

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

**S.A. No. 332 (VAT) of 2013-14**

(Arising out of order of the learned JCST, Bhubaneswar Range, Bhubaneswar in First Appeal Case No. AA- 106111311000107/ BH-I/2013-14, disposed of on dated 13.11.2013)

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

M/s. Paras Enterprises,  
Plot No. 16/7, Cuttack Road,  
Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri M.K. Panda, Advocate  
For the Respondent : Sri D. Behura, SC (CT) &  
Sri M.S. Raman, Addl.SC (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

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Date of hearing: 26.08.2021 \*\*\* Date of order: 09.09.2021  
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**O R D E R**

The dealer-appellant has preferred this second appeal assailing the order dated 13.11.2013 passed by the learned Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (hereinafter called as 'first appellate authority') in First Appeal Case No. AA

106111311000107/BH-I/2013-14 confirming the order of assessment dated 26.02.2013 passed by the Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar (in short, 'assessing authority') u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') for the period from 2008-09 to 2010-11 raising tax demand of ₹12,72,575.00 including penalty of ₹8,48,383.50.

2. The facts of the case giving rise to the present second appeal are that the dealer-appellant runs business in the name and style of M/s. Paras Enterprises at Cuttack Road, Bhubaneswar and deals in sanitary goods and fittings thereof purchasing the materials from both inside and outside the State of Odisha. The self assessment u/s. 39 of the OVAT Act was completed basing on the returns submitted by the dealer-appellant as there was no arithmetical error. But, subsequently a Tax Evasion Report (in short, 'TER') was submitted by the Investigation Unit, Bhubaneswar necessitating initiation of proceeding u/s. 43 of the OVAT Act against the dealer-appellant and issuance of statutory notice in Form VAT-307 to him.

2(a). On 09.03.2011, a surprise visit was conducted by the Sales Tax Officials of Investigation Unit,

Bhubaneswar in the business premises of the dealer before whom it submitted its books of account for the period from 2008-09 to 2010-11. In course of such surprise visit, some loose documents i.e. 380 nos. of slip-sheets of paper "Estimation for Approval" which relate to the financial year 2008-09 to 2010-11 and another 9 nos. of loose documents containing purchase and sale relating to the periods 2009-10 and 2010-11 were detected from the business premises of the dealer-appellant. Those documents i.e. "Estimation for Approval" contained the details entries of items sold, quantities, rate and amount. In each of the Estimation for Approval slips, VAT was collected by the dealer. These documents were confronted to the dealer-appellant and were duly verified with reference to the sale register, corresponding tax invoice/retail invoice produced by the dealer. On verification of the Estimation for Approval slips, it was found that these documents were not entered in the sales register for the corresponding period nor were there any issuance of tax invoice/retail invoice in respect of the sales contained in these slips. It was pointed out in the TER about total sales suppression to the tune of ₹49,68,363.00. The dealer used to issue the Estimation for Approval slips

against the actual sales instead of issuing sale bills. These 380 nos. of slips/loose documents were seized from the custody of the dealer-appellant under his acknowledgment and signature. The other 9 nos. of loose documents containing purchase and sale transactions were duly seized from the custody of Sri Binayakia, the dealer-appellant, for necessary verification.

2(b). On 14.03.2011, Paras Kumar Binayakia, the proprietor of the concerned firm appeared before the Sales Tax Officials and produced the regular books of account maintained from 2008-09 to 2010-11 with supporting purchasing bills/invoices and sale bills. So far as 9 nos. of documents are concerned, those were also confronted to the dealer-appellant who admitted that during the periods 2008-09 to 2010-11 he made purchase and sales through these 9 nos. of slips. He personally verified the transactions contained in Sl. Nos. 1 to 9 with reference to the regular books of account and admitted that all these purchases and sales were not taken into account. The total purchase and sale suppression was found to be ₹11,46,184.00 for the periods 2009-10 and 2010-11 out of which ₹11,34,524.00 relates to sale suppression and ₹11,660.00 relates to

purchase suppression. It was pointed out in the TER that on verification of the books of account it was found that there was total purchase and sale suppression to the tune of ₹61,14,547.00 during the periods from 2008-09 to 2010-11.

2(c). The assessing authority on examination of the allegations made in the TER vis-a-vis the books of account and explanations submitted by the dealer, the GTO and TTO of the dealer were determined at ₹3,12,43,524.48 and ₹2,97,29,949.55 respectively. The total VAT payable was determined at ₹19,05,502.18 after adjustment of ITC of ₹2,93,260.43 and the dealer having paid ₹11,88,050.00, the balance tax payable was determined at ₹4,24,199.75. The assessing authority apart from raising the tax liability to the tune of ₹4,24,199.75, imposed penalty of ₹8,48,383.50, which is equal to twice of the tax assessed as per the provisions of Section 43(2) of the OVAT Act.

2(d). The dealer-appellant being aggrieved with the aforesaid findings of the assessing authority raising tax demand of ₹12,72,575.00 including penalty of ₹8,48,383.50, preferred appeal before the first appellate authority, who also vide the impugned order dismissed the appeal and

confirmed the order of assessment. Hence, the present second appeal is at the instance of the dealer-appellant.

