

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 96(ET)/2017-18**

(From the order of the Id.JCST (Appeal), Bhubaneswar  
Range, Bhubaneswar in Appeal No. AA-  
108221722000080/OET/BH-IV, dtd.22.06.2017 quashing  
the assessment order of the Assessing Officer)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

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

**-Versus-**

M/s. Gouri Electricals,  
Bhubaneswar. .... Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel  
For the Respondent : Mr. C.R. Das, Advocate

(Assessment Period : 01.01.2012 to 31.03.2012)

Date of Hearing: 16.07.2019 \*\*\* Date of Order: 17.07.2019

**ORDER**

The present second appeal has been directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) quashing the entire tax demand raised on the dealer in the order of assessment passed by the Assessing Authority/Sales Tax Officer (in short, AA/STO) for the assessment period from 01.01.2012 to 31.03.2012 u/s.7(5) of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The facts of the case in brief are runs as follows:

The instant dealer M/s. Gouri Electricals, Bapuji Nagar, Bhubaneswar is a registered dealer bearing TIN-21581104073 is engaged in trading of electrical goods, PVC and Steel Pipes etc. both on retail and wholesale basis. For the period under assessment, the dealer was initially found to be self-assessed u/s.9(2) of the OET Act, but subsequently assessed u/s.9(C) for the self-same period following the visit of Audit Visit Team to the business premises of the dealer. On physical verification, it was found that, the dealer has some unaccounted purchase of physical stock for some selected goods and could not establish the veracity of the same. Thus, the dealer was alleged with escapement of turnover for purchase suppression of those unaccountable physical stocks. Further, at the assessment stage also, the AA re-opening the assessment u/s.10 of the OET Act, issued notice to the dealer to appear before him with his books of account. Despite availing number of opportunities, the dealer could not turn up and hence set ex-parte at the assessment stage. On perusal of the Audit Visit Report, the AA found the dealer exhibited physical stock of goods for sale worth of Rs.25,13,979/- and treated those as total purchase suppression in absence of reliable documents from the side of the dealer. Accordingly, the GTO of the dealer stood established at Rs.1,00,56,763/- for the period under

assessment. After allowing deduction of Rs.75,42,784/- towards purchase value of schedule goods as entry tax suffered goods, the TTO became calculated at Rs.25,13,979/- and thereafter imposed tax @2% to the tune of Rs.50,280/-. Besides tax, penalty twice of it u/s.10 of the OET Act established at Rs.1,00,560/-. Thus, the total tax due along with penalty together came to Rs.1,50,840/-, which the dealer is liable to pay as per the assessment order.

3. Being aggrieved with the order of assessment passed by the AA, the dealer preferred first appeal before the learned FAA as JCST, Bhubaneswar Range, Bhubaneswar, who in turn, entirely quashed the order of assessment passed by the AA and hence, this appeal.

4. Being dis-satisfied with the order of assessment passed by the AA, State has come up with this second appeal before this forum to re-assess the dealer by setting-aside both the orders of the forums below with the grounds that, (i) The FAA should have at best annulled the assessment order instead of quashing the assessment order. (ii) The first appellate authority fails to visualize the order passed by the STO on ex-parte basis and moreover the STO has gone beyond his capacity and jurisdiction, which is otherwise illegal and untenable in the eyes of law. (iii) The FAA should have gone through the AVR and emphasized the authenticity of the reported purchase suppression and moreover (iv) The FAA should

have verified the books of account to determine the authenticity of the suppression and thereafter could have reached to the conclusion that the suppression charged against the dealer is viable or not. In order to substantiate his claim, the learned Standing Counsel has produced a plethora of decisions justifying the detection of purchase suppression by the AA leads to sale suppression and as per the provisions of the Act, tax is to be levied on value addition. Among those bunches of decisions submitted by the Standing Counsel the decisions passed by different Hon'ble Courts, which are mostly relevant to the dispute in this appeal are reproduced below:

Hon'ble High Court of Orissa in the case of **Commercial Enterprisers V. State of Orissa (1991) 81 STC (Ori)** has held thus :

“2. Annulment of an assessment is permissible where the taxing authority would have no jurisdiction to assess. In all other cases, where there is jurisdiction to assess, the assessment order may be set aside if there is any error, which requires further enquiry to be conducted by the appellate authority.”

