

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

S.A. No. 888 of 2007-08

(Arising out of the order of the learned ACST, Sambalpur Range,
Sambalpur, in First Appeal Case No. AA 206 (SAIII) of 06-07,
disposed of on dtd.30.06.2007)

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. Jai Jagannath Marbles,
Jharsuguda.

... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.

For the Respondent ... Mr. B.P. Mohanty, Advocate

Date of hearing: 16.05.2018 **** Date of order: 18.05.2018

ORDER

This appeal is directed against the order dtd.30.06.2007 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA 206 (SAIII) of 06-07, wherein and whereby he has allowed the first appeal by reducing the tax demand to nil from Rs.43,257.00 raised by the learned Sales Tax Officer, Sambalpur III Circle, Jharsuguda (hereinafter referred to as, the learned STO) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947

(hereinafter referred to as, the OST Act) against the respondent-dealer for the assessment year 2002-03.

2. The respondent-dealer is a trader of marble, mosaic chips, tiles, G.I. pipes and sanitary wares etc. Basing upon a fraud case report bearing No.21 dtd.31.05.2005 submitted by the Intelligence Wing, Sambalpur, 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 2002-03 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the respondent-dealer appeared and produced the books of account which were duly been examined. As per the allegation of the fraud case report, the Intelligence Wing, Sambalpur visited the additional place of business of the respondent-dealer situated at Sambalpur and recovered certain slips from the Branch Manager Ashok Kedia showing purchase and sale and arrived at a conclusion of purchase and sale suppression amounting to Rs.2,66,118.00. When the allegation of the fraud case report was confronted to the authorized representative of the respondent-dealer, he denied the same and took the plea that, Ahok Kedia, from whom, the alleged documents have been ceased is also engaged in some of his personal business and those documents relates to his such business and no way related to the business of the respondent-dealer. On hearing the contention of the respondent-dealer and on examination of the materials available on record, the learned STO though accepted its contention of the respondent-dealer, enhanced the GTO to certain extent opining that the same will safeguard the interest of the Revenue and as such the enhancement resulted in a balance tax demand of Rs.43,257.00, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned ACST bearing First Appeal Case No. AA 206 (SAIII) of 06-07. On hearing and on

consideration of the materials on record, the learned ACST accepted the contention of the respondent-dealer and allowed the appeal by reducing the balance tax demand to nil from Rs.43,257.00 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. No cross objection has been filed by the respondent-dealer.

5. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned ACST has not considered the matter properly and has passed the order and as the order passed by him is erroneous and is not based on the materials available on record, the same needs to be rectified by this forum. 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 orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, during assessment, the respondent-dealer has taken the plea that, Ashok Kedia, who was looking after the business activities of the respondent-dealer's Sambalpur branch was also engaged in some of his personal business and the documents recovered from him relates to his own business and not to the business of the respondent-dealer and as such the allegation of purchase and sale suppression amounting to Rs.2,66,118.00 cannot be established against it basing upon those documents. But, though the learned STO has accepted the contention of the respondent-dealer, without accepting the GTO and TTO as disclosed by it, he has enhanced the same to certain extent by opining that the same will safeguard the interest of the Revenue. At the first appeal stage, considering the enhancement made by the learned STO to be improper and unjustified, the learned ACST has set aside the same and has accepted the GTO and TTO as disclosed by the respondent-dealer. On consideration of the materials on

record further, it can clearly be said that, as the enhancement made by the learned STO was unreasonable, the learned ACST has rightly set aside the same by accepting the figures shown by the respondent-dealer. As the order passed by the learned ACST suffers from no infirmity, the same needs no interference of this forum.

7. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

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

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