

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 320 (VAT) of 2018

(Arising out of order of the learned Additional CST (Appeal), Bhubaneswar
in First Appeal Case No. AA (OVAT) 106221722000096
disposed of on 30.10.2018)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Kalyan Jewellers India Ltd.,
Plot No. A/411 (1&2), Saheed Nagar,
Bhubaneswar

... Appellant

-Versus-

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

... Respondent

For the Appellant : Sri R.R. Mohanty and Sri M. Panda, Advocates
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 20.01.2021

Date of order: 05.02.2021

ORDER

Instant appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') is pressed into service by the dealer assessee questioning the legality and judicial propriety of the impugned order dated 30.10.2018 promulgated in Appeal Case No. AA (OVAT) 106221722000096 by the learned Additional Commissioner of Sales Tax (Appeal), Bhubaneswar (in short, 'FAA'), who confirmed the order of assessment dated 28.02.2017 passed under Section 43 of the Act by the learned Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (hence called,

'AA') for the tax period from 01.04.2015 to 30.09.2016 on the grounds inter alia that it is not tenable in law and thus, liable to be interfered with.

2. In fact, the dealer assessee is engaged in manufacturing and trading of gold, diamond, silver jewelleryes and gift items. Against the dealer assessee, which effected inter-State purchase and sale inside the State of Odisha, a Tax Evasion Report was received from the STO, Enforcement Wing, Bhubaneswar with the observations that it has not discharged the tax liability under Section 12 of the Act and also failed to submit declarations in Form-F in support of outward branch transfer in despatching old gold and jewelleryes. On receiving such a report, assessment under Section 43 of the Act was initiated and ultimately, additional tax to the tune of ₹25,25,652.00 including interest was raised and a demand notice in Form VAT-313 was issued and served upon the dealer assessee for its payment. On being dissatisfied with the order of assessment dated 28.02.2017, the dealer assessee approached the FAA in appeal and denied the tax liability under Section 12 of the Act and further claimed that old jewelleryes suffered branch transfer against 'F' form and in exchange it received new ones and such levy of purchase tax on the former would result in double taxation which is against the basic tenets of law. However, such an argument of the dealer assessee did not find favour with the FAA, who, considering and appreciating the nature of transactions effected, arrived at a definite conclusion that it has to comply the tax liability in terms of Section 12 of the Act and hence, the order of assessment dated 28.02.2017 is absolutely justified and does not warrant any interference. For being unsuccessful,

the dealer assessee knocked the doors of the Tribunal and adopted, more or less, the same argument which it had advanced before the authorities below.

3. As per the dealer assessee, it receives old ornaments in exchange of new jewellery sold and the ornaments so received from its customers are sent and despatched outside as stock transfer against declarations in Form-F and if tax is leviable under Section 12 of the Act for having received old jewellery in course of exchange, it would amount to paying tax twice which is certainly to violate the fundamental concept of law and would also be in utter disregard to the principles of natural justice. On the contrary, by way of cross-objection, the State contended that since the conditions of Section 12 of the Act are fulfilled and as the dealer assessee received old ornaments from its customers while selling the new ones to them and for the fact that the said ornaments have not been sold inside the State or in course of inter-State or export, it cannot escape from paying purchase tax in respect thereof as is enjoined under law and in this regard, the authorities below rightly proceeded and raised additional demand of ₹25,25,662.00 for the tax period from 01.04.2015 to 30.09.2016.

4. In course of argument, the learned Counsel for the dealer assessee highlighted upon the fact that the nature of transactions is basically exchange and therefore, to fix a liability on old ornaments demanding purchase tax as per Section 12 of the Act cannot be sustained. It is also urged that the old ornaments after being received had been despatched as it suffered movement outside the State of Odisha on account of stock transfer stood substantiated by

furnishing declarations in Form-F and for the fact that the dealer assessee received back new ornaments manufactured therefrom, any such demand of purchase tax on the old ornaments cannot withstand the scrutiny of law. A decision in the case of State of Kerala Vs. M/s. Alukka Gold Palace decided on 10.12.2007 in ST Rev. No. 384 of 2006 is cited by the learned Counsel for the dealer assessee, while challenging the assessment held under Section 43 of the Act. The learned Standing Counsel (CT) for the State contended that since the dealer assessee received old gold jewellery and disposed of it in one of the ways as envisaged in Section 12 of the Act, it has to pay the purchase tax and rightly, therefore, the authorities below, notwithstanding a plea of stock transfer and receiving back new ornaments manufactured from the old ones, were not disinclined to levy purchase tax and accordingly, raised the additional demand.

5. As per Section 12 of the Act, a dealer, who, either purchases or receives any taxable goods within the State in course of business from (i) a registered dealer, in the circumstances in which no tax is payable under Section 11 of the Act by such dealer on the goods; or (ii) any person other than a registered dealer shall be liable to pay purchase tax, if after such purchase or receipt, as the case may be, the goods are not sold within the State or in course of inter-State trade or commerce or export, but are (a) disposed of otherwise; or (b) consumed or used in manufacture of exempted goods under the Act; or (c) after its use or consumption in the manufacture of goods, such goods are disposed of otherwise than by way of sale in the State or in course of inter-State or export; (d) used or

consumed otherwise and such tax shall be levied at the same rate at which tax under Section 11 would have been levied on the sale of such goods within the State on the date of such purchase or receipt. In the instant case, admittedly the dealer assessee received and in a way purchased old gold jewellery from its customers in respect of which there was no occasion to pay tax under Section 11 of the Act and moreover, such purchase or receipt was from its customer and later on, it had not been sold inside the State, but shown to have been despatched on account of stock transfer and for the fact that, it was disposed of otherwise which is one of the essential ingredients specified in clause (a) of Section 12 of the Act, in the humble opinion of the Tribunal, on a plain and simple reading and appreciation as to the nature of transactions inter se parties, there is no escape from a conclusion that on such goods purchase tax is realizable.

