

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 203 (VAT) of 2019

(Arising out of order of the learned JCST, Territorial Range,
Jajpur, Jajpur Road in Appeal No. AA 1004 JPR 19-20 (OVAT),
disposed of on 24.06.2019)

Present: **Shri G.C. Behera, Chairman**

M/s. Panda Sweets,
NH-5, Near Over Bridge, Kuakhia, Jajpur ... Appellant

-Versus-

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

For the Appellant : Sri S.R. Mishra, Advocate
For the Respondent : Sri N.K. Rout, Addl. SC (CT)

Date of hearing : 12.03.2024 *** Date of order : 27.03.2024

O R D E R

Dealer is in appeal against the order dated 24.06.2019 of the Joint Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road (hereinafter called as 'First Appellate Authority') in F A No. AA 1004 JPR 19-20 (OVAT) setting aside the assessment order of the Sales Tax Officer, Jajpur Circle, Jajpur (in short, 'Assessing Authority') for reassessment.

2. The facts of the case, in brief, are that –

M/s. Panda Sweets carries on business in manufacturing and sale of sweets and cooked food on retail basis. The assessment relates to the period 21.02.2007 to 31.03.2012. The Assessing Authority raised tax demand of ₹6,31,500.00 u/s. 44(1) of the Odisha Value Added Tax Act,

2004 (in short, 'OVAT Act') in *ex parte* proceeding basing on survey report dated 02.08.2010.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority set aside the order of assessment and remanded the case for assessment afresh. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection.

3. The learned Counsel for the Dealer submits that the impugned order of the First Appellate Authority is unjust and illegal due to non-application of mind. He further submits that the imposition of tax and penalty is unlawful. He contends that the proceeding is barred by limitation. So, he submits that the order of the First Appellate Authority is otherwise bad in law and liable to be set aside.

4. Per contra, the learned Addl. Standing Counsel (CT) for the State supports the finding of the First Appellate Authority to be just and proper. He submits that the impugned order needs no interference in appeal.

5. Heard rival submissions of the parties and gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record.

The Dealer assails the impugned order on the ground of limitation and imposition of penalty besides the general ground of wrong assessment of tax. On the contrary, the State has filed cross-objection supporting the finding of the First Appellate Authority.

The assessment order reveals that the Dealer is an unregistered dealer and the Assessing Authority completed the *ex parte* assessment u/s. 44(1) of the OVAT Act by following best judgment principle. The Dealer deals in sale of cooked food on retail basis with daily average sale of ₹2,000.00 at the time of visit by the inspecting officials. The inspecting authority found the total sale from 01.01.2007 to 20.02.2007 at

₹1,00,000.00. So, the Assessing Authority assessed the Dealer by levying tax and penalty after allowing taxable limit.

The First Appellate Authority remanded the matter to the Assessing Authority for disposal afresh as per law by allowing opportunity of being heard to the Dealer.

6. On perusal of the grounds of appeal, the Dealer assails the impugned order on the ground of limitation and without any specific ground except that the impugned order is non-application of mind and imposition of penalty along with tax are unjust and illegal. The impugned order reveals that the First Appellate Authority has remitted the matter back to the Assessing Authority for disposal afresh as per law and the State supports it. The Dealer fails to adduce any material evidence before this forum to show the order of remand is illegal due to non-application of mind. So, I do not find any material to dislodge the finding of the First Appellate Authority in remanding the matter to the Assessing Authority for reassessment. Hence, it is ordered.

7. Resultantly, the appeal stands dismissed being devoid of any merit and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G.C. Behera)
Chairman

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(G.C. Behera)
Chairman