

BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 400(ET)/2005-06

(Arising out of the order of the learned Asst.CST(Appeal), Puri Range, Bhubaneswar in first appeal Case No. AA (ET)358/BH.II/04-05 disposed of on 07.10.2005)

**Present :- Shri A.K. Das, Smt. Sweta Mishra, & Shri S. Mishra,
Chairman 2nd Judicial Member Accounts Member-II.**

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

..... Appellant.

-Vrs.-

M/s. Morabi Ceramic Sales,
Cuttack Road, Bhubaneswar.

..... Respondent.

For the Appellant: : Mr. D. Behura, SC(C.T.)
: Mr. S.K. Pradhan, Addl.S.C. (C.T.)
For the Respondent: : None.

Date of Hearing : 04.10.2021 * Date of Order :22.10.2021**

ORDER

This present appeal has been filed by the Revenue against the impugned order of learned Assistant Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter referred to as ld. FAA) passed on 07.10.2005 in Appeal Case No. AA (ET)358/BH.II/04-05 allowing the appeal filed by the dealer in full thereby reducing the demand raised by the learned Assessing Authority, Bhubaneswar-II Circle, Ward-E (hereinafter referred to as LAO) of Rs.2,98,686.00 made under Section 7 of Odisha Entry Tax Act (in short, OET Act) to Rs. Nil relating to the assessment year 2003-04.

2. Being aggrieved by the aforesaid order, the appellant-State has come up in second appeal before this Tribunal with the following grounds of appeal:-

- “1. That the order of the ld. ACST is not just & proper.
2. That enhancement made on the basis of suppression under OST Act by the ld. Assessing Officer same was found reasonable.
3. That purchase & sale suppression are correct.....”
3. The brief fact of the case is as follows:-

In the instant case, the dealer carries on business in sanitary items and ceramic tiles. At the time of assessment under both the OST & OET Act for the impugned period, heard simultaneously, the LAO observed that under the OST Act, the turnover was enhanced by Rs.34,20,900.90 on the basis of alleged sale suppression in the Circle Fraud Case Report. Accordingly, he determined the corresponding purchase suppression at Rs.29,74,696.00 which he added to the GTO returned, resulting in an extra demand of Rs.2,98,686.00.

4. Being aggrieved by the said order, the dealer filed first appeal before the ld. FAA and at appeal stage challenged the enhancement as baseless, presumptive and bad in law as he has disclosed his total purchases including transportation charges by utilizing Govt. waybills and paid ET accordingly. Citing case law in case of M/s. Suravi Steels Vrs. State of Kerala reported in 123 STC 491 (Kerala), he further argued that ET is leviable at the point of entry of goods into a local area for consumption, use or sale. Moreover, referring to decision of Hon'ble

Odisha High Court reported in 139 STC Page 450, he argued that it is not a tax on goods but a tax on entry on goods. Since, all his purchases have been made from outside the State i.e. Gujarat by utilizing Govt. waybills and no purchase suppression has been detected by the LAO, hence no tax is leviable on alleged sale suppression converted into purchase suppression. On verification of the documents filed by the dealer and averments taken thereon, the ld. FAA observed that purchase turnover of enhanced sale turnover under the OST Act has been estimated by LAO in his order under OET Act, resulting in above demand. On examination of OST Assessment Record, he found that no purchase suppression has been reported in the said Circle fraud Report. Accordingly, he accepted the above grounds taken by the dealer at appeal including cited case laws thereby allowing the appeal in full and reduced the demand to returned figure.

5. Being aggrieved by the appeal order passed by the ld. FAA, the State has come up before this Tribunal challenging the said order as not just and proper and the assessment order as reasonable.

6. That, in spite of sufficient opportunities availed by the dealer-respondent, he failed to appear in appeal proceeding without any reasonable cause. Accordingly, in the absence of dealer-appellant who has also not filed cross objection, the case was heard and disposed of ex-parte basing on the materials available in this record including appeal record of the forum below and hearing from the ld. Standing Counsel(C.T.) for appellant -Revenue.

7. In course of hearing, Mr. D. Behura, Id. Standing Counsel (C.T.) for the Revenue referred to the grounds of appeal annexed to the appeal memorandum and argued that as per Circle Fraud Case Report, sale suppression to the tune of Rs.34,20,900.90 was established by the LAO under OST Act who converted into purchase suppression of Rs.29,74,696.00 under the OET Act. Since sale has a distinct causal connection with purchase and both are intrinsically interlinked and interconnected, the LAO has rightly established purchase suppression on sale suppression. Where there will be a sale suppression, it will automatically arise out of purchase suppression.

From the contentions taken by the Id. SC (C.T.) for the State-appellant vis-à-vis the relevant documents available in this record including record of forum below, the questions raised for decision in this appeal are:

1. Can demand of tax be made under the OET Act on alleged sale suppression based on some estimate / Challan slips as pr circle fraud report?
2. What will happen when some scheduled goods may have been brought clandestinely into a local area without reflecting the same in books of account / returns filed and sold as such un-accounted for?
3. Is there any causal connection between sale suppression and purchase suppression? In other words, can sale suppression of goods draw an inference that there is a simultaneous purchase suppression

of the same goods i.e. sale suppression leading to purchase suppression?

In order to answer all queries above simultaneously, we have to refer to the relevant provisions of OET Act.

As per section-3 of the OET Act, it is the entry point of the scheduled goods which is relevant for the purpose of entry tax when the goods are entered into the local area or been brought into the local area for consumption, use or sale therein. **Further, section 2(j) of OET Act defines purchase value of a scheduled goods as under:**

“Purchase value means the value of scheduled goods as ascertain from original invoice or bill and includes insurance charges, excise duties countervailing charges, sales tax, transport charges freight charges and all other charges incidental to the purchase of such goods.”

In the instant case, sale suppression was established by the LAO in his OST assessment order and thereby he made calculation of purchase suppression on the said established sale suppression. It is a fact that goods can come into possession of a dealer basically in two ways i.e. either by way of purchase or receipt of such goods other than by way of purchase. In both the occasions, necessary documents are required to corroborate the fact that such goods have been purchased /received. Unless and until any goods are in possession of a person, he cannot dispose of those goods by way of sale or otherwise. In the instant case, it is established by the LAO that the dealer has made sale suppression of goods which has been unaccounted for in his books of account.

Resultantly, it is inferred that this dealer was in possession of those unaccounted for sold goods which have been purchased/ received by him unaccounted for. There are many a ways to bring scheduled goods into a local area that may not pass through the Sales Tax Check Gates and may elope the eyes of Taxing Authorities. That is why, the Taxing Department make periodic checking of business premises of different dealers to ascertain the correctness of books of account maintained and returns filed. Thus, we are of the considered opinion that when sale suppression has been established by the LAO, it has got a causal bearing on its purchase suppression as both purchase/receipt and sale of goods are totally interlinked.

8. Hence it is ordered.

In the result, the appeal filed by the State-appellant is allowed in full, the appeal order passed by the ld. FAA is set-aside and the assessment order of the LAO for the impugned period is confirmed.

Dictated & corrected by me,

Sd/-
(Srichandan Mishra)
 Accounts Member-II

Sd/-
(Srichandan Mishra)
 Accounts Member-II

I agree,

Sd/-
(A.K. Das)
 Chairman

I agree,

Sd/-
(Sweta Mishra)
 2nd Judicial Member