

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

Present: **Shri A.K. Dalbehera**, 1<sup>st</sup> Judicial Member,  
**Mrs. S. Mishra**, 2<sup>nd</sup> Judicial Member,  
&  
**Shri S. Mishra**, Accounts Member-II.

**S.A. No.399(V) of 2014-15**

(Arising out of the order of the learned JCST, Ganjam Range,  
Berhampur , in First Appeal Case No.AA(V).79/2013-14,  
disposed of on dtd.27.11.2014)

M/s. R.S. Dresses,  
Main Road, Giri Market,  
Berhampur. ... Appellant

**- V e r s u s -**

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

For the Appellant ... Mr. S.K. Patel, Advocate  
For the Respondent ... Mr. D. Behura, S.C.

-----  
Date of hearing: 13.04.2021 \*\*\* Date of order: 12.05.2021  
-----

**ORDER**

This appeal is directed against the order  
dtd.27.11.2014 passed by the learned Joint Commissioner of  
Sales Tax, Ganjam Range, Berhampur (hereinafter referred to  
as, the learned JCST) in First Appeal Case No. AA(V).79/2013-  
14, wherein he confirmed order of the learned Sales Tax  
Officer, Ganjam I Circle, Berhampur (hereinafter referred to as,

the learned STO) for the assessment period 01.04.2011 to 31.03.2013 u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, the appellant-dealer is a proprietorship concern which deals in readymade garments, hosiery goods, woollen garments etc. on wholesale basis. It effects purchases both from inside and outside the State of Odisha. On the basis of the Tax Evasion Report submitted by the Sales Tax Officer, Vigilance, Berhampur Division, Berhampur, the learned STO issued notice in form VAT-307 for assessment on escaped turnover of the appellant-dealer for the period from 01.04.2011 to 31.03.2013. The appellant-dealer appeared and produced books of account and relevant documents relating to the above tax period which were examined. As per the tax evasion report, the sales and purchase suppression were determined at Rs.1,30,30,524.00. The learned STO found that the said purchase and sales suppression of Rs.1,30,30,524.00 was established and treated the same as the modus operandi of the appellant-dealer in the instant case. So, the learned STO estimated the escaped turnover to the tune of Rs.1,30,30,524.00 being proved actual suppression of the appellant-dealer. However, the learned STO completed the assessment by determining the GTO and TTO at Rs.2,53,84,762.00 and Rs.2,48,45,554.00 respectively being enhanced by adding purchase and sale suppression amounting to Rs.1,30,30,524.00 over and above the gross sale value and thereby raised an extra demand of Rs.17,84,763.00 including penalty u/s.43(2) of the OVAT Act.

3. Being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned JCST who confirmed demand raised by the learned STO amounting to Rs.17,84,763.00. Being further aggrieved by the order of the learned JCST, the appellant-dealer has preferred the second appeal.

4. The appellant-dealer has come up with this second appeal on the grounds that the dispute under adjudication in the present appeal relates to challans found from the business premises of the appellant-dealer which have subsequently been made final bills and further addition of same transactions is illegal; that the learned JCST has not applied his judicial mind while passing the impugned appeal order without considering the submission of the appellant-dealer which is arbitrary; that the appellant-dealer has made all the alleged challans to final bills at the end of each day and has entered into the sales account. However, the vigilance team has not taken the physical stock of the business in order to find truth and genuineness of the alleged challans and slips recovered from the shop room; that the learned STO as well as the learned JCST have committed gross mistake by completing the assessment on presumption and assumption basis, the alleged papers would have been thoroughly enquired prior to completion of assessment for the relevant period and that the learned JCST without going through the prima facie of the case, confirmed the order of the learned STO.

On the other hand, the respondent-Revenue has filed cross objection supporting the order of the learned JCST.

5. Heard the learned Counsel for the appellant-dealer and the learned Standing Counsel for the respondent-Revenue. Perused the materials available on record so also the orders of both the fora below. We also perused the grounds of appeal so also the plea taken in the cross objection. On perusal of the materials available on record it is seen that the learned STO has not gone into the details of the allegations regarding sale suppression and purchase suppression and has mechanically calculated the suppression. The learned STO in his order represented in a tabular form the details of 27 nos. of bill books. In Sl. No.16 the period relates to 06.06.2013 to 26.06.2013 where the sale amount involved is Rs.5,73,072.00. But the assessment period relates to 01.04.2011 to 31.03.2013. So entry No.16 is beyond the period of assessment. The learned JCST without verifying the same mechanically confirmed the order of assessment. The learned STO was strongly inclined to go by the tax evasion report without proper verification of the same and calculated the suppression which is wrong. Hence it is necessary to delete the sale amount involved amounting to Rs.5,73,072.00 relating to the period 06.06.2013 to 26.06.2013 for which it is necessary to remand the case to the learned STO for necessary computation and calculation of tax liability of the appellant-dealer.

6. While coming to the question of penalty the appellant-dealer is found guilty of purchase suppression and sale suppression. The appellant-dealer being a wrong doer attempted to evade the payment of tax by suppression of

turnover. Thus, it can be said that penalty u/s.43(2) of the OVAT Act is to be levied after calculation of tax.

7. In view of the aforesaid findings it is necessary to remand the matter to the learned STO for necessary recomputation by deleting the sale amount involved pertaining to the period 06.06.2013 to 26.06.2013 amounting to Rs.5,73,072.00 and calculation of tax liability of the appellant-dealer. Hence, it is ordered.

8. The appeal is allowed in part and the impugned order is modified to the extent indicated above. The matter is remitted to the learned STO who is directed to make a fresh computation as regards the tax liability of the appellant-dealer in view of the observations made above preferably within a period of three months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

I agree,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II