

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.**  
**S.A.No. 158(V)/2008-09**

(Arising out of order of the Id.ACST (Appeal), Sambalpur Range, Sambalpur, in  
Appeal No. AA.312/SAI/VAT/07-08,  
disposed of on dtd.24.10.2008)

**Present:** Sri S. Mohanty & Sri P.C. Pathy  
2<sup>nd</sup> Judicial Member Accounts Member-I

M/s. Chaitanya Krishna Modern Rice Mill,  
At- Ladukhai, P.O. Gosala,  
Dist. Sambalpur. ... Appellant

**-Versus-**

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

For the Appellant : None

For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

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Date of Hearing: 09.05.2018 \*\*\* Date of Order: 11.05.2018

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**ORDER**

Against the order of remand passed by the First Appellate Authority/Asst.  
Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short,  
FAA/ACST) in the impugned order, this tax appeal is preferred by the Revenue.

2. Brief facts of the case are; the instant dealer was faced audit  
assessment u/s.42 of the OVAT Act for the tax period 01.04.2005 to  
30.06.2007, basing on the Audit Visit Report (AVR) submitted by the STO,  
Vigilance Unit, Sambalpur (Audit). The audit team had reported about the sale  
suppression of 60 quintals of rice valued Rs.51,000. The dealer had wrongly  
claimed ITC on purchase of machinery and spare parts treating the same as  
capital goods. Further, the Vigilance Unit also recovered hand written slips  
relating to purchase of paddy of Rs.3,21,985/-. The AO on confrontation of the

allegations to the dealer and on due verification of the books of account and connected documents found the dealer guilty of purchase suppression to the tune of Rs.3,21,985/-. Imposing tax on it and then penalty twice of the tax due as per Sec.42(5), the total demand raised at Rs.56,140/-.

3. The assessment order was carried by the dealer before the FAA in First Appeal Case No. AA.312/SAI/VAT/07-08. The FAA in consideration of the dealer's plea challenges to the jurisdiction of the STO, Sambalpur-I Circle i.e. in violation to Sec.3(2) and Rule 34(12) of the OVAT Act and Rule respectively held that, STO, Sambalpur Range-I Circle, who had conducted audit assessment has no territorial jurisdiction. Thereupon, he remanded the matter with a direction to transmit the assessment record to the AA of the range, where the dealer was registered under sub-rule 1 of Rule 18 and assigned with Taxable Index Number.

4. When the matters stood above, the dealer has preferred this appeal on many grounds such as the purchase suppression detected by the audit team is unfounded and the AA has no territorial jurisdiction to conduct assessment u/s.42 of the OVAT Act in the case in hand.

5. At the outset, learned Addl. Standing Counsel drawing attention of the Court to the relevant provision under Rule 34(12)(b) of the OVAT Rule and argued that, though the seal of the STO, appended to assessment order reveals he was 'STO, Sambalpur-I Circle' but the concerned STO has jurisdiction over the range within which the dealer is registered and has his business concern runs. It is argued that, by looking at the seal only, jurisdiction of the AA should not be viewed. Before delving into the aforesaid aspect of the case, it is felt

necessary to know the exact stage and progress of remand assessment. The impugned order was passed on 24.10.2008. Now it is 2018. The assessment was set-aside by the FAA and it was remanded back to the AA for assessment afresh. The assessment must have completed in the meanwhile unless question of limitation will arise. Moreover, when the assessment was set-aside, State has not challenged the impugned order by way of appeal. Whereas the dealer has challenged the impugned order on the point of law and facts, if point of law i.e. the jurisdiction of the AA is considered, then it can safely be said that, in the event the officer conducted the assessment has no jurisdiction, the matter should be remanded back to the Officer having jurisdiction. Merely, because the assessment was done by an officer competent to decide the lis has no territorial jurisdiction, the proceeding cannot be vitiated and the dealer cannot left scot free. So far as the question of fact i.e. the purchase suppression, levy of tax and penalty are concerned, this aspect has not been dealt with by the FAA. In view of the facts and circumstance above, it is held that, the dealer's appeal is bad both in law and facts. Accordingly, it is ordered.

The appeal is dismissed on contest as of no merit.

Dictated and Corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(P.C. Pathy)  
Accounts Member-I