

**BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK**

**S.A.No. 16/2012-13**

(From the order of the Id.JCST, Balasore Range, Balasore, in  
Appeal No. AA-95/BD 2007-2008, dtd.26.03.2012,  
confirming the assessment order of the Assessing Officer)

**P R E S E N T :**

**Smt. Suchismita Misra**      **Sri S. Mohanty**      &      **Sri P.C. Pathy**  
**Chairman**                      **Judicial Member-II**                      **Accounts Member-I**

M/s. Puspanjali Printers,  
At/P.O. Adalplank,  
Dist. Bhadrak.

... Appellant

**-Versus -**

State of Orissa, represented by the  
Commissioner of Sales Tax,  
Orissa, Cuttack.

... Respondent

**Appearance :**

For the Appellant ... Mr. K. Padhi, Appellant

For the Respondent ... Mr. M.S. Raman, Addl. Standing Counsel (C.T.)

(Assessment Period : 1994-95)

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Date of Hearing: 06.07.2018

Date of Order: 12.07.2018  
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**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short, FAA/JCST) in First Appeal Case No.AA-95/BD 2007-2008 in confirming the order of Assessing Officer/Sales Tax Officer, Bhadrak Circle, Bhadrak (in short, AO/STO) in a remand assessment proceeding u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) raising demand of tax due at Rs.12,46,520/- on the dealer for the assessment period 1994-95.

2. Before delving into the facts involved in this case, it is pertinent to mention here that, the instant dealer was subjected to assessment u/s.12(4) of the OST Act by the AO vide Order dtd.23.06.2007. The dealer carried the matter before the FAA, who in turn, confirmed the order of the AO in First Appeal Case No.AA.66/BO-1988-99 dtd.27.06.2000. The order of the FAA was challenged before the Full Bench of this Tribunal vide S.A.No.803/2000-2001, wherein and whereby this Tribunal vide it's Order dtd.20.08.2001 directed for assessment afresh as per the observation in the order to be followed by the AO. The AO thereafter assessed afresh the dealer vide Order dtd.23.06.2007, but the demand of tax remained undisturbed. The matter was then carried before the FAA, who in turn, by the impugned order dtd.26.03.2012 confirmed the order of the AO and thereby the demand of tax remained as it. On this backdrop, the dealer has preferred this appeal.

3. The facts in dispute may be summarized as follows :

The appellant-dealer having a printing press engaged in manufacturing of devotional books and for that purpose, it used to purchase raw materials like white paper from dealer's inside the State. In the regular assessment u/s.12(4) of the OST Act for the assessment period 2000-01 relating to the dealer, the AO took consideration of a letter bearing No.1121(7)/CT/Dtd.16.2.1996 of the Sales Tax Officer, Cuttack addressed to Sales Tax Officer, Bhadrak stating therein the fact of purchase suppression by the dealer i.e. the purchase of white paper from M/s. Tamilnadu Newsprint and Papers Ltd. Banka bazaar, Cuttack by using Form-IV. The AO in confrontation of the above report to the dealer in the assessment proceeding found that, the dealer has suppressed the purchase of

white paper value of Rs.10,70,659.51. As against the detection of that suppression, the AO enhanced the GTO to Rs.1,76,23,390/-and raised tax on it at full rate calculated to Rs.12,46,519.56 as the dealer had not paid any tax, the entire demand was raised against him.

4. The dealer preferred the FAA. When failed then preferred this Tribunal. The Tribunal remanded the matter to the AO as mentioned above with the following direction :

“The appeal is allowed, the order passed by the Id.ACST is hereby set-aside and the matter is remitted back to the learned assessing officer with a direction to issue summon to the selling dealer and to give an opportunity to the assessee for confrontation so as to verify the genuineness of the signature of Kartikeswar padhi appearing in Form-IV and complete the assessment accordingly”.

The above observation of the Tribunal was passed on the basis of consistent plea of the dealer before all the forums such as, the dealer had never purchased any goods from M/s. Tamilnadu Newsprint and Papers Ltd. and the dealer had demanded for confrontation of the fact of issue of Form-IV with the selling dealer and for verification of the signatures appear in the Form-IV purported to have issued by the accountant of the dealer. The plea of the dealer was/is he had no accountant to assist him who was authorized to give signature on behalf of the dealer on declaration Form-IV. With the above specific direction of this Tribunal, the AO in the remand assessment, issued notice to the selling dealer M/s. Tamilnadu Newsprint and Papers Ltd. But when the selling dealer did not turn up, the AO proceeded with the assessment and just confirmed the order passed in assessment at the first instance. In the impugned

order, the appellate authority also found to have reiterated the findings of AO and then confirmed the demand of tax as raised.

