

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.**  
**S.A.No. 80(V)/2017-18**

(From the order of the Id.JCST (Appeal), Sambalpur Range, Sambalpur, in Appeal No. AA.101/SAI/VAT/2013-14, dtd.03.04.2017, setting-aside the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty**  
**2<sup>nd</sup> Judicial Member**

M/s. Sri Samleswari Gudakhu Factory,  
Khetrajpur,  
Dist. Sambalpur. ... Appellant

**-Versus-**

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

For the Appellant : None

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

(Assessment period : 01.04.2007 to 31.03.2010)

Date of Hearing: 27.06.2018 Date of Order: 27.06.2018

**ORDER**

This tax appeal is against the order of the First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/JCST) challenging the impugned order as not sustainable and thereupon prayed for quashing of the entire assessment proceeding u/s.43 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The assessee-dealer having its partnership firm at Khetrajpur, Sambalpur engaged in manufacturing and sale of 'gudakhu' as a tobacco product. For the purpose of manufacturing, the dealer used to purchase tobacco, molasses, red earth oxide, lime and essence etc. from sellers of outside and inside the State. On the basis of a fraud case report no.9 dtd.30.09.2010 by the Deputy Commissioner of Sales Tax, Enforcement Range, Sambalpur, proceeding u/s.43 of the OVAT Act was initiated taking the assessment period

of the dealer from 01.04.2007 to 31.03.2010. The fraud case report as such reveals that the dealer was guilty of suppression of turnover as well as non-filing of declaration form 'C'. The AO found that the Intelligence Wing had seized some letters containing the request for issue of 'C' form by the sellers. Similarly, the Assessing Officer, Sambalpur Circle, Sambalpur (in short, AO) also found that, the allegation by the Intelligence Wing regarding sale suppression is established. Accordingly, he raised demand of tax on the sale suppression of Rs.2,92,608/- calculated at Rs.36,576/-. Twice of it was imposed as penalty as per Sec.43(2) of the OVAT Act. As a result, the total demand raised to Rs.1,09,728/-.

3. The dealer challenged such order before the FAA, who in turn, has accepted the argument of the dealer that, the dealer was not provided with sufficient opportunity of being heard and at the same time, the FAA also held that, the suppression as suggested by the Intelligence Wing on the basis of eye estimation that too for a previous period is improbable. Accordingly, he has remanded the matter to the AO for assessment afresh.

4. When the matters stood thus, the dealer has filed this appeal with the contention like, the dealer has not given with proper opportunity to advance his arguments before the AO and as because the AO has accepted the allegation of sale suppression based on eye estimation the entire assessment proceeding should be quashed.

5. State has advanced cross objection supporting the impugned order. The appeal is heard ex-parte since the dealer-appellant did not turn up. In the case in hand it is found that, on the basis of Vigilance report proceeding u/s.43 of the OVAT Act initiated by the AO. He has passed an ex-parte order of assessment since the dealer did not turn up in the hearing. The FAA on the other hand held that, the method of determination of sale suppression is imaginary and it is also held that, the dealer should be given an opportunity of being heard and accordingly he has remanded the matter to the AO. On this backdrop, the plea of the dealer is since the determination of sale suppression

by eye estimation is imaginary, which should be discarded and the proceeding should be quashed. At the same time, it is also contended by the appellant that, the appellant should be given opportunity of being heard. Both these pleas are self-contradictory. The Intelligence Wing has reported about the non-filing of declaration Form 'C' and sale suppression. It is a fact that, the dealer's unit was visited on 25.08.2010. The assessment period was taken into consideration from 01.04.2007 to 31.03.2010. On the physical verification of 25.08.2010, it may not be possible to ascertain the stock position on 31.03.2010. At the same time, when it is the case of the dealer that, he has not given with proper opportunity to produce the documents, then in that case, it will be early enough to arrive at a conclusion that, basing on the Intelligence report and the documents of the dealer, detection of escapement of turnover is impossible. Hence, in the view of this Tribunal, the plea of the dealer is not convincing. At the same time, it is noteworthy to mention here that, the dealer is found to be very casual in attending the proceeding before the fora below and also before this forum. The acts and conducts of a party is very much material when there is an allegation of tax evasion, non-production of documents and non-cooperation in the assessment proceeding. With the observation above, here it is believed that, the impugned order suffers from no illegality. Hence, calls for no interference. Accordingly, it is ordered.

The appeal stands dismissed as of no merit.

Dictated and Corrected by me,

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

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