# BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
## (Full Bench)

## S.A. Nos. 2211 & 2212 OF 2003-04

(Arising out of order of the learned ACST, Puri Range,
Puri in Sales Tax Appeal Nos. AA. 34/35 (PUII) of 2003-04,
disposed of on dated 27.09.2003)

Present: Shri R.K. Pattanaik, Chairman,
Smt. Sweta Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. Padmaja Traders,
At/PO- Balugaon, Dist .Khurda ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri M.L. Agarwal, Standing Counsel (CT)

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Date of hearing: 03.03.2020 ***** Date of order: 17.03.2020

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O R D E R

Instant appeals under Section 23 of the Odisha Sales Tax Act, 1947 (hereinafter called as 'the Act') at the instance of the appellant assails assessment orders dated 20.03.2003 passed by the Sales Tax Officer, Puri-II Circle, Jatni (in short 'the AA') for the assessment years 1999-2000 and 2000-01 on the grounds inter alia that the findings are palpably wrong, erroneous and, therefore, liable to be interfered with in the interest of justice.

2. According to the appellant, the AA and the 1st Appellate Court fell into gross error, while making and confirming assessment as to taxable return ignoring

the materials on record. It is also contended that the purchase register, sale register supported by vouchers and memos and individual item wise stock register have been looked into by the AA and were found not to be with any defect or discrepancy vis-a-vis the accounts and, therefore, denying deduction against the gross turnover under the plea that in respect of some agencies as against whom 'D' forms had been submitted found to be obsolete or fictitious is absolutely untenable. The above contention further fortified on the ground that the declaration forms after having been duly submitted, the AA ought not to have rejected it and that apart, before any such rejection, he ought to have been provided an opportunity to challenge it. Primarily, the appellant said to have questioned the deductions denied by the AA, which according to him, he was lawfully entitled to.

3. So far as the State is concerned the aforesaid contention of the appellant has been strongly refuted. According to the learned Standing Counsel (CT), the order of assessment to be absolutely justified, so also the impugned order dated 27.09.2003 and that apart, the appellant did not take any step to prove the genuineness of the declaration forms vis-a-vis the purchasing registered dealers and moreover, the 'D' forms in question found to be obsolete by virtue of the notification of the Commissioner of Commercial Taxes, Odisha, the specific details of which have been described by the AA. Lastly, it is contended that claim of deduction without proving the genuineness of declaration forms cannot be permitted under Section(s) 5(2)(A)(a)(ii) and 5(2)(b) of the Act read with Rule 27(2) of the Odisha Sales Tax Rules, 1947 (in short, 'the Rules') in view of the decision of the Hon'ble Court in the case of Ramprasad Tormal Vs. State of Orissa reported in [1970] 25 STC 38 (Orissa).

4. The gross turnover stands at ₹1,04,47,349.40 and the taxable turnover at ₹41,46,585.00. The AA, while denying deduction, determined the taxable turnover and assessed the tax and calculated the same at ₹4,97,615.40 with surcharge @ 15% of the total tax due and finally, concluded that the tax and surcharge stands at ₹5,72,258.00 with a deduction of ₹5,901.00 towards payment of tax by the appellant and thus, raised an extra demand of ₹5,66,357.00 for the assessment year 1999-2000. In so far as the assessment year 2000-01 is concerned, as per the AA, gross turnover of the appellant determined at ₹58,86,614.16 and with allowed deduction of ₹22,71,001.66 towards first point tax paid goods arrived at taxable turnover at ₹36,15,612.50 and then applied tax @ 12%, surcharge @ 10% and taken together and for the appellant having not paid any tax, raised an extra demand of ₹4,77,261.00. In both the assessments, as it is made clear the AA found the 'D' forms submitted by the appellant to be obsolete and invalid ones referring to the notification No. 6600/CT dated 18.03.2000. Furthermore, the AA considering the enquiry reports and verifying the 'D' forms so submitted by the appellant for both the assessment years, denied deductions and finally, raised the extra demands. The appellant, as revealed from the record, appeared and participated and submitted the books of account and other documents but then, the AA rejected the alleged 'D' forms vis-a-vis the agencies (separately indicated), where after, it was challenged before the 1st Appellate Court which by a common order allowed the appeal in part for the assessment year 1999-2000 and reduced it to the extent indicated therein but upheld the assessment of 2000-01 and dismissed the appeal thereof.

5. For the assessment year 1999-2000, the AA, with respect to an agency (KO-761), disbelieved the purchases made on the ground that there was no business link with the dealer nor the dealer ever received the 'D' forms by referring to a fraud case report received from IST, Jeypore, Koraput. Similarly, for the agency (SAI-6159), it was ascertained that the registration had been cancelled w.e.f. 01.04.1999. Likewise, for another agency M/s. Orissa Enterprisers, Bhadrak, its registration was found to be cancelled under Section 9(3) of the Act w.e.f. 01.04.1997. That apart, adverse reports were received from the concerned Circles with regard to the purchasing dealers, details of which have been referred to by the AA, in the assessment order dated 20.03.2003. As to the first point tax paid goods, the 1st Appellate Court referring to a decision of the Hon'ble Supreme Court of India reported in [1982] 50 STC 101 (SC), allowed the deduction for ₹19,500.00. In other words, the appeal for the assessment year 1999-2000 was allowed in part.

6. For the agency (KA-1551), as revealed from the assessment order, its registration was cancelled in terms of Section 9(3) of the Act w.e.f. 01.04.1996 and moreover, the dealer in question had never received any statutory forms, since the date of his enrolment. For the agency (SAI-6159), again it was revealed that the registration was cancelled in respect thereof w.e.f. 01.04.1999, which was supported by an enquiry conducted by the ACST, Intelligence, Sambalpur. For two more agencies (KO-761 and PH-823), as alleged by the AA, the registered dealers had never received 'D' forms. In fact, with respect to the agency (KO-761), basing on a fraud case report, it was ascertained that no such purchases had been made against the specified bills and the alleged 'D' forms were confronted to the appellant. So to

speak, the said dealer was alleged of never to have been issued with any such 'D' forms from the concerned Circle. The cancellation of registration in respect of the alleged agencies which was arrived at on verification was also confronted to the appellant and at last, the AA denied the deductions to the extent indicated and raised the demand. The above is with respect to assessment year 2000-01. However, the 1st Appellate Court allowed the deduction on first point tax paid goods sale purchased from one M/s. Krishna Enterprisers for purchase of milk powder on the ground that the second seller has no risk or responsibility to prove the liability that the first seller paid the tax earlier by referring to a decision of the Hon'ble Apex Court reported in [1982] 50 STC 101 (SC) and thus, allowed the appeal in part. No cross-objection is filed by the State as against the deduction allowed with respect to the first point tax paid goods sale.

7. In so far as the appellant is concerned it was carrying business in goods like grocery, Amul product, etc. at Balugaon on a wholesale basis. There is no denial to the gross turnover. The deductions having been rejected by the AA, the appellant challenged the assessments made for the year 1999-2000 as well as 2000-01 on the ground that the adverse reports regarding the 'D' forms and the cancellation of registration were not confronted to him. In fact, such was the stand taken by the appellant before the 1st Appellate Court. As earlier mentioned, the appellant did not turn up in so far as the present appeals are concerned.

8. Let us examine, as to whether, the AA rightly raised the additional demands denying the deductions claimed under Section(s) 5(2)(A)(a)(ii) and 5(2)(b) of the Act. As regards, the books of account and other documents, like vouchers etc.

no doubt the appellant produced the same at the time of assessment but the AA found fault with the 'D' forms and noticed cancellation of registrations in respect of some purchasing dealers with whom the appellant claimed to have had business transactions for the assessment years 1999-2000 and 2000-01.

9. The appellant has not questioned the genuineness vis-a-vis the adverse reports received on 'D' forms and cancellation of registration certificates with respect to the alleged agencies. In other words, the appellant did not demand production of the adverse reports for inspection so as to question its authenticity. According to the appellant, when the declaration forms having been produced before the AA, the burden of proof, which was rested upon him, was fully discharged but unfortunately, the deductions so claimed were denied without any justification. It is also not forthcoming, whether, the appellant really demanded production of necessary material documents on the cancellation of registration in respect of some agencies. That apart, the appellant did not take any chance to adduce rebuttal evidence to justify the deductions under the 'D' forms at any stage of the 1st appeal.

