

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 167(V)/2013-14**

(From the order of the ld.JCST, Ganjam Range,  
Berhampur, in Appeal No. AA.(VAT)144/2010-2011,  
dtd.27.07.2012 confirming the assessment order of the  
Assessing Officer)

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

M/s. Manas Automobile,  
Near Hanuman Mandir,  
Phulbani, Dist. Kandhamal .... Appellant  
-Versus-

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

For the Appellant : Mr. S. Lal, Advocate  
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2005 to 30.06.2007)

Date of Hearing: 01.07.2019 \*\*\* Date of Order:

**ORDER**

The present second appeal has been directed against  
the order of the learned First Appellate Authority/Joint  
Commissioner of Sales Tax, Ganjam Range, Berhampur  
(in short, FAA/JCST) in confirming the assessment order  
passed by the Assessing Authority/Asst. Commissioner of  
Sales Tax, Phulbani Circle, Phulbani (in short, AA/ACST)

for the assessment period from 01.04.2005 to 30.06.2007 u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The facts of the case in nutshell is that :

The dealer in the instant case, M/s. Manas Automobiles, Phulbani is located in the district of Kandhamal bearing TIN-21281900220, which carries on business in automobiles and its spare parts on retail basis. Basing on the Audit Visit Report (AVR) submitted by the STO, Audit Unit, Ganjam Range, Berhampur, the AA issued notice to the dealer in Form VAT-306 u/r.49(1) of the OVAT Rules, 2005 for production of his books of account for verification of the same. But the dealer remained callous and did not turn up even after issuance of repeated statutory notices duly served on him. Hence, in absence of the dealer and on non-production of his books of account, the AA passed the order in absence of the dealer setting him ex-parte on wanting of supporting documents in support of the dealer. As per the assessment order, the AA found the total purchase turnover of the dealer

including ITC already availed, is Rs.3,21,31,599/-.

Likewise, the dealer has effected total sales turnover at Rs.3,08,25,676/- including collection of VAT. The AA determined the purchase suppression and sale suppression of the dealer at Rs.12,15,361.27 and Rs.6,63,592.52 respectively. Thereafter, taking into consideration the collection of VAT to the tune of Rs.35,58,075/-, set the GTO of the dealer at Rs.3,27,04,629.79 and TTO at Rs.2,91,46,554.79. In this way, the AA imposed tax @12.5% on the entire TTO of the dealer which comes to Rs.36,43,319.34 and allowed ITC of Rs.35,55,945.96. Consequently, the tax due became calculated at Rs.87,373.38. Penalty twice of it u/s.42(5) of the OVAT Act was imposed on the dealer at Rs.1,74,746.77. Thus, the tax due along with penalty together became calculated at Rs.2,62,120/-, which the dealer is found liable to pay at the assessment stage.

3. Being aggrieved with such illegal and arbitrary order of assessment passed by the AA, the dealer-appellant preferred first appeal before the learned

FAA/JCST, who in turn, confirmed the order of assessment passed by the AA and thus, the tax demand raised on the dealer remained as it is.

4. Being further aggrieved, the dealer knocked the door of this Tribunal by way of filing second appeal with the following grounds :

(a) It has effected both purchases and sales within the State of Odisha (excluding accessories) by way of declaration forms under OVAT Act and Rules for purchases purpose only.

(b) It has disclosed his total sales turnover at Rs.3,08,25,676/- before the AA which includes collection of VAT.

(c) There is no iota of evidence regarding any suppression in the sale and purchase register maintained by the dealer. Thus, the question of evading tax does not arise at all.

(d) The AA has passed the assessment order only on ex parte basis without taking into consideration the books of account and other related documents available on record.

Moreover, the Gross Turnover as determined by the AA is based totally upon conjecture and surmises.

(e) The AA has established the turnover on mere assumptions and imposition of tax and penalty on the said turnover is based upon only eye estimation and hence unjustified.

State on the other hand, filed cross objection countering to the aforementioned grounds of appeal submitted by the dealer. The main point raised by the State before this Tribunal is, since the dealer has maintained its purchase register, sale register, stock register regarding vehicles and spare parts, the AA has thoroughly gone through those evidences and appropriately enhanced the turnover and purchases and hence determined the GTO of Rs.3,27,04,629.79 as just and proper.

5. The significant question arises out of this present appeal, which needs to be resolved by this Tribunal is : Whether the learned FAA has committed gross error of law by confirming the order of assessment

passed by the AA, thereby upholding the GTO and TTO of the dealer at Rs.3,27,04,629.79 and Rs.2,91,46,554.79 respectively and raised demand of Rs.2,62,120/- is justified or not ?

5. Heard learned counsels from both the sides. Perused the assessment order as well as first appeal order. Gone through the grounds of appeal submitted by the learned Counsel on behalf of the dealer and cross objection filed by the State countering to it. During the course of argument, Mr. S. Lal, learned Advocate appeared on behalf of the dealer-appellant, whereas for the State-respondent, Mr. S.K. Pradhan, learned Addl. Standing Counsel was present to advance his case.

Dictated and Corrected by me,

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

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