BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 103 (VAT) of 2018

(Arising out of order of the learned JCST, Angul Range, Angul
in First Appeal Case No. 106211721000007
disposed of on dated 30.12.2017)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Srikrushna Jewellers,
Meena Bazar, Dhenkanal ... Appellant

-Versus-

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

For the Appellant : Sri M.V.S.R. Pantulu & Sri D.K. Hazra, Advocates
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 08.02.2021 ***** Date of order: 04.03.2021

O R D E R

Aforesaid appeal in terms of Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 93 of the Odisha Value Added Tax Rules, 2005 is preferred by the dealer assessee assailing the impugned order dated 30.12.2017 passed in Appeal Case No. 106211721000007 by the learned Joint Commissioner of Sales Tax, Angul Range, Angul (in short, 'FAA'), who confirmed the order of assessment dated 31.03.2016 directed as per Section 43 of the Act by the learned Deputy Commissioner of Sales Tax, Dhenkanal Circle,

Dhenkanal (hence called 'AA') for the tax periods from 01.04.2011 to 28.02.2014 on the grounds inter alia that it is not sustainable for being unjust, arbitrary and therefore, deserves to be set aside in the interest of justice.

2. As regards the dealer assessee, it carries on business in wholesale and retail distribution of gold and diamond jewelleries; for that purpose, it effects purchase of goods in course of intra and inter-State, however, sells it within the State only. Indeed, the dealer assessee self assessed itself for the period from 01.04.2012 to 28.02.2014 and was earlier assessed under Section 42 of the Act for the rest period. In fact, a vigilance inspection was conducted at the business premises of the dealer assessee, consequent upon which, a report (FCR) was submitted. On the strength of said report, a proceeding under Section 43 of the Act was commenced. It was alleged that the dealer assessee had been indulged in clandestine business activities and evaded paying legitimate tax dues. On completion of reassessment under Section 43 of the Act, the AA held and determined taxable amount of ₹32,141.00 payable by the dealer assessee @1% of TTO. Furthermore, penalty was imposed under Section 43(2) of the Act. Thus, the dealer assessee, as per the assessment dated 31.03.2016, was directed to pay tax and penalty of ₹96,423.00. Being aggrieved of, the dealer assessee knocked the doors of the FAA. Though, the dealer assessee raised a number of grounds, while defending the charge as to the assessment dated 31.03.2016, it did not find favour with the FAA, who ultimately dismissed the appeal thereby confirming the additional tax demand.

Being unsuccessful, the dealer assessee approached the Tribunal reiterating all such grounds which had earlier been raised. It is contended that there was no purchase and sales suppression as concluded by the AA and upheld in appeal by the FAA and therefore, the impugned order dated 30.12.2017 to be clearly indefensible.

3. As per the dealer assessee, the grounds are: (i) in the facts and circumstances of the case, gold and other ornaments and the stock had been regularly maintained with the books of accounts which are transparent and verifiable there being no omission or commission detected during the vigilance inspection and as such, determination of taxable turnover without any nexus is completely baseless and ought to be dismissed; (ii) so far as finding on sales suppression at ₹4,35,608.00, it was concerning transactions where sales did not materialize despite acceptance of advances from customers and therefore, the same should not have been included in the taxable turnover rejecting a reasonable explanation offered in that respect; (iii) as no transactions were finalized though token receipts were issued at the time of orders placed by the customers and when no sales were concluded, the authorities below could not have determined purchase and sales suppression at ₹85,723.00 and ₹15,66, 050.00 respectively and a decision in respect thereof must have to be invalidated; (iv) regarding sale suppression of ₹34,000.00, it was an advance which was received and later returned and thus, was not to be included; (v) valuation of gold weighing 0.987 gms. for ₹3,050.00 treating it as a sale suppression is also a wrong, as there was no sale actually effected; (vi) it was again an error committed in

rejecting the books of accounts and determining the turnover at ₹32,14,146.00, which is totally unjust, arbitrary and uncalled for; and (viii) considering the nature of transactions and business of the dealer assessee and the kind of explanation offered, while meeting the charge, the authorities below committed illegality in imposing penalty which is arbitrary and unwarranted. Precisely, the above are the grounds which have been consistently raised by the dealer assessee all along while opposing the tax liability.

