

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 57 of 2003-04

(Arising out of the order of the learned ACST, Sambalpur Range, Sambalpur, in Sales Tax Appeal Case No. AA-203 (SAI) of 2001-02, disposed of on dtd.25.01.2003)

Present: **Mrs. Suchismita Mishra, Chairman,**
Shri Ashok Kumar Panda, 1st Judicial Member,
&
Shri P.C. Pathy, Accounts Member-I.

M/s. Radhakeshab Rice Mill (P) Ltd.,
Larpank, Sambalpur. ... Appellant

- V e r s u s -

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

S.A. No. 88 of 2007-08

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

- V e r s u s -

M/s. Radhakeshab Rice Mill (P) Ltd.,
Larpank, Sambalpur. ... Respondent

For the Dealer : Mr. R.C. Poddar, Advocate
For the Revenue : Mr. M.S. Raman, A.S.C.

Date of Hearing: 20.11.2018 **** Date of Order: 15.12.2018

ORDER

As both the appeals bearing S.A. No.57 of 2003-04 and S S.A. No.88 of 2003-04 have arose out of the self-same order, both are disposed of by this common order.

2. S.A. No.57 of 2003-04 has been preferred by the dealer-assessee, whereas S.A. No.88 of 2003-04 has been preferred by the Revenue challenging the order dtd.25.01.2003 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in Sales Tax Appeal Case No. AA-203 (SAI) of 2001-02, wherein and whereby he has allowed the first appeal in part by reducing the entire demand to Rs.7,10,225.00 from Rs.13,40,043.00 raised by the learned Sales Tax Officer, Sambalpur I Circle, Sambalpur, Ward-A (hereinafter referred to as, the learned STO) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) in respect of the dealer-assessee for the assessment year 1999-2000.

3. The dealer-assessee is a rice miller who purchases paddy and converts the same to rice, broken rice and bran and used to sale them. Basing upon two fraud case reports, one submitted by the Vigilance Wing and another submitted by the Intelligence Wing of the Commercial Tax Department, the learned STO initiated a proceeding u/s.12(4) of the OST Act against the dealer-assessee for its assessment for the assessment year 1999-2000 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the dealer-assessee appeared and produced the books of account which were duly been examined. As per the allegations of the fraud case report, the officials of the Vigilance Wing visited the business presmises of the dealer-assessee on 12.05.1999 and found out shortage of Q. 36.75 of paddy, Q. 0.33 of rice, Q. 0.15 of broken rice and Q. 0.12 of bran. Thereafter, the officials of the Intelligence Wing also visited the business premises of the dealer-assessee on 14.03.2000 and found out shortage of Q. 485.31 of paddy. On confrontation of the fraud case reports, though the dealer-assessee took the plea that the shortage of paddy of Q. 36.75 found out by the Vigilance Officials is included in the shortage of paddy of Q. 485.31 found out by the Intelligence officials and the shortage of other goods are within the permissible limit, the learned STO did not accept such contention and held it to be out of account sale. Similarly, on being confronted about

the allegation of shortage of Q. 435.31 of paddy found out by the Intelligence officials, the dealer-assessee took the plea that it had issued Q.700 of paddy for milling which has not been taken into consideration. Similarly, as regard the excess stock of Q. 442.56 of rice, it took the plea that, the opening balance of carry forward stock for the year 1997-98 has not been taken into account and even on the date of inspection it had received some quantity of rice out of milling and the same has also not been taken into consideration. But the learned STO did not accept any of the contentions of the dealer-assessee to be true and genuine on examination of the books of account, rather found out that, the transactions mentioned in some of the way bills has not been accounted for by the dealer-assessee and as it could not be able to clarify the same, he determined the suppression on this score to be Rs.7,15,144.07 and enhanced the same by 24 times to determine the estimated suppression. Similarly, as the dealer-assessee had not included the stitching charges in the sale price of the goods, he took note of the same and determined the sale price on inclusion of the stitching charges amounting to Rs.59,637.50. Further, as regard the claim of exemption under the IPR, the learned STO found out that, the IPR benefit has already been withdrawn from 01.08.1999 by the Government and as such the dealer-assessee is not entitled to get any benefit of exemption by virtue of declaration in form ID and accordingly he levied tax on sale of bran amounting to Rs.8,23,551.00 at the appropriate rate. In view of the delayed payment of tax for some period, the learned STO also levied interest upon the dealer-assessee amounting to Rs.4,527.22 u/s.12(4-a) of the OST Act and finally the order of the learned STO resulted in a demand of tax, surcharge and interest amounting to Rs.13,40,043.00, to be paid by the dealer-assessee.

4. After the assessment, being aggrieved with the order of the learned STO, the dealer-assessee preferred an appeal before the learned ACST bearing Sales Tax Appeal Case No. AA-203 (SAI) of 2001-02. On hearing and on consideration of the materials available on record, the learned ACST found out the finding and order of the learned STO relating to

the claim of exemption under IPR and the inclusion of the stitching charges in the sale price to be proper and justified and did not accept the contentions of the dealer-assessee in these regard. But, so far as the determination of suppression on the part of the dealer-assessee is concerned, he arrived at a conclusion that, the shortage of Q. 36.75 of paddy found out by the Vigilance officials on their visit on 12.05.1999 is included in the shortage of Q. 485.45 of paddy found out by the Intelligence officials on their subsequent visit on 15.03.2000 and the shortage of other goods like broken rice and bran are quite negligible and can be ignored. As regard the shortage of paddy and rice as found out by the Intelligence officials, he re-determined the suppression to be Rs.89,034.74 and the suppression in connection with the way bills to be Rs.6,40,994.50 and determined the estimated suppression to be Rs.1,20,00,000.00 and as such finally, his order resulted in reduction of the entire demand to Rs.7,10,225.00 from Rs.13,40,043.00 as raised earlier by the learned STO. But, thereafter, still being aggrieved with the order of the learned ACST, the dealer-assessee has preferred the second appeal bearing S.A. No.57 of 2003-04. Similarly, being aggrieved with the order of the learned ACST relating to the re-determination of the suppression on the part of the dealer-assessee, the Revenue has preferred the second appeal bearing S.A. No.88 of 2003-04.

