

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

S.A. No. 215 (ET) of 2015-16

(Arising out of the order of the learned JCST (Appeal), Cuttack II Range,
Cuttack, in First Appeal Case No. AA/21/OET/CUII/2013-14,
disposed of on dtd.12.01.2016)

P r e s e n t :

Shri A.K. Panda,
1st Judicial Member

M/s. Rajashree Minerals & Chemicals,
At:- Plot No.B/06-2/190,
New Industrial Estate, Jagatpur,
Cuttack.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. D.S. Jethi, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 03.04.2018

Date of order: 13.07.2018

ORDER

This appeal is directed against the order dtd.12.01.2016 passed by the learned Joint Commissioner of Sales Tax (Appeal), Cuttack II Range, Cuttack (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA/21/OET/CUII/2013-14, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Cuttack II Circle, Cuttack (hereinafter referred to as, the learned STO) passed in an assessment u/s.10 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as, the OET Act) in respect of the appellant-dealer for the assessment period from 01.04.2008 to 31.12.2010 raising a tax demand and penalty amounting to Rs.46,926.00.

2. The appellant-dealer bearing TIN-21101300568 is a manufacturer and seller of Alumina Ferric-grade-II, Bentonite powder and fire clay powder. To manufacture these goods, the appellant-dealer used to purchase raw materials both from inside as well as from outside the State and also used to sale the finished products only inside the Sate. Basing upon an Audit Visit Report (in short, the AVR) submitted by the Asst. commissioner of Commercial Taxes, Enforcement Range, Cuttack, the learned STO initiated a proceeding u/s.10 of the OET Act and also under the provisions of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) against the appellant-dealer for its assessment for the period from 01.04.2008 to 31.12.2010 and issued a notice to appear and to produce the books of account and in response to the notice, the proprietor of the appellant-dealer firm appeared and produced the books of account which were duly been examined in the light of the allegations of the AVR. As per the allegation of the AVR, the audit officials visited the manufacturing unit of the appellant-dealer on 30.10.2010 and when the books of account could not be produced, they recovered and seized a number of incriminating documents showing suppression on the part of the appellant-dealer. On being noticed, though the proprietor of the appellant-dealer firm appeared before the visiting officials, he could not be able to clarify the discrepancies and as such the AVR was submitted showing allegations of certain amount of purchase and sale suppression. During assessment, as the proprietor of the appellant-dealer firm failed to clarify the allegations leveled in the AVR on confrontation, the learned STO accepted the same as true and genuine on examination of the books of account and the other relevant materials and on calculation determined the escaped turnover to be Rs.15,64,194.00 and after accepting the same as TTO, levied Entry Tax thereon @ 1% which came to be Rs.15,641.94. Then, he also imposed a penalty of Rs.31,283.88, equal to twice of the tax demand u/s.10(2) of the OET Act and as such both the tax demand and penalty came to be Rs.46,926.00 in total, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned JCST bearing First Appeal Case No. AA/21/OET/CUII/2013-14. On hearing and on examination of the entire materials available on record, the learned JCST found no merit in the contentions of the appellant-dealer and accordingly dismissed the appeal by confirming the order of the learned STO. Thus, again being aggrieved with the order of the learned JCST, the appellant-dealer has preferred this second appeal.

4. Cross objection has been filed by the respondent-Revenue supporting the orders of the learned forums below.

5. Heard the learned Counsel appearing for the appellant-dealer and the learned Standing Counsel appearing for the respondent-Revenue. The learned Counsel appearing for the appellant-dealer submitted that, though the appellant-dealer has clarified each and every allegations leveled against it in the AVR and though there is no convincing evidence against it relating to the purchase and sale suppression, both the learned forums below have arrived at a wrong conclusion of suppression on its part by accepting the AVR blindly. He further submitted that, the learned forums below have not considered the matter in its proper perspective and have passed the orders and as the orders passed by them are erroneous and are not based upon the materials available on record, the same are liable to be set aside. On the other hand, the learned Standing Counsel appearing for the respondent-Revenue supported the orders of the learned forums below and urged for dismissal of the appeal.

6. Perused the entire materials available on record including the orders of both the learned forums below. From the materials available on record, it is seen that, the Asst. Commissioner of Commercial Taxes, Enforcement Range, Cuttack along with some other officials conducted an audit visit in the manufacturing unit of the appellant-dealer on 30.10.2010 and asked for production of the books of account for the purpose of examination. But, when the authorized person looking after the business activities of the appellant-dealer failed to produce the books of account, the

visiting officials recovered certain incriminating documents like one pioneer account book, one diary, paper craft note pad, one classmate expression note book, one good day green book, one Anjana day book, one spiral pad, one weigh bridge certificate book and some loose written slips and asked for clarifications of the contents of the documents from the proprietor of the appellant-dealer firm. But, instead of denying the contents of the seized documents and the consequential transactions arising out of the same, the proprietor admitted it and as such the visiting officials recorded a detail statement of him in token of his admission. During assessment, though the proprietor of the appellant-dealer firm appeared before the learned STO and put forth his clarifications denying the allegations in toto, he did not accept any of the clarifications to be genuine on consideration of it to be an afterthought on the part of the appellant-dealer and accordingly determined the escaped turnover and levied tax thereon at the appropriate rate. Similarly, at the first appeal stage, though the appellant-dealer put forth its contentions relating to the entire seized documents, the learned JCST did not accept any of the contentions to be true and genuine on examination of the materials available on record and accordingly confirmed the finding and order arrived at by the learned STO. Though, a dealer is duty bound to produce the books of account before the competent authority on demand as per the provisions of law, the appellant-dealer has failed to produce the same before the visiting officials during their visit. Even, on being asked to clarify the contents of the seized documents and the consequential transactions arising therefrom, instead of denying the same, the proprietor of the appellant-dealer firm admitted it by giving a written statement. During their visit, the visiting officials had taken note of the stock of goods and on examination, the same were found not to be tallied with the books of account. Not only at the stage of assessment but also at the first appeal stage, the contentions taken by the appellant-dealer relating to each and every document have been examined meticulously in detail and both the learned forums below have arrived at a concurrent finding of purchase and sale suppression on its part. On a close scrutiny of the entire materials

available on record, the finding and order arrived at by the learned forums below in connection with the proceeding under the provisions of the OVAT Act in respect of the appellant-dealer has already been confirmed by this forum. The present proceeding is a consequential one of the said proceeding. Thus, basing upon the materials available on record, a conclusion can clearly be arrived that the learned forums below have considered the matter in its proper perspective and have passed a reasoned order and the same being proper and justified needs no interference of this forum.

7. In view of the above discussion, the appeal fails and as such the same is hereby dismissed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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