4. With respect to the respondent State, by way of a cross-objection, the determination of taxable turnover and additional demand raised has been justified. It is contended that the vigilance inspection was conducted and during and in course of enquiry, the seized records were taken into account and accordingly, the estimation was made and as no plausible explanation was furnished, it was held to have been unaccounted for. Further contended that the discrepancies could only be unearthed after verifying the seized documents. That apart, as per the State, the dealer assessee failed to produce documentary evidence in counter and therefore, the grounds and averments were rightly rejected. Lastly, it is urged that penalty was correctly levied on determination of escaped turnover which is as per Section 43(2) of the Act. Thus, according to the State, there is no justification to interfere with the impugned order dated 30.12.2017 and hence, it is not to be disturbed.

5. The rival contentions of the parties are to be examined by the Tribunal. There is no denial to the fact that during the vigilance inspection, certain documents were seized wherefrom discrepancies were made known. In course of such enquiry by the Vigilance Wing, adverse materials were retrieved and it prima facie indicated that there was purchase and sales suppression. The dealer assessee claimed that in all transactions, no sales were concluded. In other words, according to the dealer assessee, there were preparatory activities, such as receiving and retaining gold ornaments, making charges, advance money, but sales were not materialized. Moreover, the learned Counsel for the dealer assessee contended that the assessment which has been made does not have any nexus and therefore, the findings cannot be sustained. Essentially, the best judgment assessment is under direct attack due to absence of any nexus with the materials on record. The learned Standing Counsel (CT), on the other hand, would contend that the assessment is evidence based and the demand raised against the dealer assessee needs confirmation. In the instant case, the assessment is on best judgment of the AA, who rejected the books of accounts and proceeded to reassess the dealer assessee under Section 43 of the Act. In fact, according to the ruling of the Hon'ble Apex Court in State of Kerala Vs. C. Velukutty reported in 17 STC 465 (SC), the assessing authority is to make an assessment against a dealer to the best of judgment and while doing so, not to act dishonestly or capriciously; limits of the power are implicit in the expression 'best of his judgment'; judgment is a faculty to decide matters with

wisdom; albeit, an element of guess work in a best judgment assessment is involved, it shall not be wild, but must have a reasonable nexus to the available material. In other words, while invoking jurisdiction under Section 43 of the Act, an estimate should not merely be a guess work but it must be accompanied with a decision having a reasonable nexus with the facts discovered. In the case at hand, the learned Counsel for the dealer assessment claims that the escaped assessment is without any nexus. However, as per the record, it is made to understand that certain documents were seized, which on verification, discrepancies were found, that ultimately led to the additional demand raised. It is not that the authorities below simply resorted to wild guess work, but as it appears, the escaped assessment was determined with reference to the documents seized and relied upon. The documents procured from the business premises of the dealer assessee were confronted to and thereafter, on an objective satisfaction, taxable turnover was determined. Considering the materials on record, it can, therefore, be not correct to allege that the decision so taken by the authorities below was having no nexus with the materials on record.

6. It is alleged that there were no sales effected by the dealer assessee as claimed to have been revealed from the seized documents referred to by the authorities below. In fact, six set of documents were seized which were lying at the disposal of the dealer assessee when its business premises was inspected. The documents, such as, an exercise book (D1), a register (D2), an MBD note book (D3), calculation books (D4), a pocket book (D5) and a bunch of documents (D6 were

examined and verified and also discrepancy was pointed out vis-a-vis stock of goods and at last, the tax due was determined. The AA examined all the seized documents and rejected the claim of the dealer assessee one by one. As to D1, in course of its verification, the AA found that the document contains details of the customers' name, cell number, weight of jewelleries, price, making charges, advance received, expected and actual dates of delivery, final/differential amounts paid, etc. which again revealed a register maintained customer wise with separate pages assigned and besides that, a pass book under a scheme was attached to it along with a retail invoice dated 05.02.2014 for ₹31,475.00, considering which, it was held to be that of the dealer assessee rejecting the defence that the register belongs to a local goldsmith, who had been engaged under an agreement dated 15.02.2013. As a matter of fact, the contents of D1 did not commensurate to the claim of the dealer assessee that it belonged to the alleged local goldsmith. On a detailed examination of D1, suppression of ₹10,89,715.00 was revealed. If at all the document in question was of any goldsmith, the entries in D1 would have been regarding receipt of gold ornaments from the dealer assessee with specifications of the jewelleries meant to be manufactured and then, returned and also indicating the charges paid to him. When D1 was examined in detail and a satisfaction was arrived at by the AA, no any compelling reason appears for the Tribunal to accept the defence of the dealer assessee. With respect to such a claim, the dealer assessee at least was required to produce additional evidence before the FAA. The AA was not really obliged to