3. It was vehemently urged by the learned Counsel for the dealer-appellant that both the forums below have raised tax demand on the allegation of suppression purchase and sale by the present appellant, which is baseless and unfounded. There is no cogent material on record to show that the dealer-appellant suppressed the sale and purchase made by him during the period from 2008-09 to 2020-11 in order to evade payment of tax to the revenue. He strenuously argued the Sales Tax Officials who made surprise visit to the appellant's firm, have not properly verified the books of account produced by the appellant and in a very superficial manner calculated the sale and purchase suppression taking into consideration the xerox copies of certain slips alleged to have been recovered from the business premises of the dealer. Some of the slips have been calculated twice on account of which inflated figures of sale and purchase have been shown and huge demand has been made from the dealer-appellant. Both the forums below only basing on the TER raised tax demand without any kind of other materials to justify their demand. The orders passed

by both the forums below raising tax demand of ₹12,72,575.00 is unsustainable in the eye of law. It was further argued when the dealer-appellant was self assessed, there was no justification to reopen the assessment on the basis of TER submitted by the Sales Tax Officials. He submitted to allow the appeal and set aside the impugned orders passed by both the forums below.

4. Per contra, the learned Standing Counsel (CT) for the State resisting the contentions raised by the learned Counsel for the dealer-appellant submitted that the materials collected by the Sales Tax Officials in course of their visit to the business premises of the appellant was sufficient enough to reopen the assessment and recompute the tax liability of the dealer-appellant. The dealer though was given sufficient opportunity to rebut the allegations made the in the TER regarding suppression of sale and purchase made by him during the period from 2008-09 to 2010-11, did not produce any material to substantiate his claim and could not offer any satisfactory explanation regarding the estimation slips recovered from his business premises and not reflecting the same in the books of account maintained by him. Both the forums below have

rightly reassessed and recomputed the tax liability of the dealer-appellant taking into consideration the materials available on record. There is no illegality and impropriety in the impugned orders of both the forums below warranting interference of this Tribunal. He submitted to dismiss the appeal and confirm the impugned orders passed by both the forums below.

5. In view of the above rival contentions of the parties, it is to be seen as to whether both the forums below were correct in their approach in accepting the TER showing purchase and sale suppression to the tune of ₹61,14,547.00 during the period from 2008-09 to 2010-11. On perusal of the orders passed by both the forums below, we find that the present appellant was given ample opportunity to rebut the allegations made in the TER and explain the discrepancies found in the books of account maintained by it (the dealer) but he failed to explain such discrepancies. The contention raised by the learned Counsel for the appellant that there was violation of principles of natural justice and the appellant was not confronted with the incriminating materials recovered from the business premises is not at all correct. The appellant failed to explain as to under what

circumstances, 380 slips, i.e. "Estimation for Approval" amounting to ₹49,68,363.00 and 9 nos. of loose documents relating to sale and purchase suppression of ₹11,34,524.00 and ₹11,660.00 respectively were not reflected in the books of account. During visit by the Sales Tax Officials to the business premises of the appellant, they seized 380 nos. of loose slips and 9 nos. of loose documents containing sale and purchase transactions relating to the period from 2008-09 to 2010-11 and confronted the same to Sri Binayakia, who alleged to have admitted that those slips contained sales and purchase effected by him during the relevant period and the same were not reflected in his books of account. In the absence of any cogent materials to rebut the allegations made in the TER and reasonable explanation for not reflecting the loose slips/documents recovered from business premises in the regular books of accounts maintained by it, both the forums below were correct in their approach in drawing inference that the dealer-appellant in order to evade payment of tax effected purchase and sale transactions through the loose slips recovered from his business premises and did not reflect the same in the books of account. The contention raised by the learned Counsel for

the appellant that slip nos. 250, 375 to 380 were calculated twice is also incorrect and unsustainable in view of the materials available on record. The serial number of estimation slips and the serial number of carbon copy of the estimation slips which alleged to have been taken twice while calculating the sales suppression is different. So, it is not proper to say that the same estimation slip was calculated twice by the Sales Tax Officials, who made the visit to the business premises of the dealer-appellant. The documents filed by the dealer-appellant before this Tribunal are self serving documents which are not sufficient to disprove the allegations made in the TER. The dealer-appellant inspite of ample opportunities failed to produce cogent materials and plausible explanation about 380 estimation slips and 9 nos. of loose documents seized from his business premises which were not reflected in books of accounts. The decision in case of M/s. K.J. Ispat Ltd. Vs. The Commissioner of Commercial Taxes, Orissa, which has been relied upon by the learned Counsel for the dealer-appellant, has no application to the facts and circumstances of the present case. In this case, the dealer disowned the slips recovered from his premises and the slips so recovered

were also not confronted to him (the dealer). In that circumstances, their Lordships were pleased to hold that no adverse inference can be drawn against the dealer unless it is established by the revenue that noting made in the slip related to unaccounted business transaction of the dealer. Moreover, in the cited case, the assessing officer had also refused the prayer of the dealer-assessee for confrontation of third party to the petitioner-assessee and to cross-examine the third party before utilising the materials recovered or procured from the said party and utilized against the assessee. But in the case in hand, no material was recovered from the third party and the slips seized from the business premises of the dealer were not disowned by him and the dealer failed to explain under what circumstances the seized loose slips and documents were not accounted for in the regular books of account maintained by him. Therefore, both the forums below were correct in their approach in accepting the TER and holding that the dealer-appellant suppressed purchase and sale transactions for an amount of ₹61,14,547.00 and rightly raised the tax demand with penalty for ₹12,72,575.00. The dealer-appellant having purposefully suppressed the sale and purchase transactions

by not reflecting the same in the regular books of account maintained by him, the assessing authority rightly imposed penalty equal to twice of the tax assessed as per the provisions laid down u/s. 43(2) of the OVAT Act. There is no illegality or impropriety in the impugned orders passed by both the forums below warranting interference of this Tribunal.

6. In view of the discussions made above, the appeal filed by the dealer-appellant being devoid of merit stands dismissed and the impugned orders passed by both the forums below raising tax demand of ₹12,72,575.00 which includes penalty are hereby confirmed.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

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

I agree,

Sd/-  
(M. Harichandan)  
Accounts Member-I