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

S.A. No. 151(V) of 2018
(Arising out of the order of the learned JCST (Appeal), Ganjam Range, Berhampur, in First Appeal Case No. AAV.29/2013-14, disposed of on dtd.28.03.2018)

P r e s e n t: Shri A.K. Dalbehera, O.S.J.S.
M.A., LL.M.
1st Judicial Member

M/s. Padma Traders,
Sano Bazar, Berhampur,
Dist.- Ganjam. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. R.P. Sahu, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 22.01.2021 *** Date of order: 11.02.2021

O R D E R

This appeal is directed against the order dtd.28.03.2018 passed by the learned Joint Commissioner of Sales Tax (Appeal), Ganjam Range, Berhampur (hereinafter referred to as, the learned JCST) in First Appeal Case No. AAV.29/2013-14, wherein he confirmed the order of the learned Sales Tax Officer, Ganjam I Circle, Berhampur (hereinafter referred to as, the learned STO) raising tax

demand of Rs.98,808.00 for the assessment period 01.04.2008 to 31.03.2011 u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, the appellant-dealer has partnership concern business dealing in textile goods, sarees, shawls, shirtings and suitings, dhotis, blankets, chadars, bed sheets, cotton mats, pillow covers, towels, maffulars, sataranjis, durries, chanduas, saya, Turkish towels and bridal wears like odhani. The appellant-dealer effects both intrastate and interstate purchase of goods for sale inside the State of Odisha on wholesale-cum-retail basis and supplies goods to different Government departments. The Sales Tax Officer, Vigilance Wing, Berhampur Division had paid a surprise visit to the business premises of the appellant-dealer on 09.07.2010. After thorough verification of the recovered documents vis-à-vis books of account maintained and contention taken, the STO submitted the Tax Evasion Report by reporting some omissions and commissions of the appellant-dealer suggesting initiation of statutory proceedings against the appellant-dealer under the OVAT Act and OET Acts. It is stated that the appellant-dealer had not been paying VAT on sales of bed sheets and towels of any variety taking the same as handloom products and as tax exempted items under the OVAT Act. It is also reported that the appellant-dealer had effected purchase of taxable items like bed sheet, shawl, asana, blanket, durries amounting to Rs.5,94,937.00 during the year 2008-09 to 2010-11 but had shown the same as tax exempted items in the register and had not paid due tax

thereon though the said items are coming as taxable items @ 4% under the entry 114 of Part-II of Schedule-B of the OVAT Act rate schedule and thus had not paid tax under the OVAT and OET Acts. It was also reported that the appellant-dealer had effected purchase transaction vide some loose written slips without reflecting the same in his books of account resulting in loss of revenue both under the OVAT and OET Acts. The Vigilance Wing also submitted that the appellant-dealer had purchased door mat, muffler, Turkish towel & napkins etc. on door delivery basis from the local suppliers without any purchase invoices and had not reflected in his regular books of account nor had paid tax thereon which established the malafide intention of the appellant-dealer on account of unaccounted for sales and purchases. The authorized representative of the appellant-dealer admitted the stock discrepancies for which purchase suppression was established. The learned STO determined the GTO at Rs.5,35,06,855.00, calculated the claim of exempted goods at Rs.5,16,94,643.00 and allowed Rs.38,156.00 towards VAT collection. The TTO was determined at Rs.17,74,056.00 and taxed @ 4% which came to Rs.71,092.00 including excess collection of Rs.130.00. The appellant-dealer having deposited Rs.38,156.00 through challans, the balance tax payable came to Rs.32,936.00. Thereafter, two times penalty was imposed which came to Rs.65,872.00. Therefore, tax and penalty together payable by the appellant-dealer came to Rs.98,808.00.

3. Being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned JCST who confirmed the order of the learned STO. Being aggrieved by the order of the learned JCST, the appellant-dealer has preferred this second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the learned STO was unjustified in assessing the appellant-dealer u/s.43 of the OVAT Act without completing the assessment u/s.39, 40, 42 or 44 of the OVAT Act; that the order of the learned JCST is unjustified in confirming the order of the learned STO in raising an additional demand of Rs.98,808.00 including penalty of Rs.65,872.00 while assessing the appellant-dealer u/s.43 of the OVAT Act; that the learned STO has erred in law in determining the GTO at Rs.5,35,06,855.00 and the TTO at Rs.17,74,056.00 on surmises and guess work; that the handloom clothes are totally exempted from the levy of VAT under OVAT Act and therefore there is no justification on the part of the learned STO to determine the levy of tax @ 4% on the handloom clothes and that the levy of penalty at Rs.65,872.00 is illegal and bad in law as the appellant-dealer cannot be treated as a fraudulent dealer altogether.

On the other hand, the respondent-Revenue has filed cross objection supporting the impugned order.

5. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel for the respondent-Revenue. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of

appeal and the plea taken in the cross objection. It is seen that the business premises of the appellant-dealer was visited by the STO (Vigilance), Berhampur Division on 09.07.2010 and some incriminating documents like 43 nos. of loose written slips, 3 nos. of small exercise written notebooks and 2 nos. of written diaries from the business premises of the appellant-dealer were recovered by the Vigilance which were cross verified along with the books of account and sale invoices issued. It was seen that the appellant-dealer had effected purchase of taxable items like bed sheets, shawls, blanket, durries etc. to the tune of Rs.5,94,937.00 and had shown the same as tax exempted items without paying any tax on their sales. The appellant-dealer had also failed to convince the authorities that they exclusively dealt with handloom and khadi products. In this respect the findings of the learned STO and the learned JCST are justified that items like bed sheets, shawls, blankets, durries etc. come under the entries at Sl. No.114 of Schedule-B of the OVAT Act and exigible to tax @ 4%. The appellant-dealer had also made unaccounted purchases on door delivery basis and failed to produce supporting purchase invoices and relevant entries in purchase register. Hence, the learned STO completed the assessment basing on the established fact of sale suppression. For the evasion of tax made by the appellant-dealer in this regard without any reasonable cause, the penalty levied u/s.43 of the OVAT Act is also justified. The learned JCST was justified in rejecting the certificates given by the selling dealers as the said dealers are not authorized to issue any sale certificate

which cannot be taken as evidence. In fact, those certificates being self-serving certificates cannot be treated as evidence. In this regard reference may be had to the case of Jindal Photo Ltd. v. Rajasthan Tax Board. It is contended by the appellant-dealer that handloom goods are not textile under the OVAT Act as per Entry 6 of Schedule-A of the Act. However, Entry 6 does not contain description of all the goods dealt with by the appellant-dealer. The certificates obtained from the selling dealers shall be of no use to the appellant-dealer which do not bear any TIN number of both the purchasers and sellers which has also been discussed by the learned STO in his assessment order. In fact, the appellant-dealer has utterly failed to convince how he dealt exclusively with tax exempted handloom and khadi products. On perusal of Entry 114 of Schedule-B, Part-II it is seen that bed sheets, shawls, blankets, durries, towels, fancy and made up sarees, door mats, mufflers, ties, toilet towels, napkins, saya and bridal odhani are all taxable items exigible to tax @ 4%.

6. In the case of Porritts & Spencer (Asia) Ltd. v. State of Haryana (1978) 42 STC 433 (SC), the Hon'ble Supreme Court of India have described the meaning of 'textile' in the following manner:-

> "The word "textiles" is derived from the Latin "texere", which means "to weave" and it means any woven fabric. When yearn, whether cotton, silk, woolen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into being is a "textile" and it is known as such. It may be cotton textile, silk textile, woolen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving

> adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wonderous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be "textiles". What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls: it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear in its character as a textile. It may be used for making wearing apparels, or it may be used as a covering or bedsheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile...."

Entry 114 of Part-II of Schedule-B indicates "textile articles" with specific mention about bed sheet, carpet/durry, shawl, etc. which means that even if the term "handloom fabrics" appears in Entry 6 of Schedule-A, the goods in question are treated as separate items for taxation. It is worth noticing that when exemption is granted to "handloom fabrics" along with other goods like amber charkha, etc. bed sheets, towels, carpet etc. cannot be held to be comprehended in said Entry 6 of the Schedule inasmuch as they are treated as such under Entry 114 of Part-II of Schedule-B.

7. The appellant-dealer is not in the habit of maintaining stock account in course of its business. The authorized representative of the appellant-dealer admitted the stock discrepancy found by the investigating officials. Thus, purchase suppression of Rs.1,07,004.00 stood established. Since the slips and stock discrepancy pointed out the sale suppression, the learned STO computed tax liability accordingly. The order as regards imposition of penalty is just and proper. As the appellant-dealer could not adduce proper evidence there is no reason at this stage to consider deletion of penalty. The authorities below are justified in imposing penalty u/s.43(2) of the OVAT Act in view of the judgment rendered by the Hon'ble Apex Court in the case of Dharamendra Textile Processors (2008) 18 VST 180 (SC) = (2008) 306 ITR 277 (SC).

8. As regards the first ground stated by the appellant-dealer that self assessment u/s.39 being not completed the exercise of power for undertaking assessment u/s.43 is beyond the scope of jurisdiction conferred on the learned STO it is to be stated that the said aspect is no more *res integra* in view of enunciation of interpretation of law by the Full Bench of this Tribunal in the case of Jindal Steel Power Ltd. v. State of Odisha vide S.A. Nos.39(VAT) and 33(ET) of 2013-14, disposed of on dated 12.11.2020. Hence, the assessment cannot be held to be vitiated in view of Sec.98 of the OVAT Act. The learned Counsel for the appellant-dealer relied upon a decision of the Full Bench of this Tribunal vide S.A. No.231(ET) of 2013-14 and S.A. No.18(ET) of 2014-15,

disposed of on dated 03.10.2019. However, the said decision is not applicable to the facts and circumstances of the present case. In the said cases the dealer dealt with tea but not with any fabric. Similarly, the learned Counsel for the appellant-dealer cited some decisions i.e. Shree Krishna Electricals v. State of Tamil Nadu & another (2009) 23 VST 249 (SC), Ruchak Metals v. State of Tamil Nadu (2011) 43 VST 63 (Mad.), ESS, ESS, Engineering v. Commissioner of Central Excise, Chandigarh (2011) 44 VST 372 (Cestate New Delhi) and Arul Constructions v. State of Tamil Nadu (2011) 43 VST 157 (Mad.). I have respectfully gone through the said decisions but in view of my elaborate discussion I see that the said decisions are not applicable to the facts and circumstances of the present case.

9. In view of the aforesaid discussion I come to a positive finding that the impugned order is just and proper as the learned JCST has dealt each and every item which is self-explanatory and requires no further interference. The grounds taken by the appellant-dealer are baseless being devoid of any merit. Hence, it is ordered.

10. The appeal is dismissed and the impugned order is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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