examine the alleged local goldsmith, since the entries in D1 revealed something otherwise directly pointing figures at the dealer assessee. With regard to D2, since it was relating to repair works, no adverse inference was drawn by the AA. Regarding D3, it comprised of 16 pages containing the particulars as to the amounts received from the customers. According to the learned Counsel for the dealer assessee, the amount was received as advance from customers and as such, sales were not materialized. But, such a defence was again found unsubstantiated. On a verification of D3, the AA ascertained that the payments were received through debit cards of different banks amounting to ₹4,35,608.00 which was not accounted for. The AA disbelieved the claim of the dealer assessee on the ground that no customer normally ever makes any payment through debit card, while paying the advance money and if any such advance is paid, shortly after, it is followed by delivery of goods. That apart, the dealer assessee failed to produce cash book showing receipt of advance and return of the said amount, when transactions claimed not to have been materialized. In absence of any such evidence brought forth by the dealer assessee and considering the particulars of D3, it was quite but natural for the AA to conclude that the alleged amount of ₹4,35,608.00 was nothing but sale proceeds of the transactions that were unaccounted for. The most vital document is D4 which comprised of 07 numbers of calculation books and each page revealed the parties' name, dates, exchange of gold, payments received etc. and once again, the AA found the transactions not to have been reflected in the books of accounts which

further confirmed the purchase and sales suppression. Interestingly, the dealer assessee put a defence that customers placed orders when the cost of gold was on lower side and paid some advance money and since the transactions could not be concluded, so it did not find place in the books of accounts. It was also claimed that receiving advance is preceded by supply of tokens which are later produced when the transactions are finalized and accounts are adjusted. The said contention was rejected by the AA in absence of any corroborative evidence, such as, cash book, etc. regarding receipt and return of advance money. The document, i.e. D4, on being examined revealed purchase and sales suppression. The dealer assessee appears to have simply denied the said allegation. In fact, D4 clearly revealed and exposed the unaccounted for transactions vis-a-vis the dealer assessee. The defence that all the alleged transactions failed to be materialized and the amount whatever shown to have been received in D4 to be advance money could not be substantiated. The Tribunal having appreciated the facts on record also arrives at a similar conclusion and reiterates the view as has been expressed by the authorities below. Once more an amount of ₹34,000.00 and its receipt proved vide D6 could not be explained by the dealer assessee, who simply claimed that it was not on account of any sales accomplished. The said amount clearly found to be not accounted for even though was shown received as per D6. The amount was held as sale suppression and according to the Tribunal, it had to be, since no evidence was submitted in order to deny the allegation for having received it in course of sales.

Respecting the stock discrepancy, it is contended that the agreements executed with the local goldsmiths when found to be genuine, it ought not to have led the authorities below to hold any stock discrepancy by adding an amount of ₹3,050.00 on account of sale suppression. The AA considered the agreements, which were originally not accepted by the Vigilance Wing for being inadequately stamped and not according to the instructions of I.G. of Registration dated 25.04.2005 and acted upon it, notwithstanding such deficiencies pointed out and ultimately held that 930 gms. of gold were kept as security, whereas, stock discrepancy detected a deficit by 0.987 gms. valued at ₹3,050.00 @ ₹3,400.00 per gram. The finding of the AA in this regard is absolutely just and reasonable. The agreements were not at all rejected and only for a differential stock, an amount of ₹3,050.00 was added to the tally of sales suppression, which according to the Tribunal, perfectly justifiable. The conclusions so arrived at by the AA being based on the alleged documents seized from the custody of the dealer assessee and as has rightly been confirmed, it need no interference. In course of argument, it has been alleged by the learned Counsel for the dealer assessee that all the citations submitted to the FAA were not duly appreciated. On perusal of the impugned order dated 30.12.2017, the FAA found to have mentioned all the citations relied upon from the side of the dealer assessee. Predominantly the authorities are on best judgment assessment and about the judicial principles which are to be applied at the time of assessment. One of such rulings is of the Hon'ble Apex Court in C.M. Joshi Vs. State of Orissa reported in

(1999) 116 STC 89 (Orissa) which is regarding estimate of turnover and nexus with the materials on record. The Tribunal has already considered that aspect and reached at a conclusion that the authorities below rightly determined the turnover, considering the material documents seized from the establishment of the dealer assessee itself. It was also held that the assessment is entirely based on verification of the said documents and thus, has a nexus to the facts discovered. Thus, the Tribunal after considering all the aspects of the matter finds no any serious legal infirmity in the impugned order dated 30.12.2017.

7. Hence, it is ordered.

8. In the result, the appeal stands dismissed. As a logical sequitur, the impugned order dated 30.12.2017 passed in Appeal No. 106211721000007 is hereby confirmed. The cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman