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

S.A. No. 240(V) of 2018
(Arising out of the order of the learned Addl. CST (Appeal), Bhubaneswar, in First Appeal Case No. AA-106111811000008, disposed of on dtd.16.08.2018)

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

M/s. Azad Steel,
Near New Bus Stand, Palla,
Khorda. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. D.K. Joshi, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 21.01.2021 *** Date of order: 08.02.2021

O R D E R

This appeal is directed against the order dtd.16.08.2018 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA-106111811000008, wherein he confirmed the order of the learned Deputy Commissioner of Sales Tax, Jatni Circle, Jatni (hereinafter referred to as, the learned DCST) for the

assessment period 01.07.2015 to 31.12.2015 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 is a proprietorship concern engaged in trading of iron angles, iron shapes, iron sections, iron channels, iron bars, iron rods, iron MS round, iron flats, iron and steel sheets, iron doors, windows and their frames for sale on wholesale cum retail basis inside the State of Odisha. The returns filed by the appellant-dealer for the aforesaid period were accepted as self-assessed u/s.39 of the OVAT Act. On the basis of the finding by the Central Excise Department from the incriminating materials seized from M/s. Ambica Iron & Steel, Beldihi, Rourkela the Sales Tax Officer (STO), Investigation Unit, Puri conducted an enquiry regarding the allegation of out of account sale of 361.465 MT of iron & steel goods effected to the appellant-dealer. The visiting officials cross verified the purchase of 361.465 MT of iron and steel goods from M/s. Ambica Iron & Steel, Beldihi, Rourkela with the books of accounts and reported purchase suppression which ultimately lead to sale suppression to the extent of Rs.1,53,34,200.00 as per the market price prevalent during that period. It was believed that certain turnover of the appellant-dealer had escaped in self-assessment made u/s.39 of the OVAT Act. So reassessment proceeding was initiated by issuance of notice. In response to the notice, the appellant-dealer produced the purchase register and purchase invoices supported by transport bill and way bill in order to counter the transaction recorded in the report with respect to date, vehicle number,

description of goods with quantity. The appellant-dealer contended that the transaction reflected at Table-1 at Sl. No.02 and 11 on dtd.22.08.2015 and 07.11.2015 in respect of the purchase of 16.62 MT and 20.705 MT of iron and steel goods transported through vehicle No.OR-14-N-5965 & OR-16-D-3534 respectively had been duly accounted for in the books of account. The remaining transactions did not find place in the books of account. But the appellant-dealer had purchased such goods from M/s.Ambica Iron & Steel, Beldihi, Rourkela. On being confronted regarding the transactions as detected by the Central Excise Department in the seized documents of M/s.Ambica Iron & Steel, Rourkela on sale of 233.320 MT from the said firm on twelve occasions in their favour on different dates, the appellant-dealer contended that against the reported quantity of 233.320 MT, only 37.325 MT of iron and steel goods have been purchased and duly reflected in books of account and accordingly payments had been transferred through RTGS & NEFT but purchase of 195.995 MT of iron and steel goods had not been from the said firm during the aforesaid tax period as stated. The appellant-dealer had confessed in his statement recorded on the date of hearing that it did not have any cash transaction on purchase whereas most of the transactions were in cash and occasionally in cheque in respect of sale. The transactions through instrument were executed by the appellant-dealer in their cash credit account and it was also admitted that they had not been maintaining regular cash book for the cash and bank transaction but the same were recorded in petty cash book. Accordingly, the un-accounted purchase of 195.995 MT

of iron and steel goods was valued at Rs.88,19,775.00 calculated at Rs.45,000.00 per MT which led to sale suppression valued at Rs.90,60,763.75 by adding minimum 5% gross profit margin established against the appellant-dealer. Thus, the escaped GTO and TTO was determined at Rs.92,60,763.75. Tax @ 5% on the TTO was calculated at Rs.4,63,038.19, two times penalty came to Rs.6,94,374.19 which altogether came to Rs.11,57,412.00.

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

4. The appellant-dealer has come up with the second appeal on the grounds that the order of assessment is against law, weight of evidence and probabilities of the case; that the determination of GTO and TTO is on the extreme higher side which is unwarranted and bad in law being without material facts; that the principle of natural justice has not been followed; that the payment of demand dues will hard hit the appellant; that the enhancement of TTO by the learned DCST is without any material fact which is based only on the basis of sale suppression report received from the STO, Investigation, Puri Unit which is illegal, arbitrary, bad in law and contrary to the well established judgments of the Hon'ble Supreme Court and Hon'ble High Court; that the STO, Vigilance alleged on the report received from the Central Excise Department and the seized document is neither sealed by the Excise Department nor by the dealer for which the

same is false and fabricated by the department; that the learned ACST has not considered the facts and written submission and that there was no third party confrontation; that the learned DCST has passed the assessment order which is illegal and that the determination of GTO and TTO by the learned DCST is also illegal; that the learned DCST enhanced the GTO and TTO in absence of any material and that merely on the presumption of sale suppression such enhancement is arbitrary.

