

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A.No.1035 of 2003-04

(Arising out of the order of the ACST, Sambalpur Range,
Sambalpur, in Sales Tax Appeal No. AA-144 (SAII) of 2002-2003,
disposed of on dtd.29.04.2003)

Present: **Mrs. Suchismita Misra**, Chairman,
Shri Ashok Kumar Panda, 1st Judicial Member,
&
Shri Ranjit Kumar Rout, Accounts Member-II.

M/s. Jai Maa Kali Store,
Main Road, Bargarh – 768028. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. B.N. Agrawal, Advocate
For the Respondent : Mr. M.L. Agrawal, S.C.

Date of Hearing: 12.07.2018 **** Date of Order: 08.08.2018

ORDER

This appeal is directed against the order dated 29.04.2003 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in Sales Tax Appeal No. AA-144 (SAII) of 2002-2003, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Sambalpur II Circle, Bargarh (hereinafter referred to as, the learned STO) passed in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) in respect of the appellant-dealer for the assessment year 2001-02 raising a balance tax demand and surcharge amounting to Rs.5,49,496.00.

2. The appellant-dealer is a wholesaler of grocery articles. Basing upon a fraud case report bearing No.6 dtd.29.11.2002 submitted by the IST, Mobile Unit, Sambalpur, the learned STO initiated a proceeding u/s.12(4) of the OST Act against the appellant-dealer for its assessment for the assessment year 2001-02 and issued a notice to appear and to produce the books of account and in response to the notice, the proprietor of the appellant-dealer firm appeared and produced the books of account which were duly been examined in the light of the allegation of the fraud case report. As per the allegation of the fraud case report, after receipt of a reliable information of the involvement of the appellant-dealer in clandestine purchase of edible oil from different parties of Indore/Itrish Morena, Madhya Pradesh and of bringing the same through bye-pass routes in avoidance of the Unified Checkgates, the IST, Mobile Unit, Sambalpur Range, Sambalpur recovered and seized three numbers of computer floppies from Chichola Boarder Checkgate (Chattisgarh) and Bhaghatdehuri Checkgate in connection with the same, which reveals purchase suppression on the part of the appellant-dealer as follows:-

Sl. No.	Particulars of Form 59-AI furnished at the Chichoa C/G	Vehicle Number	Transporter	Particulars of bills	Item	Value (Rs.)	Remarks
1.	247709	MP-07-G/8105	Orissa Golden Transport Shankar Garrage Raipur.	Dt.3.2.02	Mustard oil	2,75,000.00	
2.	251558	MP-07-G/3858	- do -	Dt.15.02.02	Saro Oil	3,70,440.00	
3.	132241/1503	MP-20-G/8182	Orissa Andhra Transport	Dt.23.03.02 Bill 1502	Mustard oil	3,00,000.00	
					Total	9,45,440.00	

3. After the recovery, the IST, Mobile Unit verified the purchase account of the appellant-dealer and found out that, the said transactions has not been accounted for therein and on being asked, the proprietor of the

appellant-dealer firm disowned the transactions. Therefore, basing upon the incriminating materials showing clear cut purchase suppression on the part of the appellant-dealer, the IST, Mobile Unit submitted the fraud case report alleging purchase suppression amounting to Rs.9,45,440.00.

