

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

**S.A. No. 414 of 2003-04**

(Arising out of the order of the learned ACST, Cuttack I Range,  
Cuttack, in Sales Tax Appeal No. AA-554-CUIC-2001-2002,  
disposed of on dtd.11.12.2002)

**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. Soor Enterprisers,  
Mangalabag, Cuttack. .... Respondent

For the Appellant ... Mr. M.S. Raman, A.S.C.  
For the Respondent ... Mr. A. Mohanty, Advocate

---

Date of hearing: 25.06.2018

\*\*\*\*

Date of order: 20.07.2018

---

**O R D E R**

This appeal is directed against the order dtd.11.12.2002 passed by the learned Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter referred to as, the learned ACST) in Sales Tax Appeal No. AA-554-CUIC-2001-2002, wherein and whereby, he has allowed the first appeal in part by reducing the balance tax demand including surcharge to Rs.1,57,472.70 from Rs.1,77,873.00 raised by the learned Sales Tax Officer, Cuttack I Central Circle, Cuttack (hereinafter referred to as, the learned STO) against the respondent-dealer in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) for the assessment year 2000-01.

2. The respondent-dealer M/s. Soor Enterprisers, being a registered dealer deals in timber, size wood, body building and fabrication etc. Basing upon a Vigilance fraud case report No.33 dtd.30.09.2000

submitted by the Addl. Commercial Tax Officer, Vigilance Division, Cuttack, the learned STO initiated a proceeding u/s.12(4) of the OST Act against the respondent-dealer for its assessment for the assessment year 2000-01 and issued a notice to appear and to produce the books of account and in response to the notice, one of the partners of the respondent-dealer appeared and produced the books of account which were duly been examined. As per the fraud case report, the respondent-dealer was transporting goods amounting to Rs.3,00,000.00 through a bus namely M/s. Pani & Pani on 23.08.2000 without using any way bill and on being apprehended the Manager of the transport vehicle gave a written statement that the goods in question are being transported by the respondent-dealer. During assessment, as the respondent-dealer failed to clarify the allegation, the learned STO accepted the allegation of the fraud case report as true and genuine and determined the purchase suppression to be Rs.3,00,000.00 accordingly and added the same to the GTO. On consideration of all the transactions, the learned STO determined the GTO and after allowing proper deduction towards the labour and service charges and towards the collection of tax determined the TTO at Rs.56,45,278.00 and levied tax thereon @ 12% which came to be Rs.6,77,433.36. Then, he also levied surcharge thereon @ 10% which came to be Rs.67,743.34 and as such both the tax demand and surcharge came to be Rs.7,45,176.70. As the respondent-dealer had already paid tax to the tune of Rs.5,87,704.00 earlier, he raised the balance tax demand including surcharge amounting to Rs.1,57,473.00, to be paid by it.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned ACST bearing Sales Tax Appeal No. AA-554-CUIC-2001-2002. At the first appeal stage, the respondent-dealer prayed to issue summons to the Manager of the transport vehicle M/s. Pani & Pani namely Smruti Ranjan Samal for the purpose of cross examination to test the veracity of his earlier statement. Basing upon certain case laws, the learned ACST accepted the prayer of the respondent-dealer and issued a summon to Smruti Ranjan

Samal, the Manager of M/s. Pani & Pani which was returned un-served subsequently with an endorsement of "person not available". Then, on examination of the materials on record, the learned ACST found out that, the Vigilance officials have recorded the statement of Smruti Ranjan Samal without mentioning his permanent address therein and as such, it was not possible on his part to issue a fresh summon against the said Smruti Ranjan Samal. In this background, the learned ACST found out the allegation of the fraud case report relating to the illegal transportation of goods and the consequential purchase suppression to be improper and unjustified due to lack of materials and accordingly set aside the order of the learned STO passed in this regard and hence, his order finally resulted in reduction of the balance tax demand including surcharge to Rs.1,17,873.00 from Rs.1,57,473.00 as raised earlier by the learned STO. Thus, being aggrieved with the order of the learned ACST, the Revenue as appellant has preferred this second appeal.

4. Cross objection has been filed by the respondent-dealer supporting the order of the learned ACST.

5. Heard both the sides. The learned Addl. Standing Counsel appearing for the appellant-Revenue submitted that, the learned ACST has not considered the matter in its proper perspective and has passed the order and as the order passed by him is erroneous and is not based upon the materials available on record, the same needs to be rectified by this Hon'ble forum. He further submitted that, though the statement of the Manager of the alleged transport vehicle as recorded by the Vigilance officials is sufficient to establish the charge, the learned ACST has not placed any reliance upon the same and as such, the same being illegal, the order passed by him 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 respondent-dealer supported the order of the learned ACST and urged for dismissal of the appeal.

6. Perused the materials available on record including the orders of both the learned forums below. The allegation leveled against the

respondent-dealer in the fraud case report relates to the unaccounted transport of certain goods in a bus namely M/s. Pani & Pani without any way bill. The materials available on record reveals that, soon after the recovery of the goods from the vehicle, the Vigilance officials recorded the statement of its Manager, namely Smruti Ranjan Samal, wherein he has supported the allegation in toto implicating the respondent-dealer. During assessment, though the learned STO has placed reliance upon such statement to accept the allegation as true and genuine and to determine the purchase suppression accordingly, at the first appeal stage, the learned ACST considered it fit and proper to summon the said person to test the veracity of his statement, basing upon the prayer of the respondent-dealer. But, subsequently, the summon was returned as un-served with an endorsement of "person not found". As the learned ACST has already exercised his discretionary power to summon a person to test the veracity of his earlier statement, the proper course is to seek his attendance by exercising the powers in accordance with the provisions of the statute and not to accept his earlier statement as true and genuine till his appearance. As the statement of the Manager of the transport vehicle was the sole document to establish the charge, without placing reliance upon the same, it can clearly be said that, there is no material to establish the charge against the respondent-dealer in the present facts and circumstances. Therefore, the contention raised by the appellant-Revenue in the appeal bears no merit.

7. In the result, the appeal is dismissed being devoid of merit. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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