

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 38 (C) of 2009-10

(Arising out of order of the learned DCST (Appeal), Sambalpur Range,
Sambalpur in First Appeal No. AA – 273/SAI/CST/06-07,
disposed of on 09.06.2009)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

M/s. Priti Oil Ltd.,
Rengali, Dist. Sambalpur ... Appellant

-Versus-

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

For the Appellant : Sri Uttam Behera, Advocate
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 29.11.2022 *** Date of order : 08.12.2022

ORDER

Dealer assails the order dated 09.06.2009 of the Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 273/SAI/CST/06-07 confirming the assessment order of the Sales Tax Officer, Sambalpur-I Circle, Sambalpur (in short, ‘Assessing Authority’).

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

Dealer is an oil extraction Unit. It uses crude rice bran and sal seed as raw materials for utilization in solvent extraction unit. Likewise, crude rice bran oil, soyabin oil, palm oil etc. are used as raw materials in the refinery Unit to obtain refined oil, soap stock, acid oil, wax, de-oiled cake

etc. for sale. The assessment period relates to 2003-04. In assessment proceeding, the Dealer could not produce 'C' & 'F' forms. So, the Assessing Authority raised tax demand of ₹8,11,349.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the assessment and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer submits that the order of the First Appellate Authority is not based on law as well as facts involved in the case. He submits that there is no provision for levy of any surcharge under the CST Act and thus, the learned fora below have erroneously levied surcharge, which is liable to be deleted. He further submits that the Dealer may be allowed to furnish the wanting 'C' and 'F' forms before this forum. So, he submits to set aside the orders of the fora below being unlawful.

4. The learned Standing Counsel (CT) for the State submits that since the Dealer fails to produce the wanting 'C' and 'F' forms, the fora below fastened the liability as per law and the same requires no interference in appeal.

5. During hearing of the appeal, the Dealer unable to produce the required 'C' and 'F' forms to get the concessional and exemption benefits. As regards levy of surcharge, it is settled law by the Hon'ble Apex Court in the case of *Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory Pvt. Ltd.*, reported in [1992] 85 STC 106 (SC), that surcharge is nothing but an additional sales tax, it must be taken into account while determining the rate of tax payable under Section 8 of the CST Act. In view of such settled

position of law, we are unable to accede to the submission of Mr. Behera, the appearing learned Counsel of the Dealer.

6. For the foregoing discussions, we do not find any illegality or impropriety in the order of the fora below to call for any interference in appeal. Hence, it is ordered.

7. In the result, the appeal stands dismissed and the impugned order of the First Appellate Authority confirming the assessment order of the Assessing Authority is here by upheld.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

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

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**