10. The selling dealer is entitled to deduction from his gross turnover, if he produces materials to show that the sold goods is in accordance with Section 5(2)(A)(a)(ii) of the Act. The learned Standing Counsel (CT) for the State contended that the appellant was required to prove the genuineness of the declaration forms, while seeking for deduction/exemption and referred to the decision (supra) of the Hon'ble Court. It is reiterated that the deduction/exemption whatever were denied as the 'D' forms found not to have been issued to the purchasing dealers and cancellation of registration in respect of some other, which have been outlined

elaborately by the AA. At the cost of repetition, it is stated that the appellant should have demanded immediate confrontation of the adverse reports during the pendency of 1st appeal but as it seems, he utterly failed to do so. The burden of proof really lies with the dealer, who claims for deduction/exemption. It is not that the appellant had no opportunity to go through the adverse reports and as such, never applied for the inspection and verification of the same before the 1st Appellate Court. The confrontation of the adverse reports could have elicited certain facts either in favour of the AA or the appellant. But, in view of the decision of the Hon'ble Court in Ramprasad Tormal case, the burden is always on the assessee to prove that the declaration on which he relies on claiming exemption to be genuine. Elaborating further the Hon'ble Court expounded that the person whose name appears as the purchasing dealer in the books of account of the assessee may be a genuine person and may be dealing in the goods mentioned in the certification of registration, nonetheless, the assessee might not have sold any such goods to him and might bring into existence a forged declaration purporting to have been signed by the purchasing dealer and if such a question arises regarding genuineness of the declaration, it is for the assessee to establish that the declaration which is relied upon and referred to as genuine. If the above decision of the Hon'ble Court and its ratio decidendi is appreciated in its proper perspective, the inevitable conclusion would be that the appellant brazenly failed to establish that the alleged 'D' forms to be genuine, since the burden of proof was on him to discharge it reasonably. What prevented the appellant from calling for all the material records required to defend the 'D' forms, while claiming for the deduction/exemption, as the case may be. It

seems that the appellant casually had his approach without really proving the alleged 'D' forms as genuine or authentic having been issued by the purchasing dealers indicating the transactions to have taken place with them. If the 'D' forms are found not to be genuine, deduction cannot be allowed under Section 5(2)(A)(a)(ii) of the Act. Likewise, the cancellation of registration in respect of certain agencies with effect from specified dates having not been seriously questioned by the appellant, the logical deduction would be that the 'D' forms could not have been accepted by the AA for the purpose of deduction. As earlier described, considering the adverse and incriminating materials, it was for the appellant to discharge the burden of proof which is also the settled principle of law as laid down by the Hon'ble Court in the case (supra).

11. In the result, the Tribunal finds no error or illegality in the impugned order dated 27.09.2003 passed by the 1st Appellate Court which is, thus, to be confirmed. As a necessary corollary, the appeals stand dismissed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree,

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

I agree,

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

# BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
## (Full Bench)

## S.A. No. 252 OF 2010-11

(Arising out of order of the learned DCST, Puri Range,
Bhubaneswar in First Appeal Case No. AA. 267/OST/PUIIB/07-08,
disposed of on dated 14.09.2010)

Present: Shri R.K. Pattanaik, Chairman,
Smt. Sweta Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. Padmaja Traders,
At/PO- Balugaon, Dist. Khurda ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri M.L. Agarwal, Standing Counsel (CT)

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Date of hearing: 03.03.2020 ***** Date of order: 17.03.2020

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## O R D E R

In the words of Albert Bushnell Hart 'taxation is the price which civilized communities pay for the opportunity of remaining civilized'. It is truly said for the simple reason that taxation is a kind of law which in a way retains discipline in a society to a considerable extent. In fact, to maintain a sound health and to have an economically vibrant society, taxation law shall have to be sincerely enforced. The aforesaid worthy words of advice are to be borne in mind, while entertaining matters under taxation law. In the present case, Tribunal need to examine the appellant's

questioning the reassessment made under Section 12(4) of the Odisha Sales Tax Act, 1947 (hereinafter called as 'the Act').

2. In fact, the instant appeal under Section 23 of the Act at the behest of the appellant assails the order dated 14.09.2010 of the Deputy Commissioner of Sales Tax, Puri Range, Bhubaneswar passed in First Appeal Case No. AA. 267/OST/PUIIB/07-08 which was directed against the order of assessment of the Sales Tax Officer, Puri-II Circle, Jatni under Section 12(4) of the Act for the assessment year 1998-99 raising an additional demand of ₹10,06,115.00.

3. The appellant is a dealer, in the name and style, M/s. Padmaja Traders, Balugaon, Khurda dealing in goods, like Tata Tea, Amul products etc. on a wholesale basis. The Assessing Authority (in short, 'the AA') made the assessment for the year 1998-99 in terms of Section 12(4) of the Act and raised an extra demand, as aforesaid, against which an appeal was carried which stood disposed of on 24.04.2001 vide First Appeal No. AA- 223/PUII/2000-2001 directing assessment afresh, consequent upon which, reassessment was made and completed on 30.09.2001. It is further revealed from the record that the appellant approached the Hon'ble Court in O.J.C. No. 17056 of 2001 which was disposed of but later on vide M.C. No. 119 of 2008 by order dated 19.02.200, liberty was granted to prefer an appeal against the order of assessment dated 30.09.2001. From the Appellate Court Record, it is made to suggest that O.J.C. No. 17056 of 2001 was sought to be restored vide CMAPL No. 127 of 2006, however, the Hon'ble Court, while not being inclined to modify the final order dated 16.01.2006, granted the appellant the liberty to submit an appeal within the time stipulated and in consequence whereof, as it

seems, 1st appeal was entertained by the AA and ultimately, the impugned order dated 14.09.2010 came into being.

4. None appeared for the appellant. In fact, the appellant was noticed by the Tribunal, which was served upon him, in the manner indicated in the service return, with an endorsement to that effect. So to speak, the appellant did not turn up to pursue the appeal, while questioning the order of reassessment, which was carried out, pursuant to the direction of the 1st Appellate Court. The learned Standing Counsel (CT) for the State contended that in the peculiar facts and circumstances of the case, particularly in absence of the appellant, and having regard to the fact that reassessment was made by the AA in obedience to the 1st Appellate Court's direction, the impugned order dated 14.09.2010 does not deserve any interference, instead, it needs to be affirmed.

5. The original assessment for the year 1998-99 under Section 12(4) of the Act dated 28.12.2000 raised an extra demand of ₹10,06,115.00 by disallowing the deductions sought for by the appellant on the strength of 'D' forms and claim vis-a-vis 1st point tax paid goods sale during the aforesaid year. The AA disallowed 'D' forms to the tune of ₹69,88,794.25 on the ground that by the time of assessment, it had already been declared obsolete by the Commissioner of Commercial Taxes, Odisha. Similarly, with respect to sale of 1st point tax paid goods, since it was disallowed, extra tax and surcharge of ₹10,06,115.00 was raised. As earlier discussed, such an order was challenged and the 1st Appellate Court set it aside and directed reassessment. From the reassessment order dated 30.09.2001, it is made clear that later to the direction of the 1st Appellate Court, notice under Rule 45 of the Odisha

Sales Tax Rules, 1947 (in short, 'the Rules') was issued to the appellant, which was responded back with a claim that such an order directing reassessment is under challenge in a 2nd appeal. Such a fact had been brought to the kind notice of the Hon'ble Court in O.J.C. No. 17056 of 2001. Notwithstanding that, the appellant was simply granted liberty by the Hon'ble Court to move the 1st Appellate Court to file an appeal. It seems that the reassessment, or for that matter, the proceeding before the 1st Appellate Court was never stayed, or sought to be kept in abeyance at any point of time on such a ground of pendency of 2nd appeal before the Tribunal. In fact, there is no material on record to indicate the fate of the 2nd appeal which is said to have been pressed into service by the appellant. Moreover, the appellant, on the strength of an order in M.C. No. 119 of 2008 arising out of O.J.C. No. 17056 of 2001, preferred the appeal in question which resulted in passing of the impugned order dated 14.09.2010. The appellant did not participate in the reassessment, neither he obtained an order in the 1st appeal staying the same nor any such direction from the Tribunal, if at all a 2nd appeal was then pending, to keep the proceeding in abeyance. The appellant, rather, remained aloof and maintained a stony silence for nearly seven years till the time the Hon'ble Court granted the liberty facilitating filing of the 1st appeal before the learned Court below which again confirmed the assessment on the ground that the earlier direction on remand had been fully complied with.

6. So far as the remand is concerned, it is evident from the record that the 1st Appellate Court on the ground that the assessment was unspecific in certain respect directed reassessment but then, the appellant simply stayed back and

despite knowing the fact that the reassessment was likely to proceed, neither participated therein, nor obtained any orders from the 1st and 2nd Appellate Courts until such liberty was granted by the Hon'ble Court, as discussed earlier. The order of reassessment dated 30.09.2001 suggested that it was initiated and completed ex parte on the basis of the materials available on record, since the appellant defaulted in appearance though entered initially. Now the question is, whether, under the above circumstances, as is contended by the appellant before the 1st Appellate Court, there has been violation of the principles of natural justice, on the ground of reasonable opportunity of due hearing being denied? As per the principles of natural justice on the maxim '*audi alteram partem*', opportunity of fair and due hearing is to be extended and one should not be condemned unheard. In the instant case, whether such denial to the appellant did affect fair participation in the proceeding of reassessment before the AA. At the cost of repetition, it is stated that the appellant was served with a notice under Rule 45 of the Rules and then he kept back, did not even move the 1st Appellate Court to stay it, or for that matter, approached the 2nd Appellate Court since it was claimed to be pending at that point of time. No any sincere attempt was visibly made or exerted to or any wholehearted participation as far as the reassessment proceeding was concerned was there from the side of the appellant. Under the above circumstances and in view of the unfamiliar conduct of the appellant, it would not be justified to claim that there is violation of principles of natural justice, inasmuch as, the appellant cannot be permitted to blow hot and cold at the same time. Either the appellant was to participate in the reassessment proceeding, or was to challenge it in appeal but, none was even conceived of. The

AA does appear to have allowed the appellant an opportunity to show cause and defend vis-a-vis reassessment for the assessment year 1998-99 which was brazenly ignored. In view of the conduct of the appellant, it can well be said that the present is not at all a case of violation of principles of natural justice.

7. Turning to the merits of the case, it has to be considered by the Tribunal, as to whether, the AA did commit any serious wrong or gross error, while raising extra demand and surcharge, considering the taxable turnover with respect to the appellant. In fact, the AA, in absence of any accounts of the Unit, assessed the available materials applying the principle of 'Best Judgment Assessment' and arrived at a logical conclusion that it is liable to pay additional tax to the tune of ₹10,06,115.00. As a matter of fact, the AA as it is evident from the order dated 30.09.2001, verified the 'D' forms with respect to some agencies and chronologically discussed, as to why deductions on the gross turnover not to be permissible. It is revealed by the AA that the appellant utilized obsolete 'D' forms so declared vide Notification No. 6600 dated 18.03.2000 of the Commissioner of Commercial Taxes, Odisha, Cuttack. With respect to agencies (KOII-784, KOII-761, SAI-6158), the 'D' forms submitted by the appellant held to be obsolete in view of the said notification. As against agency (KA-1551), it has also been verified by the AA that the registration of it had been cancelled with effect from 01.04.1996 and as such, no 'D' form was issued to it, either. Similarly, for the agency (PH-823), 'D' form had not been issued at all. Considering the details of the SRDs to the tune of ₹69,88,794.25, in respect whereof, the 'D' forms found to be obsolete and the registration of an agency cancelled, the deduction so claimed by the appellant was disallowed by the AA. In

so far as the contention of the appellant before the 1st Appellate Court is concerned, it is to the effect that the obsolete 'D' forms and notification in that respect and of having any knowledge thereof, a total ignorance is or has been expressed. But the AA elaborately discussed as to the obsolete 'D' forms besides cancellation of registration in respect of the agency in question supported by enquiry reports. Indeed, an elaborate description is detailed in the order of assessment dated 30.09.2001, particularly, with regard to the enquiry reports vis-a-vis the purchasing dealers/agencies against whom the transactions purportedly shown by the appellant, while claiming deductions in terms of Section 5(2)(A)(a)(ii) of the Act. As per Rule 27 of the Rules and particularly, under clause (ix) sub-section (2) thereof, in the event of a notification by the Commissioner in the Commercial Tax Gazette to the effect that the declaration forms to be obsolete and invalid, it is the bounden duty of the dealer to surrender all such unused forms. Similarly, in case of cancellation of registration on fulfilment of one or more conditions appearing in Section 9 of the Act, the 'D' forms issued by such purchasing dealers could be of no avail, while seeking for deduction from the gross turnover. In the case at hand, according to the AA, the obsolete and invalid 'D' forms were furnished by the appellant and that apart, it had transactions, so to say, with an agency, registration of which had already been cancelled. According to the AA, the appellant is rather guilty of submitting vague forms by committing forgery, intention being to cheat and avoid payment of tax, since it is not merely confined to obsolete declaration forms. Instead of delving into that aspect and without casting any aspersions against the appellant, the Tribunal is of the considered opinion that he ought to have participated in the reassessment

