

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX
TRIBUNAL, CUTTACK.**

S.A. No. 391(V) of 2015-16

(Arising out of the order of the learned JCST,
Ganjam Range, Berhampur in first appeal case
No.AAV.16/2014-15 dtd.31.12.2015)

Present: **Shri S.K. Rout, 2nd Judicial Member**
&
Shri B. Bhoi, Accounts Member-II

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

..... Appellant.

-Vrs. -

M/s. Abhinandan Trader,
At/Po- Buguda, Dist-Ganjam.

..... Respondent.

For the Appellant :

: Mr. D. Behura, Id. S.C.(C.T.)

For the Respondent :

: Mr. B.B. Panda, Id. Advocate

Date of Hearing : 01.02.2023 * Date of Order: 24.02.2023**

O R D E R

The State is in appeal against the order dated 31.12.2015 of the Joint Commissioner of Sales Tax,(Appeal) Ganjam Range, Berhampur (hereinafter called as 'Id. FAA') in first appeal case No. AAV.16/2014-15 allowing the appeal in part and resultantly thus, the demand raised at assessment was reduced to Nil.

2. The facts in nutshell are that M/s. Abhinandan Traders, At/Po-Buguda, Dist-Ganjam carries on business in edible oil on wholesale basis. The dealer-assessee purchases edible oil in metric ton and pocketed them into one kilogram pack for sale. The

dealer-assessee was assessed U/s.42 of the OVAT Act for the assessment periods from 01.04.2011 to 31.03.2013 basing on the Audit Visit Report No.01-2012-13 submitted by the ACST, Bhanajanagar Circle Sales Tax Officer. Demand of Rs.4,59,711.00.00 was raised at assessment which includes penalty of Rs.3,06,473.00.

3. The dealer-assessee preferred appeal against the order of the ld. STO before the ld. FAA. The ld. FAA allowed the appeal in part and reduced the demand to Nil. Being aggrieved with the order of the ld. FAA, the State prefers this appeal before this Tribunal.

4. The State represented by Mr D. Behura, learned Advocate puts forth the grounds of appeal submitting that the Ld. FAA has simply accepted the contentions of the dealer in allowing the credit sales which ought to have been not acceptable. It is also submitted that the Ld. FAA has allowed leakage and wastage of 304.5 Kgs of Palmoline oil and 569 kgs of Refined oil which was not at all adorned in the assessment order. The learned Counsel of the State requested for remanding the instant case for re-assessment.

The dealer-respondent has filed cross-objection holding the grounds taken by the State in appeal to have no merits for consideration. It is argued that the first appellate authority being declared as an extended forum of assessment vests with authority to verify and examine the books of accounts of the dealer and determine the tax liability. Apart from this, the learned Counsel of the dealer respondent pleads that the input tax credit required to be availed by the dealer for the month of June, 2012, July,2012,

October, 2012 and February, 2013 involving Rs.1,05,508.30 which was not inadvertently disclosed in the relevant returns is urged to be allowed, since the books of accounts for the periods in question contains the input tax credit in dispute.

4. The contention made by the learned Counsel representing the State is gone through. The argument placed by the learned Counsel of the dealer is also heard. The order of assessment as well as the order of the Ld. FAA is perused minutely.

5. The learned STO assessed the dealer respondent for the assessment period under appeal basing on the Audit Visit report. The Audit Team conducted sample test of weight in respect of oil tins and observed that the respondent used to purchase edible oil in Kilo Litre and Metric ton and sold Mustard Oil, R.B. Oil and Palm Oil in tins procured locally labeling 15 Kg.net each. The weight of each empty tin is reported as 970 gram. As reported, as per the universal conversation rate, one litre is equal to 910 gm. As estimated in the AVR, a 15 litre net weight should be $910 \text{ gm} \times 15 = 14.620 \text{ kg}$. Whereas the respondent is alleged to sold oil tins with gross weight of 14.400 kg each making thereby shortage of 220 gm. in each tin containing R.B. Oil and Palm Oil. The dealer having sold 42143 nos. of palm oil tins during the assessment period under audit, it has suppressed sale of 9271.43 kg of palm oil which could be Rs.6,49,002.00 @ Rs.70.00 per Kg. Similarly, sale suppression of 9642.30 kg of R.B. Oil @ Rs.70.00 per Kg calculating to total of Rs.6,74,962.00 is alleged by the Audit Team. The total sale suppression on this score worked out to Rs.13,23,964.00.

6. The ld. assessing authority on verification of cash credit account No.11752055055 of State Bank of India, Karachuli Branch of the dealer noticed that the dealer had made bank transaction of Rs.10,62,070.00 towards debit and Rs.6,78,710.00 during the period from 01.01.2012 to 31.03.2012 and alleged the dealer to have suppressed the account of purchase and sale for evasion of tax.

7. The ld. assessing authority is found to have not allowed the ITC to the tune of Rs.1,05,508.30 during the tax period June 2012, July 2012, October 2012 and February 2013 and also not disclosed purchase of goods worth Rs.97,500.00 effected from unregistered sources for the tax period September, 2011 in the periodical returns filed.

8. The ld. Assessing authority has determined the GTO at Rs.8,15,32,045.00. After allowing deduction of Rs.34,17,639.00 towards collection of VAT, the ld. Assessing authority has determined the TTO of the dealer at Rs.7,81,14,406.00. The ld assessing authority has computed tax @ 4% on Rs.3,34,84,465.00 and tax @5% on Rs.4,46,29,941.00 which comes to Rs.35,70,875.65. Out of the total ITC claimed of Rs.23,73,764.00, the ld assessing authority has allowed Rs.22,00,836.70 towards ITC after disallowing excess claim of ITC Rs.1,05,508.30 and allowing carry forward ITC to the tune of Rs.67,419.00 for April, 2013. The appellant has also deposited tax to the tune of Rs.12,16,802.00 by challan. Thus, the balance tax due has arrived at Rs.1,53,236.95. The ld assessing authority has also imposed penalty of

Rs.3,06,473.90 U/s. 42(5) of the OAVT Act and raised a total demand of Rs.4,59,711.00.

9. In the first appeal as preferred by the dealer-respondent, the Id FAA sensing the complicity of the case requiring threadbare analysis took up examination of the purchase, sale and item-wise stock account vis-à-vis the periodical returns filed which are reproduced below for better appreciation:

PURCHASE

Period	Consignment purchase	Outside state purchase	Regd. Dealer purchase	ITC	Unregd. Dealer purchase	Primary freight & insurance	Entry Tax	Total
(In Rupees)								
2011-12	5126510.00	7951036.00	15801974.43	632078.98	1065260.00	26492.28	8083.15	30611434.84
2012-13	801600.00	8502228.00	32723555.40	1636177.77	1415605.00	17791.00	40927.20	45137884.37
Total	5928110.00	16453264.00	48525529.83	2268256.75	2480865.00	44283.28	49010.35	75749319.21

SALE

Period	Sale of goods received on consignment	Output VAT	Other inside state sales	Output VAT	Total taxable turnover	Total output VAT	VAT paid
(In Rupees)							
2011-12	5634087.25	225363.49	27850377.81	1114015.11	33484465.06	1339378.60	707301.00
2012-13	945102.84	47255.14	40620093.77	2031004.69	41565196.61	2078259.83	509500.00
Total	6579190.09	272617.63	68470471.58	3145019.80	75049661.67	3417638.43	1216801.00

Stock Account of Palmolin Oil

Qty. in Kg.									
period	Purchase					Sales		Closing Balance	No. of Tin @13.5 Kg. per tin
	O.B.	No. of Tin@ 13.5 Kg. per tin	Purchase	Leakage	No. of Tin @ 13.5 Kg. per tin	Sale	No. of Tin @13.5 Kg. per tin		
2011-12	12136.500	899	284255.000	174.500	21043	296217.000	21942	0.000	0

2012-13	0.000	0	284980.000	130.000	21100	257458.500	19071	27391.500	2029
	12136.500	899	569235.000	304.500	42143	553675.500	41013	27391.500	2029

Stock Account of R.B. Refined Oil

Qty. in Kg.									
period	Purchase					Sales		Closing Balance	No. of Tin @13.5 Kg. per tin
	O.B.	No. of Tin@ 13.5 Kg. per tin	Purchase	Leakage	No. of Tin @ 13.5 Kg. per tin	Sale	No. of Tin @13.5 Kg. per tin		
2011-12	5319.000	394	220500.000	301.500	16311	225517.500	16705	0.000	0
2012-13	0.000	0	207830.000	267.500	15375	188298.000	13948	19264.500	1427
	5319.000	394	428330.000	569.000	31686	413815.500	30653	19264.500	1427

Stock Account of Mustard Oil

Qty. in Kg.									
period	Purchase					Sales		Closing Balance	No. of Tin @13.5 Kg. per tin
	O.B.	No. of Tin@ 13.5 Kg. per tin	Purchase	Leakage	No. of Tin @ 13.5 Kg. per tin	Sale	No. of Tin @13.5 Kg. per tin		
2011-12	1395.000	93	1595.000	80.000	1061	17025.000	1135	285	19
2012-13	285.000	19	6480.000	0.000	432	6495.000	433	270	18
	1395.000	93	22475.000	80.000	1493	23520.000	1568	270	18

10. The ld. FAA on verification of purchase register, purchase bills, sale register and sale invoices found that the purchases are in metric tons of sale in term of Kilograms filled in shape of tins. It has also been verified that palm oil of R.B. oil have been sold in tin containing 13.5 kg net each, but in case of mustard oil, each tin contains 15kg net. The total purchase, sale and stock of R.B. oil, palm oil and mustard oil as extracted from the first appeal order appears to be genuine and in conformity with the provisions of law enshrined in rule

67 of the OVAT Rules, 2005. The allegation of underweight sale harping on eye estimation (universal conversation) is not accepted as an genuine parameter to determine purchase/sale suppression and thus, the Ld. FAA deleted Rs.13,23,964.00 alleged as sale suppression by the learned assessing authority.

11. The Bank statement of the dealer-respondent as extracted from the 1st appeal order is as below:

Date	Debit	Particulars	Credit	Particulars
07.01.2012	0.00		100000.00	cash
10.01.2012	0.00		135700.00	cash
18.01.2012	65000.00	Receipt	0.00	cash
24.01.2012	110.00	Bank charges	55000.00	cash
31.01.2012	20739.00	Bank loan interest	0.00	
	1945.00	Insurance	0.00	
07.02.2012	0.00		50000.00	cash
08.02.2012	44000.00	Receipt	0.00	
11.02.2012	49000.00	Receipt	20000.00	cash
	0.00		21000.00	cash
17.02.2012	0.00		67000.00	cash
18.02.2012	51000.00	Cash	0.00	
23.02.2012	60000.00	Receipt	210000.00	cash
29.02.2012	50000.00	Receipt	0.00	
	20000.00	Receipt	0.00	
	20000.00	Receipt	0.00	
	19643.00	Loan interest	0.00	
	550.00	Bank charges	0.00	
12.03.2012	0.00		10.00	Bank charges
14.03.2012	10000.00	Bank charges	0.00	

16.03.2012	450000.00	Payment	0.00	
31.03.2012	19755.00	Loan interest	0.00	
	3328.00	Bank charges	20000.00	contra
Total	885070.00		678710.00	

The ld. FAA avers that the learned assessing authority has not gone through the bank statement of the assessee and has accepted the figures mentioned in the Audit Visit Report (AVR) It was verified that the amount debited in the month of January, 2012 to March 2012 was Rs.8,85,070.00 instead of Rs.10,62,070.00 as alleged in the AVR and the amount credited was Rs.6,78,710.00. The transactions like bank charges, insurance, bank loan interest were included in the said debit and credit amount. Determination of purchase/sale suppression on the basis of Bank transactions is strongly rebutted. The explanation offered in support of Nil filing of returns for the period from 01.01.2012 to 31.03.2012 leading to non-transaction of business has been considered as convincing by the ld. FAA. Upon through verification, the Ld. FAA deleted the alleged suppression of purchase and sale tune of Rs.10,62,070.00 and Rs.6,78,710.00.

12. As regards the allegation of non-disclosure of purchases worth Rs.97,500.00 from the unregistered dealers during the month of September,2011, the Ld.FAA disapproved

of the same and could find that the dealer respondent had procured empty tins from the unregistered and has duly entered in the purchase register.

13. The disallowance of irregular ITC to the tune of Rs.1,05,508.30 observed in the order of assessment is accepted as rightly assessed by the Ld. FAA.

14. The Ld. FAA re-determined the GTO at d.7,84,67,300.10. After allowing deduction of Rs.34,17,638.43 towards collection of VAT, the TTO arrived at Rs.7,50,49,661.67. Tax @4% on Rs.3,34,84,65.06 and @5% on Rs.4,15,65,196.61 computed to Rs.34,17,638.43. After allowing deduction of ITC to the tune of Rs.22,00,836.70, the amount of tax due arrives at Rs.12,16,802.00 against which, the dealer-respondent is found to have paid Rs.12,16,802.00 at the time of filing periodical returns. The dealer-respondent is assessed to Nil at the stage of first appeal.

15. As discussed in the foregoing paras, the learned assessing authority is found to have relied on the findings of the AVR in the matter of determining 'underweight' of sales which was based on eye estimation (reported as Universal Conversation). It is not an accurate yardstick for measurement. Treating the Bank transactions as sale suppression without authenticity is not acceptable. On the other hand, the Ld. FAA, an extended forum of assessment,

could find the order of assessment to be on hypothetical basis and thus, examined the full set of books of accounts in details. The Ld. FAA could unearth the factual lacuna in the order of assessment and assessed the dealer respondent as per the books of accounts produced before the forum. The order of the first appellate authority is found to be elaborative and based on facts and substance. We find no justification to interfere in the order of the Ld. FAA. Hence, it is ordered.

16. Resultantly, the appeal filed by the State is dismissed. The order of the Ld. FAA is confirmed. Excess payment made, if any, by the dealer respondent in the present case may be refunded as per the provisions of law. The cross objections are disposed of accordingly.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**