

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 67 (VAT) of 2019

&

S.A. No. 38 (ET) of 2019

(Arising out of orders of the learned Additional CST (Appeal), Central Zone, Odisha, Cuttack in Appeal Case Nos. AA- 106211621000011/16-17 & AA- 108211621000012/16-17 disposed of on dated 02.03.2019)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Jay Maa Durga Furniture,
FCI Chhak, NALCO, Angul ... Appellant

-Versus-

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

For the Appellant : Sri S. Nanda, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 01.03.2021 ***** Date of order: 05.04.2021

ORDER

Since parties are same and a common tax period is involved, the aforesaid appeals are hereby disposed of combinedly.

S.A. No. 67 (VAT) of 2019:

2. Present appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') is at the behest of the dealer assessee challenging the impugned order dated 02.03.2019 promulgated in Appeal Case No. AA- 106211621000011/16-17 by the learned Additional Commissioner of

Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, 'FAA') which is directed against the order of assessment dated 28.02.2016 passed under Section 43 of the Act by the learned Deputy Commissioner of Sales Tax, Angul Circle, Angul (hence called 'AA') for the tax periods 01.04.2013 to 31.03.2015 inter alia on the grounds that it is bad in law and thus, liable to be interfered with.

S.A. No. 38 (ET) of 2019:

3. Instant appeal under Section 17(1) of the Odisha Entry Tax Act, 1999 (hereinafter referred to as 'the OET Act') is also filed by the dealer assessee assailing the impugned order dated 02.03.2019 promulgated in Appeal Case No. AA- 108211621000012/16-17 by the FAA vis-a-vis order of assessment dated 28.02.2016 for the same tax period passed under Section 10(1) of the OET Act by the AA.

4. In fact, the dealer assessee is proprietorship concern and manufacturing-cum-trading unit which carries on business in iron furniture and other items and also procures raw materials for places inside the State. It is made to understand that the place of business of the dealer assessee was inspected and at the end, a Tax Evasion Report (in short, 'TER') dated 08.06.2015 was framed and submitted. On receipt of TER, the dealer assessee was instructed to produce the books of accounts for the periods in question. After verification of accounts and considering the materials referred to in the TER, the AA raised additional tax demands of ₹7,17,593.00 under the Act; and ₹1,80,042.00 under the OET Act. Being dissatisfied, the dealer assessee knocked the doors of the FAA, but the attempts

were in vain as the appeals were dismissed and assessments stood confirmed. Being unsuccessful, the dealer assessee filed the present appeals against the impugned orders dated 02.03.2019.

5. State filed cross-objections and justified the decision of the authorities below and it is contended that during inspection, good amount of material evidence was retrieved, showing purchase and sale suppressions and also suppression relating to stock and there was no plausible explanation offered by the dealer assessee and under such circumstances, the additional demands are to be upheld.

6. It is made to appear that the inspection of the premises of the dealer assessee led to the recovery of loose written and printed slips of 23 pages and a note book of 100 pages, considering which, suppression was alleged. Since the dealer assessee had no stock register maintained, the physical stock on the date of visit was treated as unaccounted for stocks. As a result of inspection, it was claimed that the dealer assessee effected sales clandestinely, a conclusion which was accepted by the authorities below due to want of proper explanation.

7. The learned Counsel for the dealer assessee contended that the FAA failed to consider all the grounds and points raised and without any basis, upheld the assessments. It is also contended that tax assessed on the entire stock held on the date of visit was confirmed without considering the fact that stocks were related and covered a period of 10 to 15 years. On the contrary, the learned Standing Counsel (CT) for the State, adverting to the cross-objections filed,

contended that purchase and sale suppressions and suppression relating to unaccounted stock could be ascertained during the inspection which resulted in framing the TER, basing upon which, reassessment was made and all the incriminating materials were confronted to but there was no satisfactory explanation received back from the dealer assessee and finding no other way out, the AA completed the assessments.