6. Keeping in view peculiarity in transactions effected by the dealer assessee, it is contended that there has been no purchases, so to say, but old gold jewellery received in course of exchange of new one and therefore, purchase tax under Section 12 of the Act is not leviable. Duty is payable on taxable goods, if in any one of the ways, such goods are received or purchased and subsequently, disposed of in the manner prescribed in Section 12 of the Act. In other words, a purchase tax is levied on such goods which are either purchased or received by a dealer whereupon no tax under Section 11 of the Act is payable or for having received goods from unregistered sources and later on disposed of in one of the modes described therein and such tax shall be at the same rate, had it

been taxed under Section 11. In fact, the power to levy taxes by the State is derived from Article 265 of the Constitution of India, 1950 and otherwise it is said, there can be no taxation without the authority of law. If the contention of the learned Counsel of the dealer assessee is appreciated and it is assumed that the transactions were in effect exchange, then one needs to understand, what does it really mean. An exchange is an act of giving or taking a thing in return of another; or a process of substituting; or something offered, given, or retained for one another. In lexicological term, 'exchange' means to part with, give, or transfer in consideration of something received as an equivalent; or to have replaced by other merchandise; or to offer and receive something reciprocally. In normal parlance, as assigned to the meaning of 'exchange' just described above is applied to the case in hand, the Tribunal is afraid, if at all the nature of transactions did really effected in course of exchange. The dealer assessee is said to have received old gold jewelleryes on price paid and adjusted it against the sale price on new jewelleryes and therefore, by no stretch of imagination, it can be said that there was any kind of exchange of goods. That apart, the definition of 'sale' as appearing in Section 2(45) of the Act speaks of only cash payment, if at all the argument of the learned Counsel for the dealer assessee as to exchange is really to be believed. As per the said definition, 'sale' means transfer of property in goods other than by way of mortgage, hypothecation, charge or pledge by one person to another in course of trade or business for cash, deferred payment or *other valuable consideration* and also includes deemed sales (*italics emphasized*). As it is also known that earlier

under the multitude of the State Tax laws, the incidence of tax occurred, when there was a sale in exchange for cash or 'other valuable consideration', a term and expression which is generally not considered to include other goods as the principle of ejusdem generis implies that such consideration should be in the nature of cash only. Moreover, in so far as the present case is concerned, it cannot be said that the dealer assessee simply received old gold jewellery and offered the new ones in exchange without involvement of cash. In fact, by looking at the very nature of the transactions so carried out by the dealer assessee, it would clearly imply that it purchased old gold jewellery from customers and then, with the adjustment in price, sold the new ornaments to them and collected VAT thereon. That apart, the purchased jewellery were not shown as sold in the same form, but as per the contention of the learned Counsel for the dealer assessee, such ornaments were melted and made gold bullions and were, then, despatched outside the State which clearly suggested its disposal otherwise by way of sale inside the State or inter-State trade or commerce or export and in such view of the matter, the Tribunal is of the conclusion that purchase tax must have to be realized upon such old gold jewellery. The contention of the dealer assessee that the old jewellery received back in the form of new ornaments after undergoing a manufacturing process and its sale within the State of Odisha, while denying liability to pay tax under Section 12 of the Act has rightly been rejected by the authorities below on the ground that the gold ornaments old and new differed in purity level and besides that, both are different and distinct commercial commodities effected

by way of separate transactions altogether. Had there been a case that the dealer assessee simply traded in old jewelleries and received in exchange without involvement of cash, it would have been exchange of goods. Likewise, if the dealer assessee had received old ornaments and without any manufacturing process sold it inside the State, then also, it would have been otherwise. The plea of the dealer assessee that the same old gold jewelleries despatched by way of stock transfer were received back after manufacture of new jewelleries was also correctly dismissed, since it was against the standard accounting procedure. The Tribunal does not really find a way or any reasoning based on logic to accept the contention of the dealer assessee on this score. The decision of the Hon'ble Kerala High Court supra, in the considered view of the Tribunal, is totally distinguishable for the fact that the assessee in that case were shown to have purchased old gold items and sold it in the same form. Such is not the case here in so far as the dealer assessee is concerned. The dealer assessee, rather, found to have received and purchased old gold jewelleries whereupon no tax under Section 11 of the Act was payable and then sold new jewelleries and furthermore, despatched it to outside the State against declarations in Form-F and hence, under the above circumstances, it was definitely liable to purchase tax thereon and having concluded so, the Tribunal, thus, reaches at an inescapable conclusion that there are no good grounds or compelling reasons to take a different view than the opinions expressed by the authorities below in this regard.

7. Hence, it is ordered.

8. For the discussions made herein above, the appeal stands dismissed. As a logical sequitur, the impugned order dated 30.10.2018 passed in Appeal Case No. AA (OVAT) 106221722000096 is hereby confirmed. The cross-objection is accordingly disposed of.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman