

**BEFORE THE FULL BENCH, ODISHA SALES TAX  
TRIBUNAL: CUTTACK**

**S.A. No. 916 of 2003-04**

(Arising out of order of the learned Asst. Commissioner of  
Sales Tax, Appellate Unit, Bhubaneswar,  
in Sales Tax Appeal No. AA 278/BH-I/02-03,  
disposed of on dated 13.03.2003)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri M. Harichandan, Accounts Member-I**

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

**-Versus-**

M/s. Avinash Enterprises,  
Cuttack Road, Bhubaneswar. ... Respondent

For the Appellant : Mr. M.L.Agarwal, S.C.  
For the Respondent : N o n e

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Date of hearing: 17.02.2022 \*\*\* Date of order:21.02.2022  
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**ORDER**

This appeal is directed at the instance of the State against the order dtd.13.03.2003 passed by the Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter referred to as, the learned FAA) in Sales Tax Appeal No. AA 278/BH-I/02-03, thereby setting aside the order dtd.19.07.2002 passed by the Taxing Authority,

Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, the learned AA) raising a tax demand of Rs.5,28,746.30 for the tax period 1994-95.

2. The facts of the case in nutshell are that, the respondent-dealer carries on business in gunny bags and automobile spare parts both on wholesale and retail basis. He was previously assessed u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act). Subsequently, on the basis of the fraud case report No.54 dtd.27.06.1998 of the Investigation Unit, Bhubaneswar, the assessment was reopened u/s.12(8) of the OST Act and demand of Rs.17,31,746.00 was raised. The respondent-dealer carried on appeal against the said demand before the learned FAA, Appellate Unit, Bhubaneswar in Appeal No. AA 272/BH-I/99-2000 who reduced the tax demand to Rs.1,01,555.00. While the matter rested thus, again a letter was received from the Investigation Unit, Bhubaneswar vide letter No.435 dtd.05.09.1998 alleging about purchase suppression of Rs.83,928.00 relating to purchase of goods vide bill No.46/94 dtd.18.07.1994 from M/s. Kamal Traders, Calcutta. Accordingly, the assessment was again reopened u/s.12(8) of the OST Act and notice was issued to the respondent-dealer. The present respondent-dealer did not respond to such notice for which the assessment was completed exparte and the demand of Rs.5,28,746.00 was raised.

3. The respondent-dealer being aggrieved with such demand preferred appeal before the learned FAA who vide its order dtd.13.03.2003 reversed the findings of the learned assessing officer and set aside the order raising extra demand of tax from the present respondent-dealer.

The State being aggrieved with such order of the learned FAA deleting the tax demand raised by the learned AA filed the present second appeal.

4. When the appeal was called on for hearing, none appeared on behalf of the respondent-dealer in spite of valid service of notice. So this Tribunal was compelled to proceed with the exparte hearing of the appeal in the absence of the respondent-dealer.

5. The learned Standing Counsel (C.T.) representing the State supporting the order of the learned AA vehemently urged that the learned FAA on erroneous appreciation of the materials on record has deleted the extra demand of tax raised by the learned AA. There is absolutely non-application of mind by the learned FAA which needs to be interfered with in the present second appeal. He submitted that the findings of the learned FAA is erroneous and against the materials on record. Therefore, the same is to be set aside and the order passed by the learned AA should be restored.

6. We have heard the contention raised by the learned Standing Counsel for the State, gone through the grounds of appeal vis-a-vis the impugned orders of the

first appellate authority and the materials on record. The whole dispute in the present second appeal centres round the bill No.46/94 recovered from the business premises of M/s. Anand Automobiles Pvt. Ltd. which is said to be the sister concern of the respondent-dealer. On perusal of the impugned orders of the first appellate authority, we find that during visit of the premises of M/s. Anand Automobiles Pvt. Ltd. by the Investigation Unit, Bhubaneswar, bill No.46/94 was recovered which revealed that the goods worth Rs.83,928.00 purchased under the said bill from M/s. Kamal Traders, Calcutta was not accounted for. The learned AA holding it as purchase suppression, reopened the assessment u/s.12(8) of the OST Act and raised tax demand of Rs.5,28,746.00. The order of the learned FAA further reveals that the respondent-dealer produced the photocopies of the bill before the learned FAA which disclosed that M/s. Kalinga Alloys (P) Ltd. reported to be the another sister concern of the respondent-dealer had effected the purchase under the said bill. In view of this, the learned FAA held that as M/s. Kalinga Alloys (P) Ltd. purchased goods under bill No.46/94, the books of account of the present respondent-dealer would not reveal such purchase. The learned FAA has categorically observed in the impugned order that the CST @ 4% was collected under the said bill and the consignment has passed through Jamsolaghat Checkgate. The respondent-dealer also produced the

photocopy of the certificate issued by M/s. Kamal Traders, Calcutta which shows that it is the Kalinga Alloys (P) Ltd. which was the purchaser not M/s. Avinash Enterprises. The learned FAA holding as such deleted the tax demand raised by the learned AA. In course of hearing of the present second appeal, the learned Standing Counsel (C.T.) could not substantiate any of the grounds taken in the memorandum of appeal. The learned FAA on thorough scrutiny of bill in question has come to a categorical conclusion that, the respondent-dealer had not purchased anything under the bill in question and it was M/s. Kalinga Alloys (P) Ltd. who was the purchaser. So, the finding of the learned AA is that purchase made under bill No.46/94 was not accounted for in the books of account of the respondent-dealer is wrong and erroneous as there was no purchase by the respondent-dealer under bill No.46/94. So, the question of reflecting such purchase in the book of account does not arise at all. We do not find any illegality in the findings of the learned FAA that the respondent-dealer had not effected purchase under bill No.46/94. The learned Standing Counsel (C.T.) also could not substantiate from the materials on record that the findings of the learned FAA was erroneous. Therefore, we uphold the order of the learned FAA, setting aside the impugned order of the learned AA.

7. For the foregoing discussions, the second appeal filed by the State being devoid of merit stands dismissed

and the impugned order of the learned FAA is hereby confirmed.

Dictated & Corrected by me

(A.K. Das)  
Chairman

(A.K. Das)  
Chairman

I agree,

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

I agree,

(M. Harichandan)  
Accounts Member-I