

3. The dealer on being aggrieved against the aforesaid order has preferred an appeal before the Ld. FAA but failed to get satisfactory relief.

4. Thereafter, the dealer has preferred appeal before this Tribunal, who vide order in S.A.No.44 of 2016-17 have set-aside the impugned order with a direction to Ld. FAA to examine the contention of the dealer in respect of handling loss. The Tribunal also directed the Ld. FAA to examine whether the enhancement made is exorbitant or determination of suppression should be limited to the actual suppression detected.

5. In view of the aforesaid direction of this Tribunal the matter was taken up by the Ld. FAA afresh, who vide his order dated 10.12.2019 has reduced the impugned demand from Rs.1,47,904.00 to Rs.14,922.00. In reducing the same the Ld. FAA had observed that ***since the books of account of the dealer was not rejected, there is no scope for enhancement of suppressed turnover except confining the same to the suppressed amount.***

6. On being aggrieved with the aforesaid order passed by the Ld. FAA on dated 10.12.2019, the State has preferred the present appeal stating therein that since the books of account of the dealer was rightly rejected by the Ld. AA the enhancement of turnover made by him was justified. With regard to the quantum of enhancement of turnover on the basis of suppression, the Appellant State has relied upon the judgement of the Hon'ble Supreme Court of India in case of ***Commissioner of Sales Tax Vrs. M/s. H.M. Esufali, H.M. Abdulali, (1973) AIR 2266, 32 STC 77 (SC).***

7. The dealer respondent has also filed a memorandum of cross objection stating therein that the order passed by the Ld. FAA is in accordance with the provisions of law and in conformity to the direction issued by the Tribunal.

8. Heard the case from both the rival parties.

9. At the outset the learned counsel of the State has pointed out to Page No.10 of the impugned assessment order passed by the Ld. AA wherein he has observed that :-

“... The books of accounts of the dealer are, therefore, considered incomplete, understated and hence unreliable. The books of account are, therefore, rejected and the assessment is completed to the best of my judgement...”

10. On perusal of the impugned assessment order, we also found that the Ld. AA prior to proceeding for best judgement assessment has rightly rejected the books of account.

11. Since the books of accounts are rightly rejected by the Ld. AA basing upon the allegation made in the tax evasion report, the action of the Ld. FAA in deleting the enhancement to the exact quantum of suppression detected is found to be erroneous. The Ld. FAA therefore found to have misconstrued the assessment order of the Tribunal. He should have judiciously enhanced the turnover taking into account the quantum of suppression detected and established by the Ld. AA. Thus the question left for decision is whether the enhancement made on account of established suppression of sales is exorbitant and capricious.

12. On perusal of the assessment order, it is revealed that the visiting officers have inspected the business premises of the dealer on two occasions i.e. on 14.5.2001 and 18.5.2001 which leads to detection of sale suppression of Rs.1,44,545.58. Since the detection has been made in a single month, the enhancement of turnover by margin of 24 times is considered to be excessive and without any nexus. In our considered view taking the suppression detected in a single month into account the enhancement of turnover by 12 times would be reasonable.

13. Accordingly the Gross Turnover returned by the dealer is enhanced by margin of Rs.17,34,546.96 i.e. 12 times of sale suppression and re-determined at Rs.19,62,72,339.48. After allowing

due deduction of Rs.1,95,467.29, the Taxable Turnover is determined at Rs.17,66,66,872.19. OST @4% on TTO and Surcharge on sale of rice bran calculates to Rs.70,67,493.96. The dealer having paid Rs.69,91,971.00 (as allowed at the time of assessment), the balance tax payable calculates to Rs.75,522.16 which is now required to be recovered from the dealer as per the provisions of law.

14. Accordingly the appeal preferred by the State Appellant is allowed in part and the appeal order passed by the Ld. FAA on dated 10.12.2019 is modified to the above extent. Cross objection 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.