

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

S.A.No. 133(V)/2017-18

(From the order of the Id.JCST, Koraput Range, Jeypore, in
Appeal No. AAV(KOR)22/16-17, dtd.29.04.2017,
modifying the assessment order of the Assessing Authority)

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

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

-Versus-

M/s. Hotel New Kadambari,
Dist. Koraput. ... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (CT)
For the Respondent : Mr. S. Sundaram, Advocate

(Assessment period : 01.04.2012 to 11.09.2015)

Date of Hearing: 08.08.2018 Date of Order: 08.08.2018

ORDER

This appeal is directed against the order of learned First Appellate Authority/Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/JCST) in First Appeal Case No. AAV(KOR)22/16-17 dtd.29.04.2017 in modifying the order of assessment passed by the Sales Tax Officer/Assessing Authority, Koraput Circle, Jeypore (in short, STO/AA) for the assessment period 01.04.2012 to 11.09.2015 u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts giving rise to the present appeal are :
M/s. Hotel New Kadambari, a registered dealer was subjected to

assessment u/s.43 of the OVAT Act for the period 01.04.2012 to 11.09.2015 on the basis of report submitted by the Vigilance Wing. The gist of the report are on 11.09.2015, the Vigilance Wing had visited the business premises of the dealer and seized One notebook named Shankar note book' having 10 used pages, (2) 10 numbers loose written slips, (3) 5 nos. loose written slips and (4) one Line brand attendance note book having 15 used pages. The Vigilance Wing had also verified the physical stock available in the hotel premises with the assistance of representative of the dealer namely Sri Prasanta Kumar Sahu, the annual sale turnover of the dealer and then suggested for proceeding u/s.43 of the OVAT Act with the allegation of sale suppression to the tune of Rs.1,07,35,886/-. The AA on acceptance of the allegations in the report on application of the best judgment principle determined the GTO and TTO, then calculated the tax liability and then imposed penalty at twice of the tax liability, the total due became determined at Rs.53,61,948/-.

3. The order of assessment was challenged before the FAA. The ld.DCST as FAA vide impugned order accepted the plea of the dealer that Mr. P.K. Sahu whose statement was recorded by the Vigilance Wing was neither the proprietor of the hotel nor related to the hotel in any capacity. It is also held that, proper opportunity of being heard was not provided to the dealer and then deleted the entire tax liability as the incriminating materials were not duly proved.

4. Being aggrieved with the impugned order, State has preferred this appeal. It is contended by the State that Sri P.K. Sahu was the representative of the dealer. The affidavit sworn by

Sri Sahu is an afterthought. The dealer had adopted unfair method to defraud the Government Revenue. So, sale suppression as determined by the AA should be re-affirmed.

5. The dealer has contested the appeal without cross objection.

6. In the case in hand, it is found that, the Vigilance Unit recovered and seized some incriminating documents as mentioned above. Then on examination of one Mr. P.K. Sahu they suggested for initiation of proceeding u/s.43 of the OVAT. Later the proprietor of the Hotel Mr. Ramesh Chandra Sahu took a stand that, P.K. Sahu named above was no way related to his business. Sri P.K. Sahu also filed affidavit before the FAA stating therein that, he was not connected to the dealer. The FAA has accepted the claim of the dealer that, the statement of Sri P.K. Sahu was recorded putting him under duress. It is surprising to take note of the fact that, the FAA could rely on an affidavit sworn by Sri P.K. Sahu and on that basis, it has disbelieved the document by a responsible officer prepared in course of his official duty. The FAA should not accept the plea of the dealer in a mechanical manner. It is also apt to mention here that, the dealer has taken a stand that, Sri P.K. Sahu his relation and he was looking after the business for the day in absence of dealer. On perusal of the incriminating materials as seized in this case, it is found that, the statement of the proprietor that R.K. Sahu dtd.24.09.2015 before the Vigilance Wing, reads as follows :

“I was allowed to go through the statement given by him Prasant Kumar Sahu along with the seized documents and argued upon the statement given on the date of visit and admit that the

recovered documents those were seized on the date of visit are belonged to my firm”.

If this is the admission by the proprietor Sri R.C. Sahu himself, then why and how the FAA did not accept the Vigilance report or the findings of the AA regarding sale suppression as remained unanswered. So, it is held that, the FAA has not gone through the details of the document but arrived at a conclusion without application of judicial mind.

It is noteworthy to mention here that, the FAA has also held that, the dealer was not given with proper opportunity of being heard and if that is, it should have remanded back to the AA for re-hearing. No doubt the FAA being an extended forum of assessment has the jurisdiction to assess the dealer but once he arrived at a conclusion that, the dealer had not given proper opportunity of being heard, then he should not have deprive the dealer losing a forum like Assessing Authority to put forth his grievance.

Keeping in view the facts and circumstances of the case mentioned and the decision above it is held that, this is a fit case where the matter should be remitted back to the AA for assessment afresh. Accordingly, it is ordered.

The appeal by the State is allowed on contest. The matter is remitted back to the AA for assessment afresh in the light of the observation made herein above.

Dictated and Corrected by me,

(S. Mohanty)
2nd Judicial Member

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