

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**  
**S.A.No. 269(V)/2016-17**

(From the order of the 1d.JCST (Appeal), Sundargarh Range, Rourkela, in Appeal No. AAV.18 of 2011-12, dtd.09.09.2016 confirming the assessment order of the Assessing Officer)

**Present:**      **Sri S. Mohanty**  
                        **2<sup>nd</sup> Judicial Member**

M/s. Cell Point,  
Madhusudan Market, Rourkela,  
Dist. Sundargarh. .... 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, A.S.C. (C.T.)

(Assessment Period : 01.04.2008 to 05.12.2008)

Date of Hearing: 05.04.2019       \*\*\* Date of Order: 05.04.2019

**ORDER**

A confirming order of assessment u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) is under challenge in this appeal by the dealer.

2.         The facts in brief giving rise to this appeal are : The dealer was subjected to assessment u/s.43 of the OVAT Act on the basis of fraud case report by the Vigilance Wing. The report of the Vigilance Wing runs as follows :

- (1) Sale suppression of Rs.35,000/- towards out of account sale of seven times viz. N-2630, Sony Ericson-220, bill dated 15.12.2008, W-270, Motto, N-2626, N-73-5, N-73 Music.

- (2) Purchase suppression of Rs.2100.00 towards out of account purchase of SIM card, sale suppression of Rs.11,300.00 towards out of account sale of cell phone and Nokia phone.
- (3) Purchase suppression of Rs.22,621.00 towards out of account purchase of cell phone brand viz. W-3110-C, S-X,630, L-61, MYXI-TRIO, 7688, BL-46-09/08 battery.

3. The Assessing Authority, Sundargarh Range, Rourkela (in short, AA) in the assessment on verification of the registers, books of account and connected documents, held the dealer guilty of purchase suppression to the tune of Rs.24,721/- and sale suppression to the tune of Rs.46,850/- during the period from April, 2008 to Nov, 2008. Taking consideration of the volume of suppression and the length of the assessment period, the AA has enhanced it by 8 times covering the entire tax period i.e. from 01.04.2008 to 05.12.2008. Ultimately, the tax due from the dealer was calculated at Rs.22,903/-, interest payable as per Sec.34(1) as per the OVAT Act was calculated at Rs.3,893/-, penalty u/s.42(5) of the OVAT Act was also calculated at Rs.45,806/-. Thus, the total demand against the dealer was raised to Rs.72,602/-.

4. The dealer being aggrieved with such demand, preferred appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (in short, FAA/JCST) vide impugned order confirmed the order of the AA. It was an ex-parte order, whereby the FAA accepted the findings of the AA and as a result, the demand remained undisturbed. As against the confirming order of the FAA, being aggrieved the dealer filed this appeal. The contention of the dealer is, the Vigilance team has not taken consideration of the exact stock of the day. The purchase suppression and sale suppression

are arbitrary and not based on record. So, the suppression as detected being baseless, the demand of tax is not tenable.

5. The appeal is heard without cross objection from the side of the Revenue, but in absence of the appellant-dealer, as the appellant-dealer remained absent in spite of the notice of hearing.

6. In the case in hand, it is to be seen that, whether the determination of purchase suppression is justified or not ? The AA had the occasion to go through the audit objection and the details of the physical stock as per the register of the dealer. Thereafter, on due consideration of the facts and figures available in the books of account and connected documents and then, in comparison of the same with the fraud case report, he found the fraud report is established. Further, keeping view the fraud case report and the period in one hand with the entire period under assessment in other, the AA has enhanced the suppression by eight times. Since, the dealer did not appear before the FAA, the FAA confirmed the order of assessment. Here, in this Tribunal also, the dealer remained absent. In absence of no material evidence brought before the Tribunal, it is unsafe to hold that, the factual finding of both the fora below is wrong. In absence of any rebuttal from the side of the dealer, the findings of the fora below cannot be interfered on mere surmises. Hence, it is believed that, the impugned order calls for no interference. Accordingly, it is ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

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

Sd/-  
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