

**BEFORE THE JUDICIAL MEMBER: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No.294 (V) of 2015-16

(From the order of the Id. DCST (Appeal), Sambalpur Range,
Sambalpur, in First Appeal Case No.AA 5/BGH/VAT/2015-16,
disposed of on 22.09.2015)

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

M/s. Punjab Motors,
At:- Veer Chowk, Haldipali,
P.O./Dist.- Bargarh. ... Appellant

- V e r s u s -

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

For the assessment period: 01.04.2011 to 31.03.2013

For the Appellant ... N o n e
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 20.04.2019 ***** Date of order: 20.04.2019

ORDER

Against a confirming order of assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) relating to the assessee-dealer with the allegation of escaped turnover ended with demand of tax due and penalty at Rs.1,86,567.00 preferred by the unsuccessful dealer before both the fora below.

2. The facts relevant for the purpose of the appeal are, the assessee-dealer engaged in trading of plough, tractors, spare parts,

cultivators, agricultural and horticulture appliances was subjected to audit assessment on the basis of Audit Visit Report (in short, the AVR) alleging thereby stock discrepancy leading to escapement of turnover. The assessing authority, acting upon the AVR on due confrontation of the allegations with the dealer found the dealer had affected purchase of goods amounting to Rs.28,27,735.00. During the material tax period, it has earned ITC admissible at Rs.1,10,487.00. As the assessing authority found the dealer sold goods worth of Rs.16,97,047.00, the goods for the rest amount i.e. Rs.11,30,688.00 were supposed to be in stock of the dealer, but during verification by the team they found there was no stock available with the dealer. Hence, the assessee-dealer treated the goods of that amount as suppression. Adding profit margin, the aforesaid purchase suppression led to sale suppression of Rs.12,43,757.00. In ultimate analysis, the assessing authority fixed the tax liability at Rs.62,189.00 payable by the dealer. Above it, penalty u/s.42(5) of the OVAT Act at Rs.1,24,378.00 was imposed, thereby the total demand raised to 1,86,567.00.

3. Being aggrieved, the dealer preferred appeal before first appellate authority who in turn confirmed the order of assessment by reiterating the same view that, on the date of visit the dealer could not show the balance stock worth of Rs.11,30,688.00. The explanation by the dealer was not up to the satisfaction of the taxing authority hence, the demand of tax remained undisturbed.

4. On this backdrop, this second appeal at the behest of the dealer on the contentions like, the computation of suppression is improper and is done, ignoring the provisions produced by the appellant. Hence, the impugned order should be set aside.

5. The appeal is heard with cross objection from the side of the Revenue, whereby the Revenue has supported the finding of the both the fora below.

6. The question raised for decision in this appeal is, whether the determination of sale suppression by both the fora below is sustainable in the facts and circumstances of this case.

7. This is a case of purchase suppression leading to sale suppression. The dealer has disclosed the purchase of goods to the tune of Rs.28,27,735.00. It is remained undisputed, whereas the dealer could show the documents towards sale to the tune of Rs.16,97,047.00. In that case the dealer should have the physical stock of the goods worth of Rs.11,30,688.00 on the date of visit of the audit team. But, on the date of visit, the audit team found that, there was no such stock available in the business premises.

On careful perusal of the impugned order as well as the assessment order, it is found that, the dealer has not taken any specific plea under what circumstance there was nil stock or there was no stock with the dealer. However, the LCR as it revealed, the statement of the dealer before the audit team was, it is due to the expansion of the N.H., a portion of the dealer's premises was demolished, so the dealer shifted the goods to another place. We failed to recognize this plea of the dealer for the simple reason that, the dealer had not taken this plea before the first appellate authority. If that was not the plea of the dealer before the assessing authority or before the first appellate authority or before this Tribunal, then it will be unsafe to rely plea which was given by the dealer before the audit team. The dealer has taken a definite stand, why the calculation of suppression is erroneous. It has not pleaded on which way it is erroneous. Further, the dealer had failed to produce any rebuttal evidence to dispute that, the calculation is not in accordance to law and not in accordance to the exact fact of stock position. At the same time the appellant has created a negative inference against his plea by remaining absent in the hearing. So, to sum up, it can be said that, the appellant has failed to apprise this Tribunal through oral

or documentary evidence that, there was any kind of stock available on the date of visit and the audit team had not taken account of that stock.

Be that as it may, it is held that, the satisfaction of both fora below on the question of fact needs no interference in absence of any cogent or rebuttal evidence from the side of the dealer. Hence, ordered.

8. The appeal sans merit dismissed.

Dictated & corrected by me,

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

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