

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.  
S.A.No. 365(V)/2016-17**

(Arising out of order of the Id.JCST, Bhubaneswar Range, Bhubaneswar, in  
Appeal No. AA.106111311000074/BHIV/12-13,  
disposed of on dtd.22.04.2014)

**Present: Sri S. Mohanty & Sri R.K. Pattnaik**  
**2<sup>nd</sup> Judicial Member Accounts Member-III**

M/s. Pankaj Furnitures,  
Plot No.102, Bapujee Nagar,  
Bhubaneswar

... Appellant

**-Versus-**

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

.... Respondent

For the Appellant : Mr. A.K. Mahapatra, Advocate

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

---

Date of Hearing: 11.06.2018 \*\*\* Date of Order: 12.06.2018

---

**ORDER**

The dealer has assailed the order of learned First Appellate Authority/Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) dtd.22.04.2014 confirming thereby the order of the Assessing Officer/Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, AO/STO) passed in a proceeding u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) initiated on the basis of tax evasion report submitted by DCST, Vigilance, Bhubaneswar Division, Bhubaneswar.

2. The facts of the case in brief are : The appellant is a registered dealer engaged in trading of furniture on wholesale and retail basis. It was self-assessed as per Sec.39 of the OVAT Act for the tax period in question i.e. from

01.04.2012 to 30.06.2012. The Vigilance wing inspected the dealer's unit on dt.18.10.2012. On verification of the stock and in cross verification of the same to the books of account, purchase register etc., the Vigilance authorities found there is suppression leading to escapement of turnover in relation to 8 varieties of articles worth of Rs.8,01,748/-. On the basis of report submitted by the Vigilance Wing, the AO initiated proceeding u/s.43 of the OVAT Act. During assessment, the AO took notice of the fact that, the dealer had categorically admitted before the Vigilance Wing by giving statement to the effect, there was stock discrepancy. Relying on the statement of the dealer given before the Vigilance Wing, the AO accepted the report to be proved and then determined the GTO and TTO accordingly. On determination of the TTO the tax due was calculated. ITC as per entitlement was allowed and the dealer was ultimately found liable to pay balance amount of tax of Rs.1,08,135/-. While imposing the tax due, the AO has also imposed penalty u/s.43(2) of the OVAT Act i.e. twice of the tax due and thereby the total demand raised to Rs.3,24,405/-.

3. The matter was carried before the FAA in First Appeal Case No.AA.106111311000074/BHIV/12-13 by the dealer wherein and whereby the FAA also did not interfere with the order of the AO. The FAA has rejected the stock summary report submitted before him holding that, it was generated and prepared at a later period and treated the same as afterthought. He also found the stock summary report, which was submitted before him was prepared under a different name and style i.e. M/s. Pankaj Furniture – (10-11). Thereafter, the FAA confirmed the order of the AO. As a result, the demand remained undisturbed.

4. When the matters stood thus, the dealer preferred this appeal with the contention like, the stock verification by the Vigilance Wing is hypothetical and based on surmisation. Since the dealer's unit is a very big unit, it was not

possible for the Vigilance Wing to verify each and every stock. It is also contended that, there are many kinds of tables, chairs etc. are being dealt by the dealer, so the discrepancy as detected is not an actual discrepancy as per the books of account and physical stock. It is also further contended that, the penalty as imposed is arbitrary and illegal.

5. The appeal is heard with cross objection from the side of the State. In cross objection, State has supported the findings of both the fora below and has also urged for penalty twice of the tax due as per Sec.43(2) of the OVAT Act, as decided by both the fora below.

6. In this appeal the points for determinations are; (i) Whether the FAA is wrong in holding that, dealer is guilty of escapement of turnover to the tune of Rs.8,01,748/- and (ii) Whether the dealer is liable to pay tax with penalty u/s.43(2) of the OVAT Act at the rate i.e. twice of the tax due as decided by FAA.

So far as the discrepancy on physical verification of the Vigilance Wing it is found that, the AO has accepted the allegation for the reason that, the dealer has categorically admitted such discrepancy in his statement. It is not the case of the dealer before the FAA or before this forum that the statement before the Vigilance Wing was taken under any duress or coercion. So in absence of any definite plea against the statement which is relied by the AO and in absence of any rebuttal evidence, it can safely be said that, there is no reason why the statement recorded by the Vigilance Wing should not be relied upon. At the same time the perusal of the order of the FAA as it revealed, the dealer had tried to explain the discrepancy by preparing a stock summary. The FAA has found that, the stock summary report produced before him was prepared at a later period and it was prepared in a different name i.e. M/s. Pankaj Furniture (10-11) but admitted fact is the dealer is actually registered in the name of

M/s. Pankaj Furniture only. The subjective satisfaction of both the fora below on stock discrepancy cannot be discarded without any cogent and reliable rebuttal evidence from the side of the dealer. There is no reason to disbelieve the fact that, the Vigilance Wing has not made any stock verification on the date of visit. Hence, in the totality of the facts mentioned above, we are of the view that the stock discrepancy as detected by the Vigilance Wing is duly proved and to that effect the finding of both the fora below need not be disturbed.

7. Coming to the question of imposition of penalty, learned Counsel for the dealer vehemently argued that, the provision u/s.43(2) is not a mandatory one. His next plunk of argument is, there was no previous assessment by the authority before the initiation of proceeding u/s.43 of the OVAT Act. The proceeding u/s.39 of the OVAT Act, which was taken as a basis for proceeding u/s.43 was a self-assessment and it was treated to be a deemed assessment under law. So, the discrepancy, if any, detected or accepted by the authorities is a bona-fide mistake by the dealer in a regular course of its business. The dealer has no previous antecedent of such discrepancy. The dealer had no intention to make any escapement of turnover but keeping in view the large volume of transaction, the suppression should not be treated as an intentional act of the dealer. Learned Counsel for the dealer also argued that, since provision u/s.43 is a discretionary one and since in a later period the slab penalty has been reduced to the amount of tax liability, the dealer should be given benefit of the provision otherwise. The provision u/s.43(2) is amended w.e.f. 01.10.2015 and as per the amended provision the slab of penalty has been reduced to one time in place of two times. The provision is also not a mandatory one. Since the dealer was not faced with any tax audit and the basis of the assessment u/s. 39 of the Act even though it is accepted

that the proceeding u/s.43 is legal and valid for all purposes but in the facts and circumstances of the case mentioned above, we are of the view that, the penalty as levied should be reduced to one time in place of two times i.e. taking cue from amended provision came into force w.e.f.01.10.2015. From the discussion above it is held that, the escapement as determined by both the fora below is established. The tax due calculated thereon is not disturbed hereby. However, the penalty imposed at two times is reduced to one time. Accordingly, it is ordered.

The tax appeal by the dealer is allowed in part to the extent that, the dealer be imposed with penalty at one time of the tax due as calculated by the fora below. Cross objection by the State is accordingly disposed of.

Dictated and Corrected by me,

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

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

I agree,

Sd/-  
(R.K. Pattnaik)  
Accounts Member-III