

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 146(ET)/2013-14**

(From the order of the Id.JCST, Jajpur Range, Jajpur Road,  
in Appeal No. AA-256 CU-III (ET) 12-13, dtd.29.06.2013  
modifying the assessment order of the Assessing Officer)

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

M/s. Gadadhar Jewellery,  
Haripurhat,  
Dist. Jajpur. .... Appellant

**-Versus-**

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

For the Appellant : Mr. D. Pati, Advocate  
For the Respondent : 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**

When prayer before the learned First Appellate Authority/Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, FAA/JCST) for deletion of demand raised by Assessing Authority/Sales Tax Officer, Jajpur Circle, Jajpur Road (in short, AA/STO) in an assessment u/s.10 of the Odisha Entry Tax Act, 1999 (in short, OET Act) was not only declined but the demand also enhanced, the

unsuccessful dealer preferred this appeal challenging the sustainability of the order of the FAA in this appeal.

2. The backdrop of the appeal that are required for adjudication of the present dispute are :

The dealer was initially assessed for the tax period 01.04.2010 to 31.03.2011 u/s.9 of the OET Act. However, at a later period, on the basis of a fraud case report, the assessment was re-opened invoking provision u/s.10 of the OET Act. The assessment under the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) relating to the dealer for the self-same tax period was also re-opened on the basis of the self-same fraud case report and in consequence to the establishment of suppression in the re-assessment under OVAT Act, the same Assessing Officer in the re-assessment proceeding taxed the escaped turnover under the OET Act calculated at Rs.13,400.81. Besides tax due, penalty u/s.10(2) of the OET Act at Rs.26,801.62 was also imposed, thereby the total demand against the dealer raised to Rs.40,202/-.

3. Being aggrieved with such demand, the dealer knocked the door of the FAA. But to his ill-luck, the FAA declined his prayer and rather increased the TTO and tax liability giving a reason that, the dealer had not paid entry tax on the admitted turnover in regular return. The turnover of the dealer for the entire tax period was scrutinised and as the dealer was found to have not paid entry tax at all, the

FAA by giving an opportunity of being heard to the dealer, taxed the dealer to the tune of Rs.58,180.86 i.e. the purchase price of the good bought for the dealers outside the local area. Besides tax, penalty was imposed at Rs.1,16,361.72 and thereby the total demand became enhanced to Rs.1,74,543/-.

4. When the matter stood thus, the dealer preferred this appeal. The contention of the dealer is, the proof of escaped turnover is baseless and not sustainable, both in law and fact. The FAA has illegally enhanced the turnover. It has also levied penalty arbitrarily. Besides the above contentions, the dealer raised other question of law in the hearing such as, there was no notice of enhancement by the FAA and there was no tax liability in either case, whether it is the entire turnover or it is the escaped turnover for the reason that, the dealer neither had brought any goods into local area nor had sent any goods out of the local area.

5. The appeal is heard with cross objection from the side of the State. In cross objection, the State has supported the findings of the FAA as lawful.

6. From the rival contentions, the questions raised for decision is, (i) Whether the dealer is liable to pay entry tax on the sale purchase and if yes (ii) Whether the dealer is liable to pay tax on the escaped turnover or (iii) Whether the dealer is liable to pay tax on the entire turnover taking

consideration in to the fact that, this is a re-assessment on the basis of a fraud case report?

There is no dispute on the proposition of law that, in the event, the dealer is found to have brought any goods entered into local area as defined u/s.2(f)(ii) of the OET Act, the dealer is liable to pay tax. Similarly, when the dealer is a manufacturer of gold ornaments in that case, in the event of sale invoking provision u/s.26(1) of the OET Act r/w Rule 19 of the OET Rules, the dealer is responsible to collect tax and after availing set off of the tax against raw material the dealer is liable to pay tax under the OET Act to the Revenue. This principle under law is not disputed by the dealer. But the dealer's contention is, the dealer is a shopkeeper/goldsmith engaged in conversion of gold ornaments. He neither had purchased from any dealers outside the local area nor had sold any goods to dealers out of local area. So the liability of the dealer under the OET Act does not arise. All the transactions took place in his shop as customers came to sale or purchase to his shop.

7. Perused the impugned order. According to the appellate authority, the dealer's business concern is located at Haripurhat coming under Narasinghpur Panchayat of Jajpur district. The persons from whom the dealer had purchases gold ornaments belong to the villages of different panchayats of the same district. In the similar way, the

dealer had also effected sale to the purchasers who are inhabitants of villages of other Grama Panchayats. The portion of the sale-purchase relating to purchasers and sellers of the same Panchayats were deducted from the GTO for the purpose of determination of TTO. However, the persons, who are inhabitants of the villages other than Panchayat of the assessee-dealer, they are brought under the tax net by the FAA. The term “local area” has been defined u/s.2f(ii) of the OET Act means, the area within the limit of Grama Panchayat constituted under the Odisha Grama Panchayat Act. The dealer is not liable to pay tax, if any transaction takes place within the local area of his Grama Panchayat, Narasinghpur. Any transactions with the persons beyond the Grama Panchayat of Narsinghpur are necessarily taxable. The plea of the dealer is, he never purchases going out of the local area, he never sales going out of the local area. It is the customers, come to his shop for sale purpose, conversion purpose or for purchasing purpose. When the dealer does not make any transaction to any outside dealers, but only to the retail customers that too the retail customers comes to his shop for the purpose of sale or purchase, then the dealer cannot be brought under the tax net.

8. Perusal of the order of the FAA and AA, it is found that, both the fora below have gone by the address of the sellers and purchasers from the dealer’s register. Neither

of the authorities has made any enquiry into the fact that, the sellers and purchasers have come to the dealer's shop for the purpose of sale, purchase or the dealer has effected any sale going beyond the local area. So, the enquiry by the FAA is found to be insufficient to draw a conclusive inference in favour of the Revenue. The AA should have asked the dealer to produce evidence in support of his claim. When the register indicates, the purchaser or dealer belongs to different Panchayats, then the burden is on the dealer to establish that, these purchasers and sellers had come to his shop. But at the same time, when it is the claim of the dealer that, it effects purchases and sales sitting in his own shop, then the burden is shifted to the Revenue to prove that, the sale, purchase took place outside the local area or the goods sent to outside the local area by the dealer itself. In the matter of **“The Snow White Trading Corporation -Vrs.- State of Odisha”** in **STREV No.57 of 2013** it is held as follows :

“           xxx                   xxx                   xxx

21. In view of the above, we are of the considered opinion that to get benefit from payment of entry tax in respect of the scheduled goods purchased by a dealer from another dealer/registered dealer of that locality, who has brought the goods into the local area, the dealer need not prove that its seller has in fact paid the entry tax. It will be enough for the dealer to show that its sellers is identifiable and has in fact made entry of the scheduled

goods into the local area and the tax is payable by its sellers.”

The ratio as laid down by the Hon’ble Court is, once the dealer has disclosed the identity of purchaser or sellers, then it is incumbent upon the authority to enquire how and where the purchases or sales effected.

From above, I am of the considered view that, the enquiry is incomplete, not conclusive to arrive at a definite conclusion. Therefore, the finding of the FAA or the AA levying entry tax is not sustainable. It needs further enquiry and for that purpose, the matter should be remitted back to the AA. On such remand, the AA should verify, if the dealer had effected purchases going out of the local area or the dealer had effected sale to the outside dealer or customers or all the transactions took place in the dealer’s shop itself. In the latter event, the dealer is not liable to pay any entry tax.

9. The next question is, whether the tax liability, if any, found established should be imposed on the escaped turnover or the entire turnover? This is a re-assessment proceeding. So, when the AA found the entire TTO has been escaped from tax net, the AA can assess the same by giving a notice to the dealer with an opportunity of being heard to the dealer, which is done in this case in accordance to law. But the fact remains, once the dealer is not found liable to pay entry tax, then the very imposition of entry tax will be found

illegal. With the observation above, it is held that, this is a fit case where the matter should be remitted back to the AA for enquiry, whether the dealer has effected sale, purchase with the customers or dealers beyond the local area at his instance. Accordingly, it is ordered.

The appeal is allowed. The impugned order is set-aside. The matter is remitted back to the AA for assessment afresh in the light of the observation above.

Dictated and Corrected by me,

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

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