5. When the matters stood thus, the dealer has preferred this present appeal with the contentions like, the assessee was never a customer before M/s. Tamilnadu Newsprint and Papers Ltd. Banka bazaar, Cuttack. He has never issued Form-IV or not authorized any person to issue Form-IV. Both the fora below have not acted in accordance to the direction given by this Tribunal while remanding the case vide S.A.No.803/2000-01. Since the selling dealer did not appear before the AO, the AO should have or could have taken coercive measure to ensure the attendance of the selling dealer and the AO should have summoned the assessment record of the selling dealer for the relevant period. But the AO and the FAA has mechanically re-confirmed the assessment order of the tax demand. Accordingly, the dealer-appellant has prayed for setting-aside the impugned order being illegal and perverse.

6. Keeping in view the facts and circumstances of the case and the second round of litigation with the factual matrix mentioned above, the questions to be decided by this appeal are : (i) Whether the order passed by the AO or FAA is in compliance to the observation/direction given by the Tribunal in S.A.No.803/2000-01 dtd.20.08.2001, and (ii) Whether the impugned order raising demand of tax suffers from any illegality ?

7. At the cost of the repetition, it is pertinent to mention here that, this Tribunal had remitted back the matter to the AO with specific direction to summon the selling dealer and to give an opportunity to the assessee for confrontation so as to verify the genuineness of the signature of Karikeswar Padhi. In obedience to that, the AO had issued summon to M/s. Tamilnadu Newsprint and

Papers Ltd. Banka bazaar, Cuttack. But when the summons was returned with the endorsement sent through registered post and the same was returned with the endorsement of the post peon as refused by the addressee. The AO without any further effort to procure the attendance of the dealer, proceeded with the assessment. Thereafter, without assigning any good reason, only passed the order basing on the view taken by him on previous occasion i.e. while passing the original assessment order for the first time. The impugned order by the FAA as it revealed, the FAA has exercised a lot to justify the findings of the AO. But he has not taken into consideration the specific direction of this Tribunal and if the AO has acted in accordance to the direction of the Tribunal or pass order accordingly or not ? When the matter was remanded with a particular observation/direction, the authorities below had no option but to restrict their area of investigation confining to the specific direction by the Tribunal. Because the selling dealer did not turn up and refused to receive the notice sent through registered post, the AO was not handicapped by law. He should have taken coercive measure to secure attendance of the dealer. Conversely, he could have suggested for re-opening of the assessment of the selling dealer for the particular period, who had taken exemption/concession in payment of tax on the plea of sale to the Puspanjali Printers, the present assessee. Further, both the fora below could have verified the documents of the assessee-dealer to ascertain, if he had any person called Kartikeswar Padhi as accountant worked under his pay-roll or not ? The genuineness of the Form-IV alleged to have issued by the assessee-dealer was seriously challenged. Unless and until the authority came to a definite conclusion with supporting evidence that, the forms issued by the assessee-dealer it would be unsafe to found

the assessee-dealer guilty of suppression for evasion of tax. The argument of the learned Addl. Standing Counsel like the assessee-dealer should have knocked the door of police or Court if any act of forgery had committed is of no avail. Since this is his prerogative whether he would choose to make any complaint for initiation of criminal action against M/s. Tamilnadu Newsprint and Papers Ltd. Banka bazaar, Cuttack.

To put it in other way, when the Tribunal had remitted the matter, it implies that, the evidence before the Tribunal which is the highest fact finding authority was not sufficient to form a definite opinion that, the dealer had issued the declaration forms. Unfortunately, the FAA has lost sight to the direction of the Tribunal. The impugned order is silent about the order of the Tribunal and if the decision by the AO basing the order of the Tribunal or not. It is found that, the FAA has proceeded with the appeal as if a regular appeal against an order of assessment. But the fact remains, it is an assessment afresh as per the direction of the Tribunal. Silence about the order of the Tribunal in the impugned order itself leads to a conclusion that, the impugned order suffers from inherent defects and thereby the sustainability of the order can be successfully challenged.

8. It is also not out of place to mention here that, once the order was passed by the AO acting upon the direction of the Tribunal, then the dealer could have knocked the door of the Tribunal straight way but here in this case, surprisingly he has preferred FAA.

In the ultimate analysis of the facts and circumstance mentioned herein above, this Tribunal is in it's considered view that, the impugned order under challenge is not sustainable. In consequence thereof the matter should be remitted back to the FAA

with a direction for assessment afresh after ensuring the presence of the selling dealer as per the direction of this Tribunal dtd.20.08.2001 in S.A.No.803/2000-01.

While parting with this view, we also think it is necessary to direct the AO to investigate into the fact that, whether the assessee-dealer had any employee named Kartikeswar Padhi during that period in his pay-roll. Thus, it is ordered.

The appeal is allowed on contest. The order dtd.26.03.2012 is hereby set-aside. The matter is remitted back to the AO for assessment afresh after confrontation of the disputed documents with the selling dealer as per the direction of this Tribunal given in S.A.No.803/2000-01 dtd.20.08.2001 and further on investigation of the fact like any employee called Kartikeswar Padhi under the dealer during that period and then to pass necessary order. The entire exercise should be concluded within a period of four months from the date of receipt of this order.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(Smt. Suchismita Misra)  
Chairman

I agree,

Sd/-  
(P.C. Pathy)  
Accounts Member-I

