

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 225(V)/2013-14

&

S.A.No. 247(V)/2013-14

(From the order of the Id.JCST, Jajpur Range, Jajpur Road, in Appeal No. AA-255 CU-III 12-13, dtd.29.06.2013 modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

S.A.No.225(V)/2013-14

M/s. Gadahar Jewellery,
At/P.O. Haripurhat,
Dist. Jajpur.

.... Appellant

-Versus-

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

.... Respondent

S.A.No. 247(V)/2013-14

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

.... Appellant

-Versus-

M/s. Gadadhar Jewellery,
At/P.O. Haripurhat,
Dist. Jajpur.

.... Respondent

For the Dealer : Mr. D. Pati, Advocate

For the State : Mr. M.L. Agarwal, Standing Counsel

(Assessment Period : 01.04.2010 to 31.03.2011)

Date of Hearing: 06.04.2019 *** Date of Order: 06.04.2019

ORDER

Appeal and counter-appeal against the self-same order
of learned First Appellate Authority/Joint Commissioner of Sales

Tax, Jajpur Range, Jajpur Road (in short, FAA/JCST) whereby the FAA though have confirmed the order of escapement of turnover, but reduced the amount on fresh calculation made in an assessment u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) for the tax period 01.04.2010 to 31.03.2011 relating to the assessee-dealer, who is a TIN dealer engaged in purchase and retail sale of gold and silver ornaments.

For sake of convenience, the appeals by adversary parties above are taken up together and decided by this common order.

3. The facts that are necessary for decision of these appeals are: The Investigation Unit, Balasore Range, Balasore made a surprise visit to the dealer's premises on 18.02.2011 and submitted fraud case report with following allegations:

“(1) At the time of visit, the enforcement officials the dealer's sale proceed Rs.5700.00 against which the dealer has not issued any sale invoice.

(2) The dealer failed to produce any books of account before the Investigation Unit during their visit.

(3) The dealer purchased packing material worth Rs.31900.00 from outside the State of Odisha which he has not accounted for in the books of account. He has also not paid ET on above purchase.

(4) The Investigating officials took detail stock present at the dealer's farm and found excess stock of 670.862 gm of gold ornaments and less stock of 209.565 gm of silver ornaments.

(5) The investigation unit suggests to impose ET on purchase of goods from the local customers.”

4. The Assessing Authority/Sales Tax Officer, Jajpur Circle, Jajpur Road (in short, AA/STO) assessed the dealer as per Sec.43 of the OVAT Act on the basis of the aforesaid allegations

brought by the Intelligence Wing and in ultimate analysis, he found the dealer guilty of excess stock of Rs.670.862 grams of gold ornaments valued at Rs.13,08,181/-. So also there was less stock of 2095.565 gms of silver ornaments valued at Rs.9,430/- and thus the total suppression was calculated at Rs.13,17,611/-. The suppressed turnover was treated as TTO in the assessment. Taxing the same @1%, the tax due was calculated at Rs.13,176.11. Two times of it was levied as penalty as per Sec.43(2) of the OVAT Act, thereby, the total demand raised against the dealer towards tax and penalty is Rs.26,352.22.

5. As against the assessment and demand above, the dealer preferred appeal before the FAA. Learned JCST as FAA vide impugned order confirmed the order of assessment but on re-calculation of the GTO and TTO, which includes the suppressed turnover, he found the tax due from the dealer at Rs.12,666.41/-. He also imposed penalty twice of the tax due at Rs.25,332.82. Thereby the total demand raised at Rs.37,999/-.

6. When the demand reduced from Rs.39,582/- to 37,999/-, the Revenue has preferred S.A.No.225(V)/2013-14 with the contention that, the FAA has arbitrarily reduced the demand, which is not based on facts and figures of suppression established. On the other hand, the dealer has challenged the impugned order on the contentions like, the determination of suppression by both the fora below is wrong. The detection of stock discrepancy was not proper as there was no proper verification of the stock and proper weighment of the stock. Further, the order of the AA is barred by limitation. The levy of penalty is illegal and arbitrary and the fact of non-issue of sale invoice of Rs.57,000/- is also illegal and arbitrary.

7. On the rival contentions, the questions raised for decision in these appeals are:- (i) Whether the determination of

suppression by the FAA is arbitrary and without any basis ? and (ii) Whether the FAA has committed wrong in reducing the demand?

8. At the outset, on comparison of the assessment order of the AA with the FAA, it is found that, the AA has assessed the escaped turnover as suggested, proved and established, whereas the FAA has determined the entire GTO and TTO including the suppressed turnover and while determining the GTO and TTO of the entire tax period in question, he re-calculated the tax liability, which is ended in reduction of the same from Rs.39,582/- to 37,999/- i.e. a reduction of Rs.1,529/-.

9. Gone through the order of assessment and the order of FAA. So far as the AVR is concerned, the Audit team has found the dealer had not maintained the books of account but for that, the dealer had paid penalty at the spot. The Audit team had suggested for levy of entry tax on the purchases made from out of State sellers, which is dealt by the AA in the consequential assessment under ET Act. The stock discrepancy as detected by the Audit team was duly established. The AA and thereafter the FAA has gone into this question of fact in detail. On verification of the books of account and plea of the dealer and thereafter he found that, the dealer is guilty of suppression. The findings of the authority below on the question of fact cannot be interfered with on mere surmises that, they have not acted in good faith. Learned Counsel for the dealer draws the attention of the forum to the impugned order and submitted that, the AA has enhanced the suppression without giving notice, but a careful perusal of the impugned order, it is found that, there was no question of enhancement but a question of confirmation that too the FAA has reduced the tax due. So, the argument of the learned Counsel is unfounded.

10. It is a subjective satisfaction of both the fora below on the basis of AVR and on consideration of books of account produced before the FAA. The stock discrepancy as detected on the day of visit could not be successfully explained by the dealer. The claim of the dealer is, there was no proper weighing and there was no proper physical verification. These are wild allegations with no supporting evidence. Thus, without any rebuttal evidence, no positive inference can be drawn in favour of the claim of the dealer. Resultantly, it is held that, the suppression as detected and determined by the authority below should not be interfered with, hence, confirmed.

11. The claim of the State is reduction of tax due by the FAA is groundless. Learned Standing Counsel could not satisfy the Tribunal why and how the calculation made by the FAA is wrong and incorrect. So, the plea of the State-appellant is found to be imaginary and baseless.

From the discussion above, it is hereby ordered.

The appeal and counter-appeal both are dismissed on contest against each other.

Dictated and Corrected by me,

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

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(S. Mohanty)
2nd Judicial Member