4. During assessment, when the allegations of the fraud case report were confronted to the proprietor of the appellant-dealer firm, he denied the entire allegations in toto and prayed to summon the selling dealers as mentioned in the report u/s.21 of the OST Act. But, on examination of the materials available on record, the learned STO did not accept the prayer of the appellant-dealer to summon the selling dealers as mentioned in the report with a reasoning that, the same will cause unnecessary delay and will frustrate the very purpose of the proceeding. As the appellant-dealer had only taken the plea of denial of the allegations, the learned STO examined the materials available on record including the fraud case report being annexed with the computerized floppies and arrived at a conclusion that, the data entered into the computer floppies by the officers of the checkgates are responsible officers and there is no reason for them to falsely implicate the appellant-dealer in an allegation having no base and as such on consideration of all these aspects, he determined the purchase suppression to be Rs.9,45,440.00 and after adding a profit margin of 10%, determined the sale suppression to be Rs.10,39,984.00. Thereafter, taking note of the nature and volume of business of the appellant-dealer, he determined the estimated suppression to be Rs.1,24,89,808.00, which is twelve times of the actual suppression and after addition of the same re-determined the GTO at Rs.1,75,14,724.30 instead of Rs.50,34,916.30 as shown by the appellant-dealer in its return. Then, after allowing proper deduction, he determined the TTO at Rs.1,25,76,030.70 and levied tax thereon @ 4% which came to be Rs.5,03,041.24. Further, he levied surcharge thereon @ 10% which came to be Rs.50,304.12 and as such both the tax and surcharge came to be Rs.5,53,345.36 in total. As the appellant-dealer had already paid tax to the tune of Rs.3,849.00 earlier, the learned

STO raised the balance demand of tax and surcharge amounting to Rs.5,49,496.00, to be paid by it.

5. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST bearing Sales Tax Appeal No. AA-144 (SAII) of 2002-2003. On hearing and on consideration of the entire materials available on record, the learned ACST found no merit in the contention of the appellant-dealer and accordingly dismissed the appeal by confirming the order of the learned STO. Thus, again being aggrieved with the order of the learned ACST, the appellant-dealer has preferred this second appeal.

6. No cross objection has been filed by the respondent-Revenue.

7. Heard both the sides. The learned Counsel appearing for the appellant-dealer submitted that, the learned forums below have not considered the matter in its proper perspective and have committed a gross error by determining the suppression on the part of the appellant-dealer only on suspicion and conjecture and without any convincing material. He also submitted that, there is another establishment in the name and stile of M/s. Jai Maa Kali Store in Bargarh Town and the goods in question might have been purchased by the said establishment. But, without considering all the relevant aspects properly and without considering the prayer of the appellant-dealer to summon the alleged selling dealers, the learned forums below have accepted the allegation of the fraud case report as gospel truth and have determined the purchase suppression and the consequential sale suppression against the appellant-dealer. The learned Counsel appearing for the appellant-dealer further submitted that, though the learned forums below are duty bound to consider all the relevant factors to determine the estimated suppression, they have not considered the same and have determined the estimated suppression to be twelve times of the actual suppression and as such the entire order passed by the learned forums below being erroneous, the same is liable to be set aside and the appeal

preferred by the appellant-dealer is liable to be allowed. On the other hand, the learned Standing Counsel appearing for the respondent-Revenue supported the order of the learned forums below and submitted that, the concurrent findings arrived at by both the learned forums below suffers from no infirmity and as such the same needs no interference of this Hon'ble forum and hence, the appeal preferred by the appellant-dealer is liable to be dismissed.

8. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, after receiving a reliable information of the involvement of the appellant-dealer in clandestine purchase of edible oil from different parties of Indore/Itrish Morena, Madhya Pradesh and of bringing the same through bye-pass routes in avoidance of the Unified Checkgates, the IST, Mobile Unit, Sambalpur Range, Sambalpur recovered and seized three numbers of computer floppies from Chichola Boarder Checkgate (Chattisgarh) and Bhaghatdehuri Checkgate in connection with the same which reveals purchase suppression on the part of the appellant-dealer amounting to Rs.9,45,440.00.

9. On perusal of the orders of both the learned forums below, it is seen that, the appellant-dealer had made a prayer before the learned STO to summon the alleged selling dealers to ascertain the genuineness of the transactions as alleged in the fraud case report. But, in view of the availability of sufficient convincing materials against the appellant-dealer to substantiate the allegations, the learned STO found out the prayer of the appellant-dealer to be unjustified and accordingly rejected the same. At the first appeal stage also, the learned ACST has considered this aspect and has agreed to the finding and order arrived at by the learned STO. As both the learned forums below have arrived at a concurrent finding in this regard, this forum is also of the same opinion that, the summoning of the alleged selling dealers as prayed for by the appellant-dealer will serve no fruitful

purpose and the prayer has been made only to cause delay of the proceeding.

