

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

**S.A. No. 202 (ET) of 2014-15**

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range,  
Bhubaneswar, in First Appeal Case No. 108221422000003,  
disposed of on dtd.28.08.2014)

**P r e s e n t :**

Shri A.K. Panda,  
1<sup>st</sup> Judicial Member

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

... Appellant

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

M/s. Kanchan Jewellers,  
36-D & F, Ashok Nagar,  
Bhubaneswar.

... Respondent

**S.A. No. 208 (ET) of 2014-15**

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range,  
Bhubaneswar, in First Appeal Case No. 108221422000003,  
disposed of on dtd.28.08.2014)

M/s. Kanchan Jewellers,  
36-D & F, Ashok Nagar,  
Bhubaneswar.

... Appellant

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

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

... Respondent

For the Revenue : Mr. M.L. Agarwal, S.C.

For the Dealer : Mr. D.R. Mohapatra, Advocate

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Date of Hearing: 25.05.2018

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Date of Order: 28.07.2018  
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**ORDER**

As both the appeals bearing S.A. No. 202 (ET) of 2014-15 and S.A. No. 208 (ET) of 2014-15 arose out of the self-same order, both are disposed of by this common order.

2. S.A. No. 202 (ET) of 2014-15 has been preferred by the Revenue whereas S.A. No. 208 (ET) of 2014-15 has been preferred by the dealer-assessee against the order dtd.28.08.2014 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (hereinafter referred to as, the learned DCST) in First Appeal Case No. 108221422000003. By the said order, the learned DCST has allowed the first appeal in part by reducing the balance tax demand and penalty to Rs.40,824.00 from Rs.2,22,941.00 raised by the learned Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as, the learned STO) in an assessment u/s.9C of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) in respect of the dealer-assessee for the assessment period from 01.12.2008 to 30.11.2012.

3. The dealer-assessee M/s. Kanchan Jewellers bearing TIN-21821112089 is a trader of gold bullion, gold jewellery, silver bullion and silver jewellery and in course of business transaction it used to effect purchase both from inside as well as from outside the State and used to effect sale only inside the State. Basing upon an Audit Visit Report (in short, the AVR) submitted by the STO, Tax Audit Unit, Bhubaneswar Range, Bhubaneswar, the learned STO initiated a proceeding u/s.9C of the OET Act against the dealer-assessee for its assessment for the assessment period from 01.12.2008 to 30.11.2012 and issued a notice in form E-30 to appear and to produce the books of account and in response to the notice the proprietor of the dealer-assessee appeared and produced the books of account which were duly been examined in the light of the allegation of the AVR. During assessment, though the proprietor of the dealer-assessee denied the allegations leveled in the AVR, on examination of the books of account and the other relevant documents, the learned STO determined the

purchase suppression to be Rs.20,64,007.00. Similarly, he also found out that, the dealer-assessee has not added freight charges to determine the purchase value of the scheduled goods brought into the local area as shown in its return and accordingly determined the same @ 2% of the value of the goods and accordingly determined the TTO at Rs.29,44,58,156.14 and levied tax thereon @ 1% which came to be Rs.29,44,581.26. As the dealer-assessee had already paid tax to the tune of Rs.28,70,268.00 earlier, the learned STO raised the balance tax demand of Rs.74,313.26 and also imposed a penalty of Rs.1,48,627.00, equal to twice of the balance tax demand u/s.9C(5) of the OET Act and as such both the balance tax demand and penalty came to be Rs.2,22,941.00 in total, to be paid by the dealer-assessee.