8. The contention of the dealer assessee is that the materials recovered during inspection have not been properly examined and verified. The discrepancies so pointed out were apparently brought to the notice of the dealer assessee at the stage of assessment and a response was demanded. The dealer assessee seems to have replied with reference to the slips and the note book and also regarding physical stock which was allegedly found not to have been accounted for. The AA examined the loose written slips and other transactions as allegedly shown in the note book and ultimately concluded that purchase suppression of ₹2,22,580.00 as alleged vide slip Nos. 6, 7 & 8 and indicated in the TER to be incorrect and the amount ought to be ₹1,02,700.00 and further held that tax under Section 11 or 12 of the Act cannot be charged on such purchases, as goods purchased had been reflected in the purchase register and held on stock but not sold. As against slip No. 16, a similar view was expressed by the AA. With regard to sale suppression of ₹48,000.00, it was also taken cognizance of on the claim of the dealer assessee that goods so sold were returned due to some defects and therefore, no final sale was shown in the register. Regarding the note book

comprising of 100 pages relating to the periods 2013-14 and 2014-15, the AA, however, detected sales suppression. According to the AA, some were estimate slips and others were related to sales transactions, but unaccounted for and thus, had to be treated as suppression. The dealer assessee appears not to have submitted the bank statement, production of which could have proved the actual transactions effected. With respect to transactions at Sl. Nos. 725, 757 and 784, the dealer assessee claimed it to be quotations which were cancelled subsequently, but according to the AA, the bills contained price of goods, advance payment, date of delivery, inasmuch as, tax was shown to have been collected against Sl. No. 784 which made to suggest that the dealer assessee collected payments at different times on the strength of slips and marked the slips cancelled on receiving payments. However, it is not clearly discernable from the record, if the AA did conduct any enquiry as to whom the goods allegedly shown to have been sold, while examining the incriminating materials collected during the inspection. Whether, as against a particular transaction, sale was duly effected and as to who was the purchasing dealer and in that respect, if any enquiry was made by the AA is not clearly evident from the orders of assessment. It is the bounden duty of the AA to conduct a threadbare inquiry, while referring to the materials received along with the TER. Simply basing on the TER and without conducting an elaborate enquiry vis-a-vis the alleged transactions with the confirmation that purchase and sale suppressions to have taken place, it would not at all be a wise decision to accept its findings. On examination of all the materials, an explanation of the dealer assessee is also to be

obtained before accepting the TER and imposing penalty which is subject to the satisfaction of the escapement or under-assessment of tax, a jurisdiction which is again discretionary in nature considering Section 43(2) of the Act. Similar is the rigour of law with respect to Section 10(2) of the OET Act. The FAA, however, appears to have assumed that penalty under Section 10(2) of the OET Act to be mandatory in nature which is conspicuously reflected in the impugned order dated 02.03.2019.

9. Having regard to the above, the Tribunal is of the ultimate conclusion that when good number of documents are referred to for the purpose of ascertaining and fixing tax liability, its detailed examination and verification is absolutely needed and an elaborate enquiry is also required to be conducted before confirming purchase and sale suppressions as alleged in the TER. It is also of the view that a reasonable opportunity should be provided to the dealer assessee to submit an explanation vis-a-vis the alleged suppressions and stock discrepancy. Having concluded so, it would be just and proper that a fresh reassessment is held vis-a-vis the dealer assessee for the alleged periods with an expectation that the AA shall hold a detailed enquiry on the alleged transactions to find out as to who were the buyers or purchasing dealers and if at all, the transactions in question really culminated into sales and then to arrive at a decision regarding suppression or otherwise, which, in the humble view of the Tribunal, would subserve the purpose and meet the ends of justice.

10. No separate findings are rendered with regard to entry tax liability in view of the discussions made herein above.

11. Hence, it is ordered.

12. Thus, the appeals stand allowed. As a necessary corollary, the impugned orders dated 02.03.2019 passed in Appeal Nos. AA-106211621000011/16-17 and AA-108211621000012/16-17 are hereby set aside. Consequently, the matters are sent back to the AA for fresh assessments as to the tax liability vis-a-vis the dealer assessee for the relevant periods keeping in view the observations of the Tribunal and to pass appropriate orders under both the Acts in accordance with law, preferably, within a period of three months from the date of receipt of the above order. The cross-objections filed by the State are disposed of, accordingly.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman