

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

S.A. No. 107 (C) of 2004-05

&

S.A. No. 98 (C) of 2004-05

(Arising out of orders of the learned ACST, Sambalpur Range,
Sambalpur in First Appeal No. AA – 17 (SAI-C) of 2003-04 &
AA – 18 (SAI-C) of 2003-04, disposed of on 28.06.2004)

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

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

... Appellant

-Versus-

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

... Respondent

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

Date of hearing : 29.11.2022 *** Date of order : 26.12.2022

O R D E R

These two appeals for different periods relate to the same party and involve common question of facts and law. Therefore, they are taken up together for disposal in this composite order.

2. State is in appeals against the orders dated 28.06.2004 of the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA – 17 (SAI-C) of 2003-04 and AA – 18 (SAI-C) of 2003-04 setting aside the assessment orders of

the Sales Tax Officer, Sambalpur-I Circle, Sambalpur (in short, 'Assessing Authority) for reassessment.

3. Briefly stated, the facts of the cases 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. It purchases raw materials both from inside the State and outside the State. It also sells goods in course of inter-State trade and branch transfer to outside the State. The assessment periods relate to 2001-02 and 2002-03.

In assessment proceeding, the Dealer did not produce 'C' & 'F' forms. So, the Assessing Authority raised tax demand of ₹9,76,153.00 for the year 2001-02 and ₹24,66,107.00 for the year 2002-03 exparte u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority set aside the assessment orders for reassessment. Being aggrieved with the orders of the First Appellate Authority, the State prefers these appeals. Hence, these appeals.

4. The Dealer files cross-objections. The appeals were admitted even if the same were filed with a delay of 28 days. He supports the orders of the First Appellate Authority.

5. The learned Standing Counsel (CT) for the State submits that there is no exemption for de-oiled rice cake and the same is to be taxed at the appropriate rate. He further submits that oil-cake includes de-oiled cake. In support of his contention, he relies on the decision of the Hon'ble Court in the case of *Laxmi Agency v. State of Orissa, 1995 (I) OLR 671*. He further submits that the exemption will not be allowed if it is conditional. He

further submits that filing of revised return after filing of appeal is not maintainable. He further submits that the orders of the First Appellate Authority and the Assessing Authority are otherwise bad in law and the same are liable to be set aside.

6. Per contra, the learned Counsel for the Dealer supports the finding of the First Appellate Authority and submits that the Assessing Authority has not given due opportunity to the Dealer, which violates natural justice. So, he submits that the orders of the Assessing Authority require to be aside and the Dealer should have been given an opportunity to defend the case. In support of his contention, he relies on the decision of the Hon'ble Kerala High Court passed on 23.06.2011 in W.P. (C) No. 3861 of 2011 (G) in case of *A.G. James v. AC (ASSMT), DCT, Special Circle, Thrissur & another*.

7. On hearing the rival submissions and on careful scrutiny of the record, it transpires that the Dealer claims that the Dealer was not given due opportunity and natural justice was violated.

Order of the First Appellate Authority shows that the case before the Assessing Authority was adjourned to 31.01.2001. The First Appellate Authority further observed that passing of order on the adjourned date, i.e. 31.01.2001, by the Assessing Authority is not justified. On that ground, the First Appellate Authority set aside the order of Assessing Authority and remanded the case to the Assessing Authority with a direction for reassessment as per the observations made by him in the OST appeal.

8. The record of the Assessing Authority for the year 2002-03 shows that the Assessing Authority issued notice to the Dealer fixing 22.07.2003 for appearance. The case was adjourned to different dates, i.e. 22.07.2003, 16.08.2003, 30.08.2003, 18.09.2003, 06.10.2003, 27.10.2003, 15.11.2003, 09.12.2003, 20.12.2003, 20.01.2004 and 31.01.2004 on the strength of the time petitions of the Dealer and on 31.01.2004, the final order was passed. Though several times were given to the Dealer, but the Dealer did not

cooperate and went on seeking time, which shows the casual approach of the Dealer. So, the Assessing Authority committed no wrong in passing the assessment order on that date, i.e. 31.01.2004. The Dealer was given sufficient opportunities to prosecute his case, but the Dealer fails to do so, so the Dealer cannot claim that the Assessing Authority did not provide him proper opportunity to defend his case.

9. The First Appellate Authority asked the Assessing Authority to reassess the matter as per his direction passed in the OST appeal order. The First Appellate Authority has not any reasoned order where he had set aside the assessment order on merit. He had only set aside the assessment order on the technical ground, i.e. only because the Assessing Authority passed the order on the adjourned date, which is not a correct finding. The First Appellate Authority should have passed the final order with assigning reasons in the first appeal instead of remanding the matter to the Assessing Authority.

10. Now, this Tribunal will examine independently whether the Assessing Authority has committed any illegality in the assessment order. The Dealer does not dispute the finding of the Assessing Authority that in the Refinery Section, crude rice bran oil, soyabin oil, palm oil, etc. are used as raw materials for de-oiled cake and others for sale. This shows that the Dealer is a manufacturer of finished products, i.e. de-oiled cake, for sale. The Dealer does not dispute the finding of the Assessing Authority that the Dealer normally sells all the finished products in inter-State trade and commerce and also effects branch transfer of goods to be sold outside the State. The Dealer does not dispute that he had not produced the 'C' & 'F' forms at the time of assessment though several opportunities were given. He did not file the required 'C' & 'F' forms even during the course of hearing of appeals before this Tribunal. The Assessing Authority further recorded a finding that in absence of 'C' form, the total inter-State trade is taxable @

10%. The Assessing Authority further recorded a finding that in absence of 'F' form and since there was no otherwise evidence was produced on record that goods had been sent to outside the State otherwise than by way of sale, the branch transfer of goods was disallowed.

It is not in dispute that the Dealer fails to produce 'C' & 'F' forms even during hearing of these appeals. So, we are at one with the finding of the Assessing Authority that the said goods are exigible to tax as per the statute.

11. Now, we shall examine whether the de-oiled rice bran cake is exempted from the tax under the Act and if not, what is the rate of tax ? Section 8 of the CST Act provides the rate of tax on CST sale of goods. Section 8(2) relates to sale of goods in course of inter-State trade or commerce not falling within sub-section (1), -

“(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State;

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher; and

(c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil,”

12. As the Dealer fails to submit 'C' & 'F' forms during hearing in any forum and fails to produce any materials that the goods were sent to outside the State on branch transfer basis, the rate shall be application as per the CST Act @ 10%. The Assessing Authority has specifically made such finding in the assessment order while making assessment.

13. On the foregoing discussions, we came to an irresistible conclusion that the Assessing Authority has passed reasoned orders by imposing 10% tax in absence of 'C' & 'F' forms and in absence of any otherwise evidence that the Dealer sent the goods outside the State on

branch transfer basis. So, we do not find any illegality or impropriety in the orders of the Assessing Authority to call for any interference in appeal. But, the First Appellate Authority went wrong in remanding the matter to the Assessing Authority for reassessment without any cogent reason and the same needs interference in appeal. Hence, it is ordered.

14. In the result, the appeals are allowed and the impugned orders of the First Appellate Authority are hereby set aside. As a necessary corollary thereof, the assessment orders of the Assessing Authority for the years 2001-02 and 2002-03 are hereby restored. Cross-objections are disposed of accordingly.

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**