

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 99 (ET) of 2011-12

(Arising out of order of the learned JCST, Koraput Range,
Jeypore in First Appeal No. AAE (NGP) 12/2010-11,
disposed of on dated 29.07.2011)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri S.M. Dash, Accounts Member-III

M/s. Mahavir Stores,
Main Road, Nabarangpur ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 28.10.2021 *** Date of order: 03.11.2021

O R D E R

This appeal is directed at the instance of the dealer-appellant against the order dated 29.07.2011 passed by the learned Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter called as 'first appellate authority') in First Appeal No. AAE (NGP) 12/2010-11 thereby confirming the order of assessment dated 30.09.2009 of the Asst. Commissioner of Sales Tax,

Nabarangpur Circle, Nabarangpur (in short, 'assessing authority') raising demand of ₹1,45,965.00 including penalty of ₹97,310.00 u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') for the assessment period 01.04.2005 to 31.12.2008.

2. The facts and circumstances of the case giving rise to the present appeal are that the appellant-dealer is carrying on business in readymade garments, hosiery goods, woollen garments, umbrellas, bed holders, carpets, stockings, fancy goods and toilet goods etc. on wholesale-cum-retail basis at Main Road, Nabarangpur. The business place of the dealer was visited on 06.01.2009 by a team of officers in pursuance of notice issued in Form VAT-301 on 25.10.2008 for conducting tax audit for the periods 2005-06 to 2008-09. In course of audit, it was found that the dealer did not maintain stock account/stock register of goods dealt by him and paid VAT by adding profit margin on bare purchase value. So, the audit team suggested for assessment u/s. 9C of the OET Act. In course of assessment, the assessing authority enhanced ₹1,50,000.00 to the returned GTO and TTO. He determined the GTO and TTO at ₹2,30,30,523.00 and ₹2,23,91,158.60 respectively

and calculated tax @ 1% on ₹44,97,521.60 and @ 2% on ₹1,78,93,637.00. He allowed the claim of deduction towards ET suffered goods on proper verification and after adjusting tax payment of ₹3,54,193.00, the assessing authority determined the tax liability at ₹48,655.00 and imposed penalty of ₹97,310.00 u/s. 9C(5) of the OET Act.

2(a). The dealer-appellant challenging the aforesaid findings of the assessing authority filed appeal before the first appellate authority, who also confirmed the order of the assessing authority. The dealer being further aggrieved with the order of the first appellate authority filed the second appeal.

3. When the matter was called on for hearing none appeared on behalf of the appellant inspite of service of notice. So, this Tribunal was left with no other option except to hear the second appeal *ex parte* in presence of the learned Addl. Standing Counsel (CT).

4. It was vehemently urged by the learned Addl. Standing Counsel (CT) representing the State in terms of cross-objection filed by it that both the forums below rightly determined the tax at ₹48,655.00 and imposed penalty on the same. There is no illegality or infirmity in such order of

the learned forums below. The dealer-appellant did not maintain stock account purposefully in order to evade tax. So, the forums below enhanced the GTO by ₹1,50,000.00 and determined the tax accordingly. There is no illegality or impropriety in the impugned order of the forums below warranting interference of this Tribunal. He submitted to dismiss the appeal.

5. We have heard the learned Addl. Standing Counsel (CT) for the State, perused the impugned orders of the forums below, grounds of appeal vis-a-vis the materials on record. The only basis of enhancement of GTO by ₹1,50,000.00 by the assessing authority was that the dealer did not maintain the stock register. The Audit Visit Report (AVR) submitted by the audit team reveals that the dealer maintains purchase and sale registers and all other material account with regard to the business transaction. The books of account maintained by the dealer-appellant were sufficient enough to verify the correctness of the returns filed by the dealer for the assessment periods in question. The enhancement of ₹1,50,000.00 by the assessing authority which was confirmed by the first appellate authority is unreasonable and unwarranted. When the other

books of account clearly depict the business transaction of the dealer-appellant, the forums below should not have arbitrarily enhanced the returned GTO by ₹1,50,000.00. The appellate order reveals that the dealer filed returns disclosing total purchase of scheduled goods at ₹2,28,80,523.20 out of which goods valued at ₹6,39,364.60 were purchased within the State of Odisha and he declared the TTO at ₹2,22,41,158.60 which was taxable @1% on ₹44,47,521.60 and @ 2% on ₹1,77,93,637.00, resultantly tax payable was determined at ₹4,00,348.00 against which the dealer had paid ₹3,54,193.00. The audit visit team did not find any sale or purchase suppression in the books of account maintained by the dealer. He suggested for assessment u/s. 9C of the OET Act only because the stock register of the goods till the time was not maintained and on the basis of this AVR, the assessment proceeding was initiated by the assessing authority and the returned GTO was enhanced by ₹1,50,000.00. The assessing authority was not correct in its approach to enhance the GTO by ₹1,50,000.00 only on the vague suggestion of the audit visit team without applying its mind to the facts and circumstances of the case. The first appellate authority also

confirmed the order of the assessing authority in a very superficial manner. Therefore, the impugned orders passed by both the forums below are not sustainable in the eye of law.

6. For the foregoing reasons, the appeal filed by the dealer-appellant is allowed and the impugned orders of the forums below are hereby set aside. The assessment is reduced to return figure. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(S.M. Dash)
Accounts Member-III