

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 104(ET)/2018**

(Arising out of order of the Id. JCST, Balasore Range, Balasore,
in First Appeal Case No. AA-55/BA-2017-18 (ET),
disposed of on dtd.31.03.2018)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Swasti Medical Store,
Prop. Srikantha Mohanty,
Nuabazar, Jaleswar,
Dist.Balasore. Appellant

-Versus-

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

For the Appellant : Mr. D.S. Jethi, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.11.2012 to 31.03.2014)

Date of Hearing: 21.06.2021 *** Date of Order: 29.06.2021

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 No. AA-55/BA-2017-18 (ET) dtd. 31.03.2018 in confirming the assessment order passed by the learned Assessing Authority/Sales Tax Officer, Balasore Circle, Balasore (in short, STO/AA) for the assessment period from 01.11.2012 to 31.03.2014 u/s.9-D of the Odisha Entry Tax Act, 1999 (in short, OET Act).

2. The brief facts of the case are that :

The dealer-appellant in the instant case is an unregistered dealer and deals in HL Medicines, napkin pads, disposables and food supplements having its place of business at Nua Bazar, Jaleswar, Balasore. The learned STO, Balasore Circle, Balasore had submitted a new case report on dt.18.12.2013 following survey of unregistered dealers and suggested that the instant dealer was liable for registration but remained unregistered. Hence, the assessment. In response to statutory notice in Form E-31, the dealer neither appeared nor produced the books of account for verification. Several intimations were issued by the learned Assessing Officer to the instant dealer who failed to respond to such notice and intimation and thereby the learned Assessing Officer was constrained to complete the assessment ex-parte as per materials available on the records.

As per the report submitted by the ASTO, the dealer had started his business w.e.f. 01.05.2011. His business runs in rented house situated at Nua Bazar, Jaleswar. Till 1.15 P.M. on the date of visit, the dealer had sold goods worth of Rs.2,000/-. As admitted, his daily average sale was Rs.4,000/-. On the date of visit, the ASTO noted down the physical stock of goods held in the business premises at Rs.3,50,000/-. He used to spend Rs.1,500/- towards house rent. The report further revealed that since the dealer was a retailer having confined his purchases and sales inside the State, he is liable to pay tax. Hence, he was liable to pay tax u/s.10(4)(d) of the OVAT Act where the taxable limit is Rs.5,00,000/- during a period of

consecutive 12 months. Taking daily average sale of Rs.4,000/- into consideration, the ASTO suggested that the dealer was liable to pay tax under the OVAT Act w.e.f. 03.09.2011. During the period from 01.04.2013 to 31.03.2014, the total sales determined at Rs.12,00,000/- after allowing holidays net working days taken for assessment stood at 300 days calculating an average turnover of Rs.4,000/- per business day, the GTO determined stood at Rs.12,00,000/- which is also determined as the TTO. Tax calculated @2% on Rs.12,00,000/- comes to Rs.24,000/-. Since the dealer has not registered himself despite accruing liability to pay tax an amount of Rs.24,000/- was also levied as penalty u/s.9-D(1) of the OET Act. Tax and penalty came together to the total of Rs.48,000/-.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax, Balasore Range, Balasore, who in turn, dismissed the appeal and confirmed the order of assessment.

4. Being further aggrieved with the order of the learned FAA/JCST, Balasore Range, Balasore, the dealer knocked the door of this Tribunal by way of filing of second appeal with the contention that, the order passed by the Id.FAA/JCST is illegal, arbitrary and in contravention of law and hence needs to be quashed.

5. State-respondent has filed cross objection in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He

has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The order of assessment is bereft of merit and as such liable to be quashed. The orders passed by both the forums below are violative of the principles of natural justice. The dealer-appellant is carrying on business as a retail trader in HL Medicines at Jaleswar, Balasore. The learned Assessing Officer assessed the instant dealer raising extra demand of Rs.1,20,000/- in the assessment including penalty and subsequently the learned FAA confirmed the assessment order without proper application of mind. The learned Assessing Officer as well as learned FAA failed to appreciate the fact that, the said retail shop is annexed to one Doctor's clinic and the doctor visits the clinic thrice in a week, hence the turnover on the date of visit of the doctor cannot be compared to the turnover of the other days, when the doctor's clinic is closed and only retail medicine counter is opened. The turnover of the instant dealer cannot be identical for all the days in a week since it is a clinic attached pharmacy. The medicines are purchased from wholesaler on maximum retail price (MRP). At the time of purchase of medicines, they are paying VAT on MRP and there is no question to collect VAT on subsequent sale of medicines from the customers. Similarly they are also paying ET at the time of purchase of medicines. The ET levied on estimated sale turnover is not accordance with law as the dealer is a retailer of medicines. Further, the STO has levied ET @2%, which is also wrong. The ACTO has not verified the purchase bills and framed a baseless report basing on which the STO also raised high demand which is

illegal and bad in law. The dealer was not given sufficient opportunity to explain about his business and to produce the purchase bills before the forums. So, the learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities to produce the documentary evidence in favour of his stand taken for disposal by the learned Assessing Officer, but the dealer failed to produce the same. Hence, his plea is not acceptable. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant which is not sustainable in the eyes of law. So, he has prayed to dismiss the appeal and to confirm the order of the learned FAA.

8. Heard the learned Advocate Mr. D.S. Jethi appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. S.K. Pradhan appearing on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment, cross objection filed by the State-respondent and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the view that, this is a fit case where the matter should be remanded back to the learned Assessing Officer to re-compute

the tax liability of the dealer after making proper verification of the documents of the dealer as per provision of law. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer as per provisions of law after making proper verification of the documents of the dealer within a period of three months from the date of receipt of this order and the dealer should be given a reasonable opportunity of being heard. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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(S. Mishra)
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