10. The allegation of purchase suppression leveled against the appellant-dealer is mainly based upon the data entered in the computerized floppies prepared by the officials of Chichola Boarder Checkgate and the Bhaghatdehuri Checkgate. Though the appellant-dealer has challenged the genuineness of the data entered in the computer floppies, it is not in dispute that, the officials of the checkgates who have entered the same are responsible government officials and it must be presumed that they have acted honestly and with utmost care. Further, the appellant-dealer has failed to produce any material to show that those officials have implicated it falsely with an ulterior motive in the alleged allegation of purchase suppression. A plea has also been taken by the appellant-dealer at this stage that, another establishment in the name and style of M/s. Jai Maa Kali Store is existing in Bargarh town and the alleged transactions might have been caused by that establishment. But, on perusal of the orders of both the learned forums below, it is seen that, the appellant-dealer has never taken such a plea either before the learned STO at the stage of assessment or before the learned ACST at the first appeal stage and as such the plea taken by it at this stage can clearly be considered to be an afterthought on its part and hence needs no consideration.

11. On a close scrutiny of the entire materials available on record, it is seen that, there are sufficient materials to establish the purchase suppression amounting to Rs.9,45,440.00 on the part of the appellant-dealer. After a thorough examination of the clear and convincing materials available against the appellant-dealer, the learned STO has determined the purchase suppression and the consequential sale suppression after addition of 10% of profit margin thereon and the same has further been confirmed by the learned ACST at the first appeal stage. As the appellant-dealer has failed to counter the allegation leveled against it and as the allegation of purchase

suppression and the consequential sale suppression is clearly based upon trustworthy evidence, the concurrent finding and order arrived at by the learned forums below needs no interference of this forum.

12. In view of the settled principle of law, to determine the estimated suppression, several factors are required to be considered by the assessing authorities. The nature and volume of the business, the earlier tax compliance of the dealer and its earlier clandestine business activities, if any, are some of the relevant factors to be considered by the assessing authorities at the time of determining the estimated suppression. Here, in the present case, though no adverse materials are available against the appellant-dealer regarding its tax compliance and regarding its involvement in clandestine business activities earlier, the learned STO has determined the estimated sale suppression to be Rs.1,24,79,808.00 which is twelve times of the actual sale suppression and the same has further been confirmed by the learned ACST at the first appeal stage. On consideration of all the relevant factors, it can clearly be said that, the estimated suppression as determined by the learned forums below appears to be high and excessive and the same needs to be re-determined. On consideration of the entire materials available on record, this forum is of the opinion that, determination of the estimated suppression at the rate of three times of the actual suppression will serve the interest of justice in the facts and circumstances of the present case and as such the estimated sale suppression is re-determined at Rs.31,19,952.00 and accordingly the GTO is also re-determined at Rs.81,50,868.30 by addition of the same in the GTO amounting to Rs.50,34,916.30 as shown by the appellant-dealer. After allowing the deductions of Rs.25,56,319.50 towards tax free sale of biri dal, Rs.23,78,525.20 towards first point tax paid sale and Rs.3,848.90 towards collection of sales tax, the TTO is determined at Rs.32,12,175.60 and tax @ 4% is levied thereon which came to be Rs.1,28,487.02. Then surcharge @ 10% is levied thereon which came to be Rs.12,848.70 and as such both the tax and surcharge came to be Rs.1,41,335.72. As the appellant-dealer has

already paid tax to the tune of Rs.3,849.00 earlier, it is required to pay the balance tax and surcharge amounting to Rs.1,37,486.72, which is rounded off as Rs.1,37,487.00.

13. In the result, the appeal is allowed to the extent indicated above. The appellant-dealer is liable to pay the balance demand of tax and surcharge amounting to Rs.1,37,487.00 instead of Rs.5,49,496.00 as ordered earlier by the learned forums below. The demand notice be issued accordingly.

Dictated & corrected by me,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

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I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(Ranjit Kumar Rout)
Accounts Member-II