculation of suppressed turnover is erroneous ?

8. It is claimed by the dealer that, on 24.08.2015 the matter was partly heard and then fixed to 26.08.2015. The dealer could not appear on 26.08.2015. Thereafter, on 26.08.2015 the final order was passed. So, the dealer had not given proper opportunity to participate in hearing.

9. Perused the impugned order, the first appellate authority has categorically mentioned that, the case was partly heard on 24.08.2015 and fixed to 26.08.2015. On 26.08.2015, the dealer or his representative did not turn up, so they were set ex parte. Once the case was taken up and partly heard and when the next date of posting was within the knowledge of the dealer, the dealer cannot say that, proper opportunity of being heard was not provided to him. So, the plea taken by the dealer is factually incorrect and not sustainable.

10. So far as the sustainability of the proceeding u/s.43 of the OVAT Act in the case in hand, the claim of the dealer is, the

escaped assessment was not preceded by any other kind of assessment u/s.39, 40 or 42 of the OVAT Act, whereas the claim of the Revenue is, there was self-assessment u/s.39, so the dealer's plea is baseless. The dealer has not raised this question either before the assessing authority or before the first appellate authority. There was no occasion before both the fora below to give any finding whether the proceeding u/s.43 has been initiated or completed by following due procedure. This plea is an afterthought and raised at a later stage. Though this issue is an issue of law can be raised at any stage but it can be say that, the dealer was self-assessed as per sec.39 before this escaped assessment. Taking cue from the authority in Nilachal Ispat case, it can safely be said that, the present proceeding u/s.43 of the OVAT Act is maintainable.

11. Coming to the main question relates to suppression, the exact amount of suppression detected and determined, it is found that, the assessing authority by a threadbare discussion has determined the escaped turnover. The dealer's plea was it had purchased goods from a dealer of the local market under the name and style of M/s. Land Mark on 14.08.2012. The dealer had sent the goods on two lots through its transporter M/s. Great India Roadways and the destination was Bargarh. On 17.08.2012, when 26 packets of the readymade garments of the dealer were detected at Angul by the Vigilance Wing, the dealer failed to produce the purchase bill. The dealer also failed to produce the challan given by the selling dealer M/s. Land Mark before the Vigilance Team. However, the dealer had admitted that the consignment was for 91 packets, 65 packets were already sent and 26 packets were sent on the very day. On cross verification, the assessing authority found the dealer has purchased goods from M/s. Land Mark worth of Rs.9,66,084.00 which was sold in two occasions vide invoice No.517 dtd.17.08.2012 and invoice No.525 dtd.20.08.2012 i.e. for value of Rs.7,37,352.00 (Rs.7,02,240.00 + Rs.35,112.00 VAT) and Rs.3,11,539.00

(Rs.2,96,704.00 + Rs.14,835.00 VAT). The assessing authority took the aforesaid purchase worth of Rs.9,66,084.00 as the suppressed turnover. The claim of the dealer is, as on the very day of detection, only 21 packets of goods were detected without documents, the same amount should have been treated as suppression turnover. On careful perusal of the assessment order, it is found that, the dealer had not disclosed the purchases from M/s. Land Mark and the actual purchases from M/s. Land Mark is of Rs.7,02,240.00 vide invoice No.517 dtd.17.08.2012, whereas the another invoice No.525 dtd.20.08.2012 was also added to the suppressed turnover i.e. worth of Rs.2,96,704.00.

Here, the question is, the invoice No.525 dtd.20.08.2012 good worth of Rs.2,96,704.00 and its addition to suppression turnover if erroneous? The assessing authority has not made any best judgment assessment to determine the suppression covering the period of assessment. When the suppression is confined to particular consignment, then it cannot take into account the future consignment i.e. dtd.20.08.2012. On careful scrutiny of the statement of dealer before the vigilance team, the vigilance report and the assessment order, it is not stated with reason that, the amount under invoice of a future date should be treated as suppression.

12. So, I am of the considered view that, the actual suppression detected was at Rs.7,02,240.00. The tax liability and penalty should be fixed on suppressed goods valued at Rs.7,02,240.00 only. Accordingly, it is ordered.

13. The appeal is allowed on contest in part. The actual suppression is determined at Rs.7,02,240.00. Tax due and penalty be calculated as raised accordingly.

Dictated & corrected by me,

Sd/-
 (S. Mohanty)
 1st Judicial Member

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