

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A.No.121(VAT) of 2013-14

(From the order of the learned JCCT, Cuttack II Range,
Cuttack, in Appeal case No.AA.21/OVAT/CUII J/12-13
dated 20.03.2013)

P r e s e n t :

**Shri Subrat Mohanty,
Judicial Member.**

M/s.Kalandi Store,
Nuagaon, Kujanga, Jagatsinghpur.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant

...None.

For the Respondent

...Mr.S.K.Pradhan, Addl. S.C.(CT).

Period of Assessment: 01.04.2005 to 31.03.2011

Date of hearing: 26.09.2019 * * * Date of Order:26.09.2019

O R D E R

This appeal is preferred by the dealer against the confirming order of the first appellate authority passed in an assessment under Section-42 of the OVAT Act raising demand towards balance tax due and penalty for an amount of Rs.39,354.00.

2. The dealer M/s.Kalandi Store engaged in business of grocery goods, cattle feed etc. was subjected to audit assessment for the tax period

01.04.2005 to 31.03.2011 on the basis of audit visit report. The audit team has suggested for audit report with the allegation of sale suppression to the tune of Rs.2,14,324.00 under 12.5% taxable group and Rs.3893.73 under 4% tax group. In the assessment when the dealer could not substantiate the explanation raised against the allegation of suppression. The allegation was found established on verification of the books of accounts, connected documents, as a result the dealer was asked to pay tax and penalty as mentioned above.

3. Felt aggrieved the dealer carried the matter in appeal before the first appellate authority. Learned DCST (Appeal), Cuttack II Range, Cuttack as first appellate authority vide impugned order confirmed the finding of first appellate authority as a result, the demand remained undisturbed. Thereafter being unsuccessful before the first appellate authority such as the calculation of shortage of physical stock is wrong, disallowance of ITC on the opening stock on the appointed date 01.04.2005.

4. The appeal is heard with cross objection from the side of the revenue in support of the impugned order claiming to be just and proper. The question raised for decision are-

Whether the determination of suppression is correct?

Whether the denial of ITC is in accordance to law?

Findings:

5. At the outset, it is pertinent to mention here that the dealer being remained absent in the hearing. The appeal is heard exparte. The dealer has not produced any evidence in support to substantiate his claim that the suppression as determined is whimsical without any basis. It is also not substantiated by any evidence that the dealer had furnished Form-607 and claiming Form-608 from the department. In absence of any proof, the dealer had actually intimated the fact of physical stock on the date when the act came into force and in absence of any declaration Form-608 hardly, there is any scope

to the taxing authority to allow ITC. Similarly, it is also held that the findings of both the fora below on the question of fact like sale suppression determined on the basis of the audit report and books of accounts of the dealer the findings cannot be interfered with without any rebuttal evidence. Hence it is held that the impugned order calls for no interference.

Accordingly, it is ordered.

6. The appeal sans merits as dismissed.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member.

(Sri Subrat Mohanty)
Judicial Member.