4. After the assessment, being aggrieved with the order of the learned STO, the dealer-assessee preferred an appeal before the learned DCST bearing First Appeal Case No. 108221422000003. On hearing and on consideration of the materials available on record, the learned DCST accepted the contention of the dealer-assessee to some extent and re-determined the stock discrepancy in gold ornaments to be 196.223 gms. and silver ornaments to be 1130.000 gms. Similarly, he also found out the addition of freight charges @ 2% of the value of the goods to be excessive and re-determined the same to be Rs.6,90,000.00 on examination of the documents produced by the dealer-assessee and also re-determined the TTO accordingly and levied tax thereon at the appropriate rate and finally his order resulted in reduction of the balance tax demand and penalty to Rs.40,824.00 from Rs.2,22,941.00 as raised earlier by the learned STO. But, thereafter, being aggrieved with the order of the learned DCST, the dealer-assessee as well as the Revenue has preferred two separate second appeals as indicated above.

5. Both the parties have filed their cross objections supporting their respective grounds of appeal.

6. Heard both the sides. The learned Standing Counsel appearing for the Revenue submitted that, the learned DCST has not considered the matter in its proper perspective and has reduced the freight charges to a

considerable amount from the amount as determined @ 2% of the value of the goods by the learned STO, without any valid reason and the entire order passed by him being erroneous and not being based upon the materials available on record, the same is liable to be set aside and the order passed by the learned STO being proper and justified is liable to be restored. On the other hand, the learned Counsel appearing for the dealer-assessee submitted that, the goods in question i.e. the gold ornaments and the silver ornaments are precious goods and the same has been brought personally by the dealer-assessee after being purchased on proper invoices and hence the further addition of the freight charges on the value of the goods to determine its 'purchase value' is quite improper and unjustified. On such submission, he prayed to allow the appeal preferred by the dealer-assessee by deletion of freight charges from the value of the goods to determine its 'purchase value'.

7. Perused the materials available on record including the orders of both the learned forums below. As regard the stock discrepancy of 648.490 gms. of gold ornaments as determined by the learned STO during assessment, the learned DCST has found out that, stock discrepancy of 446.250 gms. of gold ornaments has already been considered in the earlier assessment period and there is a chance of weight variation @ 3% and accordingly he re-determined the stock discrepancy of the gold ornaments and the finding and order arrived at by him in this regard has already been confirmed by this forum in S.A. No.321 (V) of 2014-15 and S.A. No.352 (V) of 2014-15 which relates to the assessment of the dealer-assessee u/s.42 of the Orissa Value Added Tax Act, 2004 for the same assessment period.

8. But, so far as the addition of freight charges in the value of the goods to determine the purchase value is concerned, it is not in dispute that, 'purchase value' has clearly been defined in sec.2(j) of the OET Act and the same includes the value of the goods as ascertained from the original invoice/bills and includes insurance charges, excise duties, counter veiling charges, sales tax or value added tax, transport charges, freight charges and all other charges incidental to the purchase of such goods. As the dealer-assessee has not included any freight charges in the value of the goods, the

learned STO added the same @ 2% of the value of the goods to determine the purchase value for the purpose of levy of Entry Tax. But, on consideration of the materials available on record, the learned DCST found out that, the goods in question has been purchased mainly from Mumbai and Kolkata and has been brought by the proprietor of the dealer-assessee or his authorized agent by going there personally and as such the determination of the freight charges @ 2% of the value of the goods by the learned STO is quite excessive and accordingly he re-determined the freight charges on consideration of 230 trips of journey (both up and down) and by calculating the expense at the rate of Rs.3,000.00 per trip and the same came to be Rs.6,90,000.00. On further examination of the entire materials available on record, it is seen that, the determination of the freight charges by the learned STO @ 2% of the value of the goods is quite excessive. On the other hand, the determination of freight charges amounting to Rs.6,90,000.00 by the learned DCST is totally based upon the materials available on record and the same clearly appears to be proper and reasonable in the facts and circumstances of the present case. As the determination of the freight charges by the learned DCST is not a guess work, rather the same is purely based upon the materials available on record, this forum is of the considered opinion that, the order passed by him needs no interference.

9. In view of the above discussion, both the appeals are found to be devoid of merit and hence both are hereby dismissed. Cross objections are disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(A.K. Panda)  
1st Judicial Member

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