

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

S.A. No. 321 (V) of 2014-15

(Arising out of the order of the learned DCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in First Appeal Case No. 106221422000004,
disposed of on dtd.28.08.2014)

P r e s e n t :

Shri A.K. Panda,
1st 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. 352 (V) of 2014-15

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

Date of Hearing: 25.05.2018 **** Date of Order: 26.07.2018

O R D E R

As both the appeals bearing S.A. No.321 (V) of 2014-15 and S.A.
No.352 (V) of 2014-15 arose out of the self-same order, both are disposed of
by this common order.

2. S.A. No.321 (V) of 2014-15 has been preferred by the Revenue whereas S.A. No.352 (V) 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. 106221422000004. By the said order the learned DCST has allowed the first appeal in part by reducing the balance tax demand and penalty to Rs.20,076.00 from Rs.68,053.00 raised by the learned Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as, the learned STO) in an assessment u/s.42 of the OVAT 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.42 of the OVAT 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 VAT-306 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. As per the allegation of the AVR, the Tax Audit Unit, Bhubaneswar Range, Bhubaneswar conducted an audit visit in the business premises of the dealer-assessee on 31.12.2012 and found out some discrepancies such as (i) purchase suppression of gold ornaments weighing 648.49 gms. and silver ornaments weighing 1165 gms., (ii) less payment of admitted tax to the tune of Rs.1,38,857.70 on the part of the dealer-assessee and accordingly submitted its report. During assessment, on confrontation of the allegations of the AVR, though the proprietor of the dealer-assessee put forth his clarification, the learned STO did not accept the same relating to

the allegation of purchase and sale suppression, rather accepted the allegation of the AVR as true and genuine and determined the purchase suppression to be Rs.20,64,007.00 and after addition of 10% profit margin thereon determined the sale suppression to be Rs.22,70,407.00. However, on examination of the materials available on record, he did not accept the allegation relating to less payment of admitted tax and finally determined the GTO and TTO at Rs.67,28,37,226.70 and Rs.66,61,97,941.00 respectively after addition of sale suppression amounting to Rs.22,70,407.00 and levied tax thereon @ 1% which came to be Rs.66,61,979.41. After allowing the admissible ITC amounting to Rs.13,91,335.15 and after consideration of the payment of tax amounting to Rs.52,47,960.00 made earlier, the learned STO raised the balance tax demand of Rs.22,684.26. Then, he also imposed a penalty of Rs.45,368.52, equal to twice of the balance tax demand u/s.42(5) of the OVAT Act and as such both the balance tax demand and penalty came to be Rs.68,053.00 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. 106221422000004. On hearing and on consideration of the materials available on record, the learned DCST found out that, out of the excess stock of 648.490 gms. of gold ornaments, stock of 446.250 gms. of gold ornaments has already been considered during the earlier assessment period. Similarly, he estimated the weight variation in the gold and silver ornaments to be 3% considering an earlier order of this Tribunal and determined the stock discrepancy in gold ornaments to be 196.223 gms. and silver ornaments to be 1130.000 gms. and accordingly redetermined the GTO and TTO and also recomputed the tax liability of the dealer-assessee and the same resulted in reduction of the balance tax demand and penalty to Rs.20,076.00 from Rs.68,053.00 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 respective cross objections supporting their respective grounds of appeal.

6. Heard both the sides. The learned Standing Counsel appearing for the Revenue submitted that, gold and silver ornaments are very precious in nature which are measured accurately in scientific weights and measure instruments and as such the estimation of the weight variation @ 3% by the learned DCST is quite improper and justified and hence the order passed by him is liable to be rectified by this Hon'ble forum. On the other hand, the learned Counsel appearing for the dealer-assessee submitted that, the weight variation as estimated by the learned DCST @ 3% is very low and as such the stock discrepancy and the consequential sale suppression as determined by him is quite illegal and hence the balance tax demand and penalty as raised by him on that basis is liable to be deleted.

7. Perused the orders of both the learned forums below and the other materials on record. From the rival submissions advanced by both the parties, it appears that, the sole dispute relates to the estimation of some short of weight variation in the gold and silver ornaments by the learned DCST. On perusal of the materials on record, it is seen that, at the first appeal stage, the learned DCST found out that, out of the stock discrepancy of 648.490 gms. of gold ornaments as determined by the learned STO during assessment, stock of 446.250 gms. of gold ornaments has already been considered in the earlier assessment period and accordingly he did take note of the same further in the present assessment period. The said finding and order of the learned DCST has not been challenged by the Revenue in either of the appeals. However, so far as the estimation of the weight variation in the gold and silver ornaments as determined by the learned DCST is concerned, it is seen that, the same is a very negligible part of the entire dispute.

8. From the order passed by the learned DCST, it is seen that, while deciding a similar question earlier in S.A. No.82(V)/2010-11, order dtd.20.11.2013, this Tribunal has allowed weight variation of 5% in gold ornaments. Though the dealer-assessee has claimed consideration of weight

variation at a higher percentage, the same is not acceptable in view of the fact that, gold and silver ornaments are precious goods and are measured mostly in accuracy by use of proper scientific measured instruments. Perhaps, considering this fact, the learned DCST has not accepted the finding arrived at by this Tribunal in S.A. No.82(V)/2010-11 blindly and has estimated the weight variation on his own @ 3% on consideration of the materials available on record. As the dispute raised by both the parties is considered to be a negligible one in terms of turnover and in terms of tax demand and as the weight variation in gold and silver ornaments as estimated by the learned DCST appears to be a reasonable one, this forum found no justified ground to interfere in the finding and order arrived by the learned DCST. On further consideration of the entire materials on record, it can clearly be said that, the appeals preferred by both the parties are devoid of any merit.

9. In the result, both the appeals are dismissed. Cross objections are disposed of accordingly.

Dictated & corrected by me,

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

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