5. Though no cross objection has been filed by the Revenue in S.A. No.88 of 2003-04, the dealer-assessee has filed its cross objection in S.A. No.57 of 2003-04 mentioning the self-same contention raised in S.A. No.88 of 2003-04.

6. Heard both the sides. The learned Counsel appearing for the dealer-assessee submitted that, the learned forums below have not considered the matter in its proper perspective and have determined the estimated suppression on their own without any convincing material and by accepting the fraud case reports blindly. Further, as regard the claim of exemption on sale of bran amounting to Rs.8,25,551.00 under the IPR and the levy of tax on stitching charges amounting to Rs.59,687.50, the conclusion arrived at by the learned forums below is erroneous both in fact

and law and as such the entire finding and order being improper and unjustified the same is liable to be set aside and the appeal preferred by the dealer-assessee is liable to be allowed. On the other hand, the learned Addl. Standing Counsel appearing for the Revenue submitted that, in view of the availability of sufficient convincing materials against the dealer-assessee, the learned forums below have found out the suppression on its part. However, while reducing the estimated suppression as determined earlier by the learned STO, the learned ACST has not assigned any reason and as such the order passed by him in this regard is liable to be set aside and the order passed by the learned STO being proper and justified, the same is liable to be restored. He also submitted that, stitching charges is clearly coming under the purview of other incidental charges and is to be included in the sale price of the goods as defined under the Act and as such levy of tax on stitching amounting to Rs.59,687.50 by the learned forums below can never be considered to be erroneous one. He further submitted that, by the time of the sale of bran amounting to Rs.8,28,551.00, the benefit of exemption as declared by the Government under the IPR was not in force and as such the disallowance of the claim of the dealer-assessee by the learned forums below in this regard also can never be considered to be erroneous. On such submission, he prayed to allow the appeal preferred by the Revenue and also prayed for dismissal of the appeal preferred by the dealer-assessee.

7. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, the dealer-assessee has shown exemption on sale of bran amounting to Rs.8,28,551.00 under the IPR. But, peculiarly by the time of the sale, the Government had already withdrawn the benefit of exemption under the IPR. As the benefit of exemption under the IPR was not in existence by the time of the transactions, the dealer-assessee is not entitled to the same as claimed by it. Both the learned forums below have dealt with the matter in detail and have disallowed the exemption against form I-D as claimed by the dealer-assessee. On further scrutiny of the entire facts and law it can clearly

be said that, the order passed by both the learned forums below in this regard suffers from no infirmity and as such needs no interference of this forum.

8. As regard the levy of tax on stitching charges amounting to Rs.59,687.50, it is to be noted that, the same is clearly coming under the purview of 'sale price' as defined under the OST Act and as such the finding and order arrived at by both the learned forums below in this regard can clearly be considered to be justified.

9. As regard the suppression on the part of the dealer-assessee, it is to be seen that, during their visit on 12.05.1999 the officials of the Vigilance Wing found out shortage of Q. 36.75 of paddy, Q. 0.33 of rice, Q. 0.15 of broken rice and Q. 0.12 of bran. Subsequently, on their visit on 14.03.2000, the officials of the Intelligence Wing found out shortage of Q. 485.31 of paddy and on consideration of both the reports, one by the Vigilance Wing and the other by the Intelligence Wing, the learned STO call for an explanation of the dealer-assessee and also examined the books of account produced by it and found out that, the transactions mentioned in some way bills have not been accounted for and thus he determined the actual suppression and enhanced the same by 24 times to determine the estimated suppression. But, at the first appeal stage, the learned ACST found out the shortage of the goods other than paddy to be within the permissible limit and as such deleted the same while determining the suppression on the part of the dealer-assessee. Similarly, he also found out that the shortage found out by the officials of the Intelligence Wing is inclusive of the shortage found out by the officials of the Vigilance Wing earlier on consideration of the materials available on record and also deleted the same while determining the suppression. On further scrutiny of the entire materials on record, it is to be seen that, the dealer-assessee has failed to show under what circumstances the transaction mentioned in certain way bills has not been accounted for by it. Thus, the reason assigned by the learned ACST while determining the suppression on the part of the dealer-assessee can clearly be considered to be proper and

justified. But, so far as the determination of the estimated suppression is concerned, while determining so, the assessing authorities should consider all the relevant factors including the volume of business, the earlier tax compliance of the dealer-assessee and the earlier allegation of suppression, if any. Therefore, on consideration of the entire facts and circumstances, the learned ACST has reduced the estimated suppression to nearly about 16 times of the actual suppression from 24 times as determined earlier by the learned STO. On further examination of the entire materials on record and on consideration of all the relevant factors for determining the estimated suppression, it can clearly be said that, the finding and order arrived at by the learned ACST in this regard suffers from no infirmity and as such needs no interference of this forum.

10. In view of the above discussion, it is very much clear that, both the appeals are devoid of any merit and hence are hereby dismissed. The cross objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

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