

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

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Rout, Accounts Member-II**

S.A. No.75(C) of 2010-11

(From the order of the Id. JCST, Ganjam Range,
Berhampur, in First Appeal Case No. AAC.31/2007-2008,
disposed of on 21.10.2010)

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

- V e r s u s -

M/s. Amarjyoti Granites (India) Pvt. Ltd.,
Bhagabanpur, Ghandhinagar,
3rd Line Extension, Berhampur. ... Respondent

For the assessment period: 2005-06

S.A. No.76(C) of 2010-11

(From the order of the Id. JCST, Ganjam Range,
Berhampur, in First Appeal Case No. AAC.32/2007-2008,
disposed of on 21.10.2010)

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

- V e r s u s -

M/s. Amarjyoti Granites (India) Pvt. Ltd.,
Bhagabanpur, Ghandhinagar,
3rd Line Extension, Berhampur. ... Respondent

For the assessment period: 2006-07

For the State : Mr. S.K. Pradhan, A.S.C.

For the Dealer : Mr. B.B. Panda, Advocate

Date of Hearing: 29.05.2019 **** Date of Order: 29.05.2019

ORDER

These two appeals are at the instance of Revenue as appellant preferred against reversing orders of first appellate authority. Since the appeals are interrelated and interconnected facts and involves same question for determination relating to the same dealer for consecutive two periods, both are taken up together for sake of convenience and decided by this common order.

2. **Factual matrix:**

The dealer M/s. Amarjyoti Granites (India) Pvt. Ltd. is a registered dealer engaged in mining, cutting, polishing and trading activities of granite blocks, slabs, tiles etc. It affects intrastate, interstate and export sale of the goods above. On the basis of Audit Visit Report, the dealer was assessed u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) for the tax period 2006-07 to 2007-08. Consequently, on the basis of the AVR, the dealer was also assessed under CST Act for the tax period 2006-07 (quarter ending 30.03.2006 and 2007-08 separately. The allegations as per the audit report are, there was under-invoicing committed by the dealer as well as there was sale suppression by the dealer. In the assessment for the period 2006-07 (period ending 31.03.2007), the assessing authority found there was discrepancy in the disclosure of GTO and TTO when it compares to regular return and revised return with the details of the books of account. However, the assessing authority determined the net CST sale of the dealer for the period 2006-07 at Rs.57,71,267.00 as disclosed. So far as the allegation of under-invoicing, the assessing authority noticed that, there was discrepancy of sale price between the statement and the rate as per the invoice raised against such sale. The price differs from Rs.5,000.00 to Rs.7,000.00. The dealer did not

cooperate with the assessing authority and remained absent before the assessing authority. So, the assessing authority calculated the under-invoicing of his own to the tune of 71%. So far the other allegation, such as, sale suppression as reported in the audit team, the assessing authority also determined the suppression to the tune of Rs.12,34,452.00 calculated on the basis of slip No.46 to 68, recovered and seized during the visit of the audit team. The assessing authority also found the dealer not furnishing the required declaration form 'H'. Thus, in ultimate calculation the assessing authority found the dealer liable to pay balance amount of tax due at Rs.10,41,042.40.

3. Being aggrieved with such assessment, the dealer preferred appeal before first appellate authority. Learned JCST, Ganjam as first appellate authority vide impugned order held that, the allegation of under-invoicing is not proved since the dealer affected export sale. As regards suppression and enhancement of the turnover thereby to the tune of Rs.12,34,452.00, the first appellate authority deleted the same with the findings that, the aforesaid suppression was added to the GTO and TTO of the dealer in the VAT assessment. So, the addition of the same in the CST assessment amounts to double addition. Thus, in the conclusion the first appellate authority reduced the tax due to the tune of Rs.82,398.47.

In a similar manner with the self-same allegation, for the assessment period 2006-07, the assessing authority acting upon the audit report determined the tax liability of the dealer at Rs.10,41,042.00 but, in appeal before first appellate authority the tax liability was reduced to Rs.82,398.00.

