

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 311(V)/2015-16**

(Arising out of order of the Id.DCST (Appeal), Sambalpur Range, Sambalpur, in
Appeal No. AA.8/JSG/VAT/2015-16,
disposed of on dtd.31.10.2015)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Industrial Consumables,
Dist. Jharsuguda. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

For the Respondent : Mr. U. Behera, Advocate

Date of Hearing: 12.06.2018

Date of Order: 18.06.2018

ORDER

This appeal is directed against the impugned order by learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) reversing/deleting thereby the demand of tax raised against the appellant-dealer by the Assessing Officer/Sales Tax Officer, Jharsuguda Circle, Jharsuguda (in short, AO/STO) in a proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) basing an Audit visit Report relating to tax period 01.04.2011 to 31.03.2013 of the dealer's unit.

2. The facts in brief giving rise to this appeal are : The instant dealer is engaged in trading of industrial consumables, hardware goods, safety equipments, welding machine, electrodes, electrical goods and V. Belts etc.. The Audit team verified the return filed by the dealer, the purchases made by the dealer, the profit and loss account of the dealer and then applying the method of value addition against the sale price of 9 number of goods is suggested that, the dealer had unaccounted for stock of Rs.4,91,595.73. The

AO on the strength of that audit visit report initiated assessment proceeding u/s.42 of the OVAT Act. In course of investigation into the unaccounted for stock leading to sale suppression, the AO found that, the audit team had taken consideration of 9 number of items and on verification of the price of those 9 numbers of goods as per return and as per profit and loss account it was found that, the dealer has shown value addition to the sale price at 14.56%, whereas the same is at 17.04% in case of purchase price. The audit team suggested value addition at 13.68% i.e. the average calculated on the basis of claims above. Accordingly, the AO arrived at a conclusion that, the dealer is guilty of sale suppression of Rs.2,87,201/-. Tax due on it was calculated at Rs.32,629/- , penalty twice of it u/s.42(5) of the OVAT Act was added and thereafter the total due raised to Rs.97,887/-.

3. The dealer being aggrieved challenged the order of assessment in First Appeal Case No.AA.8/JSG/VAT/2015-16. The FAA in consideration of the dealer's argument arrived at a conclusion that, the allegation of sale suppression is hypothetical and based on suspicion without any cogent, sufficient evidence or materials. As a result, the FAA reversed the order of AO, thereby the tax due has reduced to return figure.

4. When the matter stood thus, State has come up with this second appeal with the contention like, the value addition method adopted by the AO on verification of purchase-sale and the profit and loss account established sale suppression. Hence, the impugned order by the FAA should be set-aside as not in accordance to law.

5. In this appeal as mentioned above, it is to be seen that, whether the FAA was wrong in rejecting the allegation in the AVR and the findings of the AO determining the sale suppression in consideration of the purchase and sale price of 9 number of items by adopting value addition method. Learned Addl. Standing Counsel for the State argued that, the dealer has intentionally shown less rate of profit which is evident on verification of 9 numbers of items by the audit team. As a result, the AO has rightly found the dealer with unaccounted for stock.

Per contra, learned Counsel for the dealer vehemently argued that, the method adopted by the Audit team or by the AO is unknown to law. They have adopted a method as per their own choice. They have selected some items out of number of items of the dealer as per their sweet will and in a surprising manner they have rejected the return of the dealer which is accepted on proper verification with finding of no suppression of any kind. Admittedly, the dealer deals with a large number of items. The AO has found that as per the statement of the dealer, there was value addition @14.56% to sale whereas as per the AVR basing on 9 number of selected items the value addition was found at 12.80%, whereas they suggested average value addition @13.68%. In accordance to that method of calculation the AO found there was sale suppression of Rs.2,87,201/-.

6. The FAA has accepted the argument of the dealer that, when turnover including tax was accepted by the Audit team then there was no reason or basis to report about suppression. The sale suppression as detected is based on guess work without any evidence and it has got no reasonable nexus with the actual sale purchase of the dealer. The argument of the learned Counsel for the dealer has considerable force on the point that, when the dealer deals with many items of different value with different profit margins then calculation of the value addition basing on only 8 or 9 number of items will be unsafe or may lead to an erroneous conclusion. The impugned order as it revealed, the FAA by an in-depth analysis of the facts involved in this case has discarded the value addition method adopted by the AO. Keeping view the large volume of transaction of the dealer containing number of items it has rightly arrived at a conclusion that the value addition based on guess work is unsafe and cannot withstand in law in the case in hand. Here it is unsafe to accept the method adopted by the AO. Unless and until each item dealt by the dealer is not taken into consideration, particularly when the dealer's account does not reveal any kind of suppression, then the conclusion of the AO is found to be erroneous on facts. In ultimate analysis herein above, it is held that, the

impugned order does not suffer from any illegality, hence need not be disturbed. Accordingly, it is ordered.

The appeal by the State is dismissed as of no merit.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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