On the other hand, the Revenue has filed the cross objection supporting the order of the learned ACST.

5. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel for the 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. On perusal of the materials available on record it is seen that the learned DCST examined the books of account of the appellant-dealer and found that there were unaccounted transactions as reported by the investigating officials on twelve different occasions. The statement of Srikanta Kumar Das, the Manager and authorized person of the appellant-dealer shows that he deposed before the Sales Tax Officer, Investigation Unit, Puri that he did not know why M/s. Ambica Iron & Steel had reflected their business entity name with details of goods etc. though they had only received one consignment out of twelve consignments. The statement of the said authorized person of the appellant-dealer is available in page- 87 & 88 of the assessment record. On perusal of the tax evasion report vide

pages 90, 91, 92, 94 & 96 it is seen that after verification of the books of account and studying of the modus operandi of the dealer the fraudulent business activities of the dealer was established. As per the said tax evasion report the appellant-dealer had regularly effected purchases of iron and steel goods from M/s. Ambica Iron & Steel, Beldihi, Rourkela covering the period 01.07.2015 to 30.11.2015. The appellant-dealer intentionally omitted the alleged transactions in the purchase account to evade tax. The details of the discrepancy noticed in the books of account is clearly mentioned in the said report. Table-2 appended to the tax evasion report shows that the total amount of purchase suppression was Rs.1,53,34,200.00 for which it was recommended to initiate statutory proceedings u/s.43 of the OVAT Act so as to assess the escaped turnover of Rs.1,53,34,200.00 for the tax period 2015-16.

6. As per the materials available on record there was purchase suppression of 195.995 MT of iron and steel goods established against the appellant-dealer on ten occasions. The appellant-dealer was given sufficient opportunity to explain about the same but he simply denied to have effected purchases from M/s. Ambica Iron & Steel, Rourkela. There is no violation of the principle of natural justice in this case as evident from the record. The appellant-dealer was given sufficient opportunities of rebuttal but his explanation was not at all satisfactory. The evasive transactions made by the appellant-dealer has been duly proved by the Central Excise Department from the incriminating materials found by it. Hence mere statement of the appellant-dealer is of no use to

him. The clandestine business of the appellant-dealer came to limelight when it was revealed that it was making deliberate cash transactions. The unaccounted purchase of 195.995 MT of iron and steel goods was valued at Rs.88,19,775.00 calculated at the rate of Rs.45,000.00 per MT which led to sale suppression valued at Rs.92,60,763.75 by adding 5% gross profit margin. The appellant-dealer could not produce any evidence of rebuttal on the purchase suppression on ten occasions. The deliberate cash transaction and non-reflection of purchase transaction can be construed as corroborative evidence of suppression as stated above. The escapement of turnover as per Sec.43(2) of the OVAT Act is well established.

7. During the course of argument it was argued by the learned Counsel for the appellant-dealer that the seized documents were neither signed by the Excise Department nor the selling dealer for which such documents are false and fabricated. However, such argument is baseless in view of the examination of the books of account of the appellant-dealer where the unaccounted transaction was reported by the investigating officials on twelve different occasions. Needless to mention that the appellant-dealer has got business transactions with M/s. Ambica Iron & Steel, Rourkela and as per the contention of the appellant-dealer almost all the sell transactions were effected through cash and occasionally through cheque which indicated that the appellant-dealer used to make cash sale and deposit the amount in the bank when purchases are made through instrument, otherwise the appellant-dealer was at its liberty to utilize its cash for any other purchase not intended to be recorded in the books of

account. The learned DCST had rightly established the alleged purchase transactions against the appellant-dealer as unaccounted purchase transactions giving rise to suppressed sales transaction by determining sales turnover by adding 5% on the established unaccounted for purchases made during the tax period under question and the appellant-dealer was rightly reassessed as per law. The grounds taken by the appellant-dealer are all baseless. The learned ACST has rightly held that the facts and circumstances of the judgment in the matter of Sri Krishna Steel Works Vrs. Commissioner of Trade Tax, Allhabad High Court VST 70 page No.309 (2014) and PC Ittamathyew & Sons Vrs. DC of Sales Tax Law Supreme Court of India STC 121 (2001) as relied upon by the learned Counsel for the appellant-dealer are not akin to the present case for which the same are not applicable to the case in hand. In view of such discussion I come to a positive finding that there is no infirmity in the impugned order. Hence, it is ordered.

8. The appeal being devoid of any merit stands 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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