

Dhenkanal (hereinafter referred to as, the learned assessing authority) by its order dtd.31.03.2016 for the tax period 01.04.2011 to 28.02.2014 in the assessment framed u/s. 43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, OVAT Act), has preferred this second appeal.

2. The relevant facts in nutshell are that the dealer is engaged in wholesale and retail business in gold and diamond jewellery and it effects purchases both intra-State and in course of inter-State trade and commerce. The Sales Tax Officer, Vigilance, Cuttack Division, Cuttack along with ASTOs basing on the information from reliable sources that the dealer is engaged in clandestine business activities, paid a surprise visit to the place of business of the dealer on 14.02.2014 and conducted raid. The inspecting official during inspection of the business premises of the dealer detected some incriminating documents such as 280 numbers of hand written slips, two sheets of bank statement which were seized u/s.73(6) of the OVAT Act and notice was issued to the dealer in VAT-401 for production of books of account. On verification of the statement of the dealer and documents detected, the inspecting team found that the dealer raised sale invoices against some of the sale transactions in the slips which were not accounted for in the books of account. They determined the sale

suppression at Rs.42,44,066.70 and accordingly submitted its report to the concerned authority. Consequent upon the fraud case report submitted by the Sales Tax Officer, Vigilance, Cuttack Division, Cuttack a proceeding was initiated u/s.43 of the OVAT Act and notice was issued to the dealer to appear and produce the books of account and other relevant documents to explain the allegations contained in the fraud case report. The assessing authority on hearing the dealer-assessee and examining the documents produced by it and fraud case report held that sale suppression to the tune of Rs.42,44,066.70 stood established and accordingly he determined the tax due at Rs.42,440.66 i.e. @ 1% of Rs.42,44,066.70 and a penalty of Rs.84,882.00 was imposed u/s.43(2) of the OVAT Act.

2(a) The dealer being dissatisfied with the extra demand of Rs.1,27,323.00 raised by the assessing authority filed appeal before the first appellate authority u/s.77 of the OVAT Act, which was dismissed by the appellate authority confirming the order of assessment.

2(b) The dealer again being dissatisfied with the order of the first appellate authority confirming the order of assessment preferred the present second appeal. Pursuant to the notice issued by this forum, the Revenue filed its cross objection supporting the impugned order of the first appellate authority.

3. When the appeal was called on for hearing, none appeared on behalf of the dealer-assessee in spite of due service of notice. This matter pertains to the assessment period 01.04.2011 to 28.02.2014 and is of ten years old. Therefore, this forum was compelled to proceed with the hearing *exparte* in the absence of the dealer-assessee and in presence of learned Standing Counsel (CT) for the Revenue.

4. I have heard the learned Standing Counsel (CT) for the State, gone through the grounds of appeal raised in the memorandum of appeal *vis-à-vis* the impugned orders of the forums below and the materials on record. It emerges from the memorandum of appeal that the dealer has challenged the impugned orders of the fora below mainly on the ground that (i) the impugned orders were perverse, illegal and against the settled principle of law; (ii) that the business premises of the dealer-assessee was not properly inspected; (iii) that the slips recovered from the business premises of the dealer were mere estimations, which could not have been treated as sale suppression. It was vehemently urged by the learned Standing Counsel for the Revenue in terms of the cross objection filed by the State that the fora below rightly accepted the fraud case report, wherein sale suppression to the tune of Rs.42,44,066.70 was reported by the Sales Tax Officer, Vigilance, Cuttack Division, Cuttack basing

on the slips recovered from the business premises of the dealer. It was the dealer who was to explain as to why these transactions mentioned in the slips detected from his business premises were not accounted for in the books of account. The dealer in spite of reasonable opportunity could not explain the reason for not accounting for the sale transaction mentioned in the loose slips and took a false plea that the same were rough estimations, which was rightly rejected by the forums below in determining the tax due to the State exchequer. The forums below have passed reasoned order on meticulous analysis of the materials on record and there is no perversity in the finding arrived at by the assessing authority in estimating the sale suppression to the tune of Rs.42,44,066.70. He submitted to dismiss the appeal confirming the order of the forums below.

5. I have given anxious consideration to the submission made by learned Standing Counsel (CT) for the Revenue, grounds raised in the memorandum of appeal and other materials on record. On going through the impugned orders of the forums below, I find that they have taken into consideration the books of account produced by the dealer-assessee, the fraud case report as well as the documents such as 280 numbers of loose written slips seized from the business premises of the dealer and on thorough analysis of those documents have

come to the conclusion that sale suppression to the tune of Rs.42,44,066.70 stood established. When the loose written slips were detected from the business premises of the dealer, the burden was on him to explain as to what those written slips were and why the transactions contained in those written slips were not accounted for in the books of account. In the absence of satisfactory explanation of the dealer, who is the competent person to explain the transaction contained those loose slips having special means of knowledge, raising of extra demand of Rs.1,27,323.00 by the assessing authority, which was subsequently confirmed by the first appellate authority, cannot be said to be illegal. I do not find any illegality or impropriety in such finding of the forums below warranting interference of this Tribunal. In course of hearing of the appeal also the dealer failed to appear and explain the loose written slips detected from the business premises and the allegations contained in the fraud case report. The conduct of the dealer shows that he is not at all interest to pursue the litigation. The present appeal might have been filed only for the purpose of delaying the payment of legitimate tax due to the State exchequer. So, in this backdrop, I am not inclined to interfere with the orders of the forum below.

6. In the light of the discussions and analysis made above, the second appeal filed by the dealer-

assessee stands dismissed and the impugned orders of the forums below are hereby confirmed. The cross-objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Das)
Chairman

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Chairman