BEFORE THE CHAIRMAN, ODISHA SALES TAX, TRIBUNAL: KATAKA

No. 87(ET)/2012-13

(Arising out of order of the learned Deputy. Commissioner of Sales Tax, Ganjam Range, Brahmapur, in Appeal No. AAE. 34/2011-2012, disposed of on 07.07.2012)

Present: **Shri G. Sharma, Chairman**

M/s. M.J stones
At: Naidupali Po: Raijhola
Dist : Ganjam, Odisha … Appellant

-Versus-

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

For the Appellant : None
For the Respondent : Mr. S.K Pradhan, Addl. S.C. (CT)

Date of hearing: 18.09.2026 *** Date of order: 12.10.2026

ORDER

This appeal has been filed by M/s. M.J. Stones (hereinafter referred to as the "Dealer") challenging the legality and propriety of the order dated 07.07.2012 passed by the Ld. Deputy Commissioner of Sales Tax, Ganjam Range, Brahmapur (hereinafter referred to as the "First Appellate Authority" or "FAA") in Appeal No. AAE. 34/2011-2012.

2. It is pertinent to note that despite due service of notice and sufficient opportunities being extended to the dealer to present their case, neither the dealer nor their Ld. Counsel appeared or participated in the

proceedings. Consequently, this matter is taken up for adjudication as an ex-parte order based on the available records, memo of appeal, and written submissions on file.

3. The brief fact relevant for disposal of this appeal runs thus:

The dealer is engaged in the business of cutting and polishing granite slabs and selling the same. Following Investigation Report No. 80 dated 31.07.2010, the Local Assessing Officer (LAO) issued a notice in Form E-32 under the Orissa Entry Tax (OET) Act. After due confrontation, the Assistant Commissioner of Sales Tax (Assessing Authority) established a purchase/sale suppression of Rs. 1,63,880/- under the OVAT Act and correspondingly under the OET Act, raising a total demand of Rs. 9,834/-, which included a penalty of Rs. 6,556/-. Aggrieved by the assessing authority's order, the dealer preferred a first appeal. The FAA confirmed the purchase suppression of Rs. 1,63,880/- under the OET Act, aligning it with the findings under the OVAT Act, and upheld the demand. Being further aggrieved, the dealer preferred the present second appeal before this Tribunal.

4. The dealer has challenged the impugned order through their grounds and memo of appeal on the following primary pillars i.e., disputed Exercise Book, the demand raised on the basis of an alleged

seized exercise book has no nexus or link to the business operations of the dealer and actually belonged to the workers. The vigilance team failed to conduct a proper physical stock verification, as granite pieces were scattered haphazardly at the business premises. Interrogation by the vigilance authority could not be properly answered because raw goods received for production and finished goods are processed, turned around, and dispatched within a rapid 7-day window. Treating this fast inventory cycle as "purchase suppression" is legally flawed and leads to a duplication of figures.

5. In the subsequent memo of submission, the dealer questioned the initiation of proceedings under Section 43 of the OVAT Act, arguing there was no prior assessment under Sections 39, 40, 42, or 44. It is acknowledged that a connected matter under the OVAT Act (S.A. No. 135(V) of 2012-13) arising from the same set of facts was previously disposed of by this Tribunal on 26.12.2017 on merits, where the dealer's appeal was dismissed and the FAA's order was confirmed.

6. The Ld. Addl. Standing Counsel vehemently opposed the contentions of the dealer supporting the order of the First Appellate Authority. It was submitted that the dealer's claims regarding the exercise book and inventory turnover are bare denials unsupported by any credible documentary evidence, primary records, or books of account. The state

urged that the concurrent findings of the lower authorities are well-reasoned and sound, warranting no interference by this Tribunal.

7. To effectively resolve this dispute, this Tribunal frames the following points for adjudication:

- *Whether the ex-parte proceeding against the dealer is sustainable in law given their non-appearance despite notice?*
- *Whether the detection of purchase/sale suppression of Rs. 1,63,880/- and the consequential demand under the OET Act are legally sustainable?*
- *What order, if any, is required?*

8. Upon a careful perusal of the case records, assessment orders, and the appellate orders, this Tribunal notes that reasonable and adequate opportunities of being heard were afforded to the dealer. However, the dealer chose not to enter an appearance or assist the bench through counsel.

9. Crucially, this Tribunal takes judicial notice of its own earlier coordinate-bench decision dated 26.12.2017 passed in S.A. No. 135(V) of 2012-13 (the parallel OVAT proceeding concerning the exact same transaction and period). In that judgment, this Tribunal conclusively held that the purchase and sales suppression stood firmly proved due to the

clear acknowledgment of the driver regarding the seized notebooks and the transportation of granite blocks. The unexplained shortage of 2,198 sq. ft. of granite slabs valued at Rs. 1,38,800/- remained unsubstantiated by any verifiable documentary evidence from the dealer.

10. The core of the dispute revolves around the evidentiary value of the seized materials and the physical stock discrepancy. The dealer's plea that the seized exercise book belonged to workers and that inventory moves too fast for proper auditing remains an unsubstantiated assertion. In tax jurisprudence, when statutory authorities establish suppression based on contemporaneous records (such as driver statements and physical stock audits), the burden shifts heavily onto the dealer to rebut the same with positive, corroborative account books. The dealer has failed to discharge this burden throughout the assessment and first appeal stages. Furthermore, because the parallel tax proceeding under the OVAT Act involving identical factual matrix, suppression amounts, and business operations has already reached finality via this Tribunal's order dated 26.12.2017, re-litigating or arriving at a contradictory finding under the OET Act would create judicial inconsistency. The foundational facts of suppression are already judicially settled.

11. In view of the foregoing facts, recorded observations, and the conclusive findings rendered in the connected tax proceedings, the appeal

filed by M/s. M.J. Stones is hereby dismissed. The impugned order of the First Appellate Authority confirming the demand under the OET Act is hereby affirmed. The cross objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman