

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

**S.A. No. 119(C) of 17-18**

(Arising out of the order of the learned JCST,  
Koraput Range, Jeypore in first appeal case  
No.AAC(NGP)01/17-18 dtd.25.10.2017)

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

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

**-Vrs. -**

M/s. Goyal Galla Bhandar,  
Dabugaon, Nabarangpur. .... Respondent.

For the Appellant : : Mr. D. Behura, Id. S.C.(C.T.)  
For the Respondent : : Mr. S.C. Sahoo, Id. Advocate

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**Date of Hearing : 02.02.2023 \*\*\* Date of Order: 24.02.2023**  
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**O R D E R**

The State is in appeal against the order dated 25.10.2017 of the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter called as 'Id. FAA') in first appeal case No. AAC(NGP)01/17-18 allowing the appeal in part and reducing the demand raised at assessment to Rs.34,063.00.

2. The facts in nutshell are that M/s. Goyal Galla Bhandar, At/po-Dabugaon, dist-Nabarangpur carries on business in seasonal goods like. Maize, procuring locally from the cultivators and sells the same both inside and outside the State of Odisha. The dealer-respondent was assessed U/r. 12(4) of the CST(O) Rules,

1957 for the tax period from 01.04.2011 to 31.03.2014 exparte raising demand of Rs.4,31,54,229.00 which includes penalty of Rs.2,84,69,486.00 imposed U/r. 12(4) of the CST(O) Rules.

3. On being aggrieved against the order of assessment, the dealer-respondent preferred first appeal. The demand raised by the ld. STO U/r.12(4) of the CST(O) Rules was reduced to Rs.34,063.00 at the first appellate forum.

4. The State preferred second appeal before this Forum citing the order of the ld. FAA as unjust and improper. It is submitted that the order of the ld.FAA at page 3 reveals that the total transaction as per return was Rs.43,58,471.00 out of which, export sale was for Rs.41,03,42,855.00 and CST sale was for Rs.2,54,83,616.00. The collected CST amount shown in last paragraph of page 4 was for Rs.4,94,881.00. From this it is calculated that the total CST turnover was for Rs.2,59,78,497.00 against which, the dealer has submitted 'C' form for Rs.2,62,58,100.00. On the contrary, in the paragraph-1 of page 4 of the appeal order, it is seen that the dealer has furnished 'C' forms for Rs.2,79,54,149.00 against the total sale turnover of Rs.1,26,82,736.00. From the above, it can be safely concluded that the order passed by the ld. FAA is congruent in nature and no conclusive inference can be drawn from it. So it is liable to be set aside for fresh assessment. It is further contended that the observation of the ld. FAA appears to be illogical on the ground that unless and until invoice raised by the dealer has been revised by himself, it cannot be construed to be accepted legally. One cannot

revise other invoice of his own accord without the consent of the selling dealer. No such documentary evidences were adduced by the dealer so as to substantiate his claim as revealed from the order of the ld. FAA. Moreover, regarding freight only to the extent of Rs.27,14,794.00 was shown by the ld. FAA Appellate Authority. So for such huge differential amount, the dealer has to pay the legitimate tax due to him as the reason attributed cannot be considered as sufficient cause for acceptance on the strength of audited balance sheet only.

In view of the above, the State urges upon setting aside the case for fresh assessment.

5. The dealer-respondent represented by Mr. S.C. Sahoo, ld. Advocate filed cross objection arguing that the ld. FAA in first appeal order dated 25.10.2017 has rightly allowed the appeal by allowing the exempted sale on export and accepting the 'C' declaration forms produced before him at the time of appeal and allowing the concessional sale. It is also submitted by the learned counsel of the dealer that the assessment passed by the Ld. STO u/r 12 (4) of the CST (O) Rules was simply on the basis of waybills generated through system and the said assessment was passed exparte. The demand raised was on account of non production of declaration Forms and imposed penalty illegally u/r 12(4)( C) of the CST (O) Rules. The ld. FAA on verification of the statutory declaration Forms allowed concessional rate of tax as well as exemption of tax as per the provisions of law. It is submitted that the first appellate authority has inadvertently mentioned the CST

turnover as Rs.1,26,82,736.00 in the appeal order, but while calculating the GTO, TTO and tax payable has rightly calculated as is apparent from the appeal order. The learned Counsel has further pleads that the first appellate has determined the TTO at Rs.2,74,59,268.00 instead of Rs.2,47,44,474.00 without deducting the freight charges for Rs.27,14,794.00 and accordingly, calculated tax payable at Rs.5,49,185.00 instead of Rs.4,94,881.00. As such, the first appellate authority has determined more tax than actual in favour of the revenue and there is no loss of revenue at all. It is further submitted that with regard to export sale U/s.5(3) of the CST Act, the Id. FAA has rightly allowed the exemption of tax by showing the following reason:

“Examined the contention of the dealer which revealed that the dealer has received all the declaration forms ‘C’ and ‘H’ against the sale transactions, but amount is varied due to the above reason. Since the quality-cut is a common practice in the trade of seasonal goods and this reason being genuine, which is also supported from the audited balance sheet filed at this forum for the relevant periods, the contention of the dealer in this regard is accepted.”

From the above paragraph it is clear that the Id. FAA has after verifying all the declaration Form ‘H’ along with statement of sale and invoice copies and basing on the audited balance sheet prepared by a independent Chartered Accountant and which is a authenticate documents has rightly allowed exemption, as such

objection raised by the State in this regard is not correct and liable to be dropped.

6. The order of assessment, first appeal order, grounds of appeal filed by the State and the memorandum of cross objection filed by the dealer-respondent are gone through at length. It is observed that the assessment has been passed *exparte*. The *ld. FAA* being the extended forum of assessment has verified all the records minutely. The *ld. FAA* is learnt to have verified 20 numbers of 'C' Forms and 76 numbers of 'H' Forms in original along with the relevant documents like bill of lading, purchase orders, detailed invoice-wise statement and found the same genuine. The cross objection filed by the dealer-respondent in defense of the grounds of appeal filed by the State is examined. The contention taken by the *ld. Advocate* on behalf of the dealer-respondent seems to have borne credence. The observation of the *ld. FAA* in regard to discrepancy as reported in the grounds of appeal appears to be convincing on the pretext that after testing of quality and quantity of the goods the purchasing dealers used to make valuation of goods afresh for the transactions. Hence, the turnovers as per returns and turnover as per declaration Forms have been varied. Since, the quality cut is a common practice in the trade of seasonal goods and this reason being genuine, which is also supported from the audited balance sheet filed by the dealer, the contention of the learned counsel in this regard has been accepted by the *ld. FAA*.

7. After thorough verification of the books of accounts together with the statutory declaration Forms, the *Ld.FAA*

determined the GOT at Rs.42,66,31,212.00. After deduction of Rs.4,94,881.00 and Rs.39,86,77,063.00 towards sales tax collection and export sales, the TTO stood at Rs.2,74,59,268.00. Tax @2% on TTO calculates to Rs.5,49,185.00. The dealer respondent having already paid Rs.5,15,121.00 earlier, he is required to pay Rs.34,064.00.

8. Under the facts and in the circumstances discussed in the foregoing paras, it is of the considered views that since extensive verifications of the books of accounts coupled with the relevant declaration Forms have been undertaken in the fora below, we find no justification to interfere in the present case. It is, therefore, ordered as under:-

9. The appeal filed by the State urging modification and re-assessment of the impugned case is dismissed. The order passed by the Id. FAA is confirmed. Excess tax paid, if any, by the dealer-respondent be refunded as per the provisions of law. The cross objections are accordingly disposed of.

**Dictated and corrected by me.**

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

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

**I agree,**

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