4. With the backdrop of the case as above, the Revenue being aggrieved with the orders of the first appellate authority preferred these two appeals in hand. The contention of the Revenue are, the first appellate authority is not justified in deleting the enhancement based on under-invoicing. So, the quantum of enhancement determined by the assessing authority should be restored by setting aside the impugned order.

5. The appeals are heard with cross objections from the side of the dealer-respondent. In cross objections the dealer has supported the findings of the first appellate authority.

6. Following questions are framed for decision in this appeal.

- (i) whether the first appellate authority is wrong in deleting the enhancement relating to the suppression detected by the audit team;
- (ii) whether the first appellate authority is wrong in deleting enhancement against the allegation of under-invoicing;

7. With regard to the allegation of enhancement of the interstate transaction for an amount of Rs.12,34,452.00 for the assessment period 2006-07 and an amount of Rs.3,00,000.00 for the assessment period 2007-08 on the basis of seized incriminating materials like slip No.46 to 68, the observation of the first appellate authority is as the aforesaid amounts was added in the VAT assessment, the same cannot be added in the CST assessment. Learned Addl. Standing Counsel argued that, there was enhancement of VAT assessment and also enhancement under CST assessment both because the incriminating materials relates to both. If we look at the grounds of appeal, State has contended that, the first appellate authority has wrongly deleted the enhancement basing under-invoicing. Thus, it is evident that, the appellant has not questioned the deletion of enhancement for suppression detected basing the incriminating materials. Only on this score, it can be said that, findings of the first appellate authority cannot be interfered with as it is not challenged by the appellant.

8. On the other hand, it can safely be said that, if the incriminating materials amounting to Rs.12,34,452.00 and Rs.3,00,000.00 were added in the VAT assessment, that means the authority has treated the same as a local sale exigible to local tax. Once it is added in the turnover of local sale, then how the same amount can be added in the turnover of the outstate sale. So, necessarily it will amount to double addition of the same suppressed amount both in CST sale and in VAT sale.

So, the findings of the first appellate authority is otherwise also correct on its own merit. So far as the question of under-invoicing, the audit team has found that, there was discrepancy of price when it compared to the invoice with the statement and computer entry of the dealer. There was a difference of price from Rs.5,000.00 to Rs.7,000.00 detected by the Vigilance Wing. The dealer did not try to explain the reason by appearing before the assessing authority. However, before the first appellate authority the dealer took a view that, since it relates to interstate sale or export sale there is no question of under-invoicing because the dealer could not have gained by any means by such under-invoicing. This argument of the dealer was accepted by the first appellate authority. The first appellate authority has observed that, since it relates to export sale and there was no reason before the dealer to suppress the sale price because the dealer is not liable pay to any tax on those sale. Similarly, the first appellate authority also observed that, there is no evidence in record to prove that, the dealer has actually received the alleged under-invoice to money from selling dealer.

The reasoning given by the first appellate authority seems to be hypothetical without proper verification of the documents. The first appellate authority should have verified the alleged transactions of under-invoicing in comparison to export sale. The dealer's plea like, the sale relates to M/s. Asai Marble & Building Material Trading Co. LLC, Sarjah, O.A.E. is mechanically accepted by the first appellate authority. The first appellate authority should have cross verified the allegations brought by the Vigilance Wing with the transactions and only when it established that, the sales relates to export sale only or exempted sale, then only there may be a question of no under-invoicing. Mechanical acceptance of the explanation by the dealer in the case in hand is not proper.

9. For the foregoing reason, it is believed that, the disputed question needs further investigation based on documents related to under-invoicing as alleged by the Vigilance Wing. In the wake of above narrative, it is held that, the addition of the suppressed turnover to the CST sale is wrong and to that extent the order of the first appellate authority calls for no

interference. So, far as the deletion of allegation of under-invoicing by the first appellate authority, it is not supported with cogent evidence, so it needs further investigation and for the reason the matter should be remitted back to the assessing authority for hearing afresh on this question only. Accordingly, it is ordered.

10. The appeal is allowed in part on contest. The matter is remitted back to the assessing authority for the limited purpose of verification of the documents of under-invoicing and to determine the tax liability, if any to be paid by the dealer in the light of observation hereinabove.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Rout)
Accounts Member-II