Further, the learned Standing Counsel cited the judgment rendered in the matter of **Snow White Trading Corporation Vrs. State of Orissa (2014) 71 VST 351 (Ori)** and argued that, in the instant case, the dealer-respondent had not proved the payment of entry tax on the goods purchased from inside the State as per charging Section 3 of the OET Act, therefore, the FAA has erroneously passed

the order by quashing the entire order of assessment by the AA.

5. The disputed fact of law arose out of this appeal needs to be decided by this Tribunal is : (i) Whether the FAA has erred in law while quashing the entire order of assessment passed by the AA by exempting the dealer from paying the entire tax demand payable by him at the assessment stage ?

6. Heard both the learned Counsels appearing for their respective parties. For the State-appellant, Mr. M.L. Agarwal, learned Standing Counsel was present whereas Mr. C.R. Dash, learned Advocate appeared on behalf of the dealer-respondent. Perused the assessment order as well as the first appeal order and the materials available on record. Gone through the grounds of appeal filed by the State and written note of submission by learned Advocate Mr. Das. While submitting the written note, learned Advocate Mr. C.R. Das appearing on behalf of the respondent-dealer vehemently countered the argument advanced by the State during the course of hearing. The first point he raised before this Tribunal in order to establish his claim is that, the learned FAA as JCST has legally and justifiably quashed the order of assessment within his official capacity and under the purview of law. Moreover, he has stated that, as per the OET Act, 1999 the word "annul" is having exact similar meaning as the word "quash". Hence, they both carry the same

synonymous nexus with each other. Secondly, on the point of purchase suppression of Rs.27,65,377/- by the dealer during the period in question as claimed by the State, learned Advocate Mr. Das brought the notice of this Tribunal that, except bringing forward the figures and drawing conclusions there from the purchase suppression has been arrived for which the State has miserably failed to bring any iota of other evidences in the record, i.e. goods are purchased from whom, the mode of purchase, the mode of payment and transportation etc. In absence of all such evidences, only basis of comparison figures, allegations of purchase suppression cannot survive. Further strengthening his basis of argument, he has also cited valuable decisions of different Hon'ble Courts and Apex Court. Some of them are like, in the case of **Oudh Sugar Mills Ltd. Vrs. Union of India, 1978 (2) ELT (J. 172) (SC)**, wherein the Hon'ble Apex Court has held that:

“allegation of clandestine production and removal based only on calculation of raw material paid into the process on working of the machinery as noticed during test inspection. **No tangible evidences on record.** Finding is thus vitiated by error of law, being based only on inference involving unwarranted assumptions”.

Similarly, in the matter of **Commissioner of Central Excise, Kanpur Vrs. Minakshi Casting, 2011 (274) ELT 180 (All)**, the Hon'ble Allahabad High Court has held that:

“the Tribunal has found that there is no material or evidence of any kind to support the findings, that there was clandestine removal, which did not tally with the physical stock. In substance it was

found that, there was shortage of finished goods. The shortage of finished goods, by itself couldn't unless it is related to clandestine removal of finished goods for which there was no material evidence, infer evasion of excise duty, and thus no penalty can be imposed".

Likewise, in the matter of **State of Kerala Vrs. M.M. Mathew and Another, (1978) 42 STC 348 (SC)**, wherein the Hon'ble Apex Court has held that, strong suspicion, strange coincidences and grave doubts cannot take place of legal proof. To establish a charge against an accused, it is essential for the prosecution to establish by complete and tangible evidences. In the case in hand, there is absence of corroborative evidence to allege suppression of sales. As such, the learned FAA has rightly passed the order by quashing the assessment order passed by the AA.

Apart from that, learned Counsel for the dealer-respondent stated that, the STO has derived purchase suppression of Rs.25,13,979/- in comparison to the book balance, where the calculation of physical stock as per book balance is Rs.(-) 1,71,839/-. This type of circumstance is virtually impossible and impractical in the real business world and primary logic of business.

Keeping in view, the decisions and analysis as aforementioned, this Tribunal is of the view that, there is enough force behind the argument of the learned Counsel for the dealer-respondent and he has justifiably argued for upholding the order of learned FAA which is legally not sustainable in the eyes of law. Accordingly, it is ordered.

The appeal filed by the State having no merit stands dismissed on contest and the order passed by the FAA stands confirmed.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member