

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 344(V)/2017-18

(From the order of the Id.JCST, Balasore Range, Balasore, in Appeal No. AA-9/BA-2017-18 (VAT), dtd.16.10.2017, confirming the assessment order of the Assessing Officer)

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

Akhtar Ali,
Prop.- M/s. Royal Bangle Store,
Fandi Bazar, Dist. Balasore ... Appellant

-Versus-

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

For the Appellant : Mr. B. Roul, Advocate
For the Respondent : Mr. M.L. Agrawal, S.C. (C.T.)

(Assessment period : 03.02.2012 to 02.02.2017)

Date of Hearing: 25.01.2019 *** Date of Order: 25.01.2019

ORDER

This second appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short, FAA/JCST) in First Appeal Case No. AA-9/BA-2017-18 (VAT) dtd.16.10.2017 in confirming the order of assessment passed by the learned Sales Tax Officer/Assessing Authority, Balasore Circle, Balasore (in short, STO/AA) for the assessment period 03.02.2012 to 02.02.2017 u/s.44 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The dealer was subjected to assessment u/s.44 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) with the

allegation like non-registration as per Sec.10(4)(a) and non-payment of tax. The dealer's unit was visited by the authority and it was detected that by 3 P.M. of the day, the dealer had effected sale of goods to the tune of Rs.140/-. Since the dealer was not maintaining the books of account or register of sale/purchase of any nature, the daily/average sale of the dealer was suggested at Rs.1000/-. As the dealer was effecting purchases from out of state sellers, he was also otherwise required to register himself as per Sec.10(4)(a) of the OVAT Act. On acceptance of all these allegations, the AA passed an ex-parte assessment order determining the taxable turnover of the dealer at Rs.11,70,512.82 for the tax period from 03.02.2012 to 02.02.2017. Taxing the amount out @1% and @13.5% on Rs.2,20,512.80, the total tax due was calculated at Rs.39,269/-. Penalty u/s.44 of the OVAT Act was imposed at one time of the tax due. As a result, the total demand was raised to Rs.78,538/-.

3. The ex-parte order of assessment was challenged before the FAA, who in turn, confirmed the order of assessment. Resultantly, felt aggrieved, the dealer has preferred this second appeal. The dealer's contention is, he is not a wholesale dealer. His sale per day was not at Rs.1,000/- in any stretches of imagination and as he was not effecting purchases from outside dealer requiring thereby compulsory registration of the firm as per Sec.10 of the OVAT Act. The period of assessment taken in this case was 03.02.2012 to 02.02.2017. The assessment order was passed on 02.02.2017 and the period taken for calculation is for the period of five years to the final order. Sec.44(2) of the OVAT Act reads as follows :

“44. Assessment of dealer who being liable to pay tax fails to register.-

(1) xxx xxx xxx xxx

(2) No assessment under sub-section (1) shall be made after the expiry of five years from the end of the tax period or tax periods to which the assessment relates.”

4. Perused the LCR. The notice for assessment was given for the period 02.04.2008 to 31.03.2012 i.e. the period beyond prior to five years preceding to the date of order. On the notice itself, it can safely be said that, the period taken for assessment as per notice is beyond the period of limitation contemplated u/s.44(2). No doubt the provision contemplates compulsory registration irrespective of the slab of the turnover in the event, the dealer purchases or receives goods from outside of State for the purpose of sale i.e. as per Sec.10(4)(a) of the OVAT Act. Since the notice for assessment covers a period i.e. the period barred by limitation as per Sec.44(2) of the OVAT Act and the period actually covers under the assessment is not preceded/initiated by giving statutory notice, then, the irresistible conclusion is, the assessment in question is not sustainable in law. In that event, it is found not necessary to see whether the best judgment assessment passed by the AA taking the average daily sale of the dealer is reasonable or not ? In the result, it is ordered.

The appeal is allowed. The assessment in question is set-aside as is not in accordance to law.

Dictated and Corrected by me,

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

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

