

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

S.A.No.40 of 2015-16.

(Arising out of the order of Ld. DCST(Appeal) Bhubaneswar
Range, Bhubaneswar, in First Appal Case No.AA-106/BH-II/2007-
08, disposed of on dated 6.4.2015)

Present:-Shri G.C.Behera & Shri S.K.Rout, & Shri S.R.Mishra,
Chairman 2nd Judicial Member Accounts Member-II.

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

Odisha, Cuttack

. . . Appellant,

- V e r s u s -

M/s. B.N.Traders,

Ashoka Market, Bhubaneswar

. . . Respondent.

For the Appellant

. . . Mr.S.K.Pradhan,
Addl. Standing Counsel,
(CT & GST Organisation)

For the Respondent

. . . N o n e.

Date of Hearing: 15-11-2023.

Date Order:11-12-2023.

ORDER

The State is in appeal against the order of the Learned
Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range,
Bhubaneswar, (here in after referred to as Learned First Appellate
Authority/Ld. FAA) passed on dated 6.4.2015, in reducing the
assessment from Rs.16,41,946.00 to Rs.54,060.00 determined by the
Learned Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar, (in
short, Ld. Assessing Authority/Ld. AA) vide order dated 29.8.2007
framed Under Section 12(4) of the Orissa Sales Tax Act, (in short,
OST Act) for the year 2004-05.

2. Briefly stated, the fact of the case reveals that the dealer
respondent which carries on business in re-sale of mobile phone and its
accessories etc. was subjected to assessment U/s.12(4) of the OST Act,

for the year 2004-05 by the Ld. A.A. For the period under assessment, the dealer is found to have not filed any return. However, in course of assessment, it had submitted statements of purchase and sales for the entire year declaring its total purchases at Rs.1,12,62,170.00 and sales at Rs.1,14,38,988.00 respectively. The entire purchase and sales have been claimed as first point tax paid goods.

3. The Ld. AA although has accepted the turnover of sales as declared by the dealer to be the GTO returned for the year, he has enhanced the same by a margin of Rs.10,00,000/- by resorting to best judgement assessment on the basis of the tax evasion report submitted by the IST. Besides, while completing the assessment the Ld. AA has discarded the entire claim made by the dealer on account of sale of first point tax paid goods due to want of supporting purchase invoices showing purchase of such goods from the registered dealers of Orissa on payment of tax. Accordingly, the Ld. AA has treated the entire GTO to be the TTO of the dealer which resulted in creation of the above demand.

4. The dealer on being aggrieved with the aforesaid order passed by the Ld. AA, has preferred an appeal before the Ld. FAA, who after examining the relevant purchase invoices produced before him, has allowed deduction to the tune of Rs. 1,26,89,447.00. from the GTO towards sale of first point tax paid goods. Besides, keeping in view, the quantum of suppression alleged in the aforesaid fraud case report, the Ld. FAA has limited the enhancement of turnover of Rs.1,59,000/- i.e. (20 times of the suppression established which

ultimately reduced the assessment from Rs.16,41,946.00 to Rs.54,260.00.

5. On being dissatisfied with the above order passed by the Ld. FAA, the State has preferred the present appeal challenging the order to be erroneous and improper particularly on the ground of allowance of deduction on account of sale of tax suffered goods as well as in respect of limiting the enhancement to Rs. 1,59,000/- instead of Rs.10,00,000/- as earlier determined by the Ld. AA.

6. Cross objection filed by the dealer seeking non-interference with the order so passed by the Ld. FAA, as the same is reasonable and judicious.

7. Heard the case from learned counsel of the State Appellant in absence of dealer respondent. As there is no response from the dealer respondent, the case is disposed of exparte on the basis of merit as per the materials available on record.

8. As evident the major portion of the impugned demand raised by the Ld. AA relates to disallowance of claim of sale of first point tax paid goods, as the dealer failed to produce the corresponding purchase invoices at the time of assessment. However, it is observed that the dealer has produced the relevant invoices showing purchase of tax suffered goods for an amount of Rs.1,10,34,302.00 before the Ld. FAA, and Ld. FAA being an extended forum of assessment after being convinced about the bonafide claim has allowed the deduction to the tune of Rs.1,26,89,447.00 towards sale of first point tax paid goods. Since

the Ld. FAA has examined the relevant purchase invoices and has not pointed out any irregularity in this score, we do not find any infirmity in the order passed by the Ld. FAA to the extent of allowance of deduction on account of sale of first point tax paid goods.

9. Further, the Learned Counsel of the State raised objection against the action of the Ld. FAA in limiting the enhancement of turnover to Rs.1,59,000.00 from Rs.10,00,000.00 as determined by the Ld. AA. He rather emphasized that considering the quantum of suppression detected by the IST and also the indulgence of the dealer in mis-utilization of way bills in previous years as brought out by the Ld. AA, the enhancement of turnover made by the later was proper and should have not been interfered with.

10. On examination of the impugned assessment order, it is revealed that although the Ld. AA has mentioned about the fact of declaration/affidavit submitted by the dealer regarding loss of way bills in previous years, yet no materials could be brought out by the Ld. AA on the fact that the said lost way bills were utilised by the dealer in effecting underhand transactions. In absence of any conclusive evidence the findings of the Ld. AA in this score are considered to be mere presumption which is not sustainable .

11. With regard to the suppression detected by the IST on the date of inspection it is found that the Ld. FAA has enhanced the GTO and TTO by margin of twenty times of the suppressed turnover. Keeping in view the volume of taxable goods dealt in by the dealer,

the enhancement made by the Ld. FAA is considered to be reasonable and justified.

12. In view of the aforesaid discussions, we do not find any infirmity in the impugned order passed by the Ld. FAA in reducing the assessment.

13. Resultantly, the appeal preferred by the State is considered to be without merit and hence dismissed, and the impugned order passed by the Ld. FAA stands confirmed. Cross objection filed by the dealer respondent is disposed of accordingly.

Dictated and corrected by me

Sd/-
(S.R.Mishra)
Accounts Member-II.

Sd/-
(S.R.Mishra)
Accounts Member-II.

I agree,

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

I agree,

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