

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.
S.A.No. 35(C)/2007-08**

(From the order of the Id.ACST (Appeal), Puri Range, Bhubaneswar,
in Appeal No. AA(C)33/93-94, dtd.12.01.1997,
confirming the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Acila Pharmaceuticals, 814-482,
Jharpada, Bhubaneswar. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : None

Date of Hearing: 12.07.2018 Date of Order: 12.07.2018

ORDER

Revenue has assailed a confirming order of learned First Appellate Authority/Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (in short, FAA/ACST) claiming for levy of surcharge on the tax due.

2. In the case in hand, the assessee-dealer was subjected to assessment u/r.12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules) for the assessment period 1992-93. The Assessing Officer/Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar (in short, AO/STO) rejected the claim of the dealer for tax at concessional rate for the value of goods against which the dealer failed to furnish declaration Form 'C'. In ultimate analysis, the AO calculated the tax due from the dealer at Rs.1,07,594/-. In addition to that, he levied interest of Rs.1,714/- leading to total due payable by the dealer at Rs.1,09,308/-. The dealer having paid Rs.39,569/- along with return, the balance tax due with interest raised at Rs.69,749/-.

3. The order is carried in appeal by the dealer claiming concession in rate of tax even without furnishing of declaration Form 'C'. But the FAA vide impugned order dtd.12.01.1997 declined the claim of the dealer and as such the demand remained unaffected.

4. When the matters stood thus, State on the other hand came up with this appeal with the prayer that, surcharge should be added with the tax due determined by the fora below.

5. The appeal is heard with cross objection and ex-parte as well since the dealer remained absent in the hearing.

Here in the case in hand, the admitted fact is, the dealer had effected inter-state sale but failed to produce declaration Form 'C' against the claim of concession in rate of tax. As a result, the AO levied appropriate rate of tax and interest for delay payment. Same finding of the AO was confirmed by the FAA.

6. At the outset, it is pertinent here to look at the relevant provisions under the CST and OST Act. The provision u/s.8(2) of the CST Act reads as follows :

“(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Explanation.-

For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.]”

At the same time, provision u/s.9(A) of the CST Act reads as follows :

“9A. Collection of tax to be only by registered dealers. –
No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the Rules made thereunder.]”

Whereas the provision u/s.5(A) Clause-3 of the OST Act is as follows :

“5-A. Surcharge -

(3) Notwithstanding anything to the contrary contained in any other provision of this Act, no dealer mentioned in sub-sec (1) who is liable to pay surcharge, shall be entitled to collect this amount of this surcharge”.

The provision under the aforesaid section 5(A)(3) of the OST Act became substituted w.e.f. 27.05.1995. It indicates, prior to the substitution the position of law as it was, no dealer can collect any amount towards surcharge. If we apply the said provision to the case in hand, which relates to the assessment for the period 1992-93, then it is held that, the assessee-dealer was not empowered under law to collect surcharge by that time and in consequence thereof the dealer cannot be asked for surcharge.

7. Putting the case in hand in another way, when the AO had not raised any surcharge and if there was a case of under-assessment, then the assessment is to be re-opened invoking provision u/s.12(8) of the OST Act read with Rule 10 of the CST(O) Rules, unless the tribunal cannot sit over the matter directly, which was never before both the fora below. It is nothing but violation of principle of natural justice by denying the dealer to the door of the two forums. It is also a rule of law that no person can be put to a position worse than what he was before while preferring appeal. Keeping in view the observation herein above, it is decided as follows:

The appeal by the State is devoid of any merit, hence dismissed.

Dictated and Corrected by me,

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

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