proceeding proving the genuineness of the 'D' forms and also the alleged transactions with the purchasing dealers during the assessment year 1998-99. For a moment, the Tribunal considered it proper to hold a view that the enquiry reports and the fact that 'D' forms when were not accepted as being genuine or obsolete, the appellant ought to have had an opportunity to rebut the same. Furthermore, in case when enquiry reports received and such other adverse materials stood on the way of the dealer, it should be made known to him, so that true elicitation would have come forth, which is again the mandate of law, since because a dealer against whom a declaration sought to be denied should have the full opportunity in all fairness to defend it. In the instant case, the appellant did not participate in the proceeding of reassessment nor applied the lower Appellate Court for such confrontation of the reports vis-a-vis the purchasing dealers and the transactions held with them. In fact, the AA did not have the scope and opportunity to confront all such incriminating materials or adverse circumstances due to the absence of the appellant and for letting the reassessment proceed ex parte. The appellant could have moved the 1st Appellate Court immediately and ought not to have waited for nearly seven years before obtaining an order of the Hon'ble Court in 2008.

8. The learned Standing Counsel (CT) cited a decision of the Hon'ble Court reported in [1975] 25 STC 38 (Orissa) in the case of Ramprasad Tormal Vs. State of Orissa and contended that the appellant is at fault in not proving the declarations of 'D' forms, while claiming exemption under Section 5(2)(A)(a)(ii) of the Act as genuine. In the decision (supra), the Hon'ble Court observed that the burden is always on the assessee to prove the genuineness of a declaration, while seeking for exemption

under the Act perforce on the ground that the person whose name appears as the purchasing dealer in the books of account of the assessee may be a genuine person and dealing in goods mentioned in the Certificate of Registration, nonetheless, the assessee might not have sold any such goods to him and might have produced forged declaration purporting to have been signed by the purchasing dealer. As to the appellant, when the 'D' forms were found to be obsolete, he ought to have satisfied the AA otherwise to prove its genuineness. The appellant, as previously described, did not bother to participate in the reassessment nor made any attempt before the 1st Appellate Court to call for the adverse reports so as to confront him. The appellant could not have remained silent till the very end, with respect to the genuineness of the declaration forms, the burden of proof which entirely rested upon him. One more decision is cited which is in the case of Chuni Lal Parshadi Lal Vs. CST reported in [1986] 62 STC 112 (SC), wherein, it is held and observed that the genuineness of the certificate and declaration may be examined by the authority concerned but not the correctness or the truthfulness of the statements contained therein and relying upon that it is contended by the State that the appellant utterly failed to discharge that burden as well. The AA may only be able to examine the genuineness of the declarations but not the truthfulness of its contents which is what has been observed by the Hon'ble Apex Court in the aforesaid decision. So to say, when a particular document and its genuineness is doubted and certain adverse and incriminating materials are referred to doubting the credibility of the same, the party which proposed to rely upon it shall have to dispel the doubt by rebuttal evidence. The appellant, in the present case, did not participate in the reassessment, never

tried to call for the adverse reports for the purpose of confrontation, while participating in the appeal before the 1st Appellate Court and, therefore, referring to the aforesaid decisions, it is to be concluded by the Tribunal that the burden of proof was not at all discharged with regard to the declaration forms, in particular. Thus, the Tribunal finds no compelling reasons to take a different view than the one which has been expressed by the authority of first instance and also the 1st Appellate Court.

9. For the claim with regard to 1st point tax paid goods and the sale in respect thereof to the tune ₹1,40,016.66, it was for the appellant to substantiate it but according to the AA, the same was disallowed. There is no dispute with regard to the gross turnover which has been accepted and determined at ₹1,60,37,944.00. The tax free transaction with respect to salt has been deducted on the gross turnover. Since the appellant could not produce the list of 1st point tax paid goods to the tune of ₹1,40,016.66, the same was rejected and as a result, a sum of ₹87,52,684.02 has been allowed and so deducted from the determined gross turnover. As such, the taxable turnover stands at ₹71,37,328.91. The AA appears to have applied 12% OST on sale of Reynolds pens, 16% on hair dye and arrived at a tax figure of ₹77,698.00 and the total tax due on the appellant stood determined at ₹8,75,904.02 and with surcharge payable @ 15% on the total tax due, advanced a demand of ₹10,06,115.00 after deducting paid tax of ₹1,175.00 including the surcharge. In that respect, the appellant does not appear to have raised any dispute as the challenge is principally confined to the deductions vis-a-vis the 'D' forms which have been held obsolete and invalid.

10. Having regard to the above and on a conspectus of materials on record, the Tribunal arrives at an irresistible conclusion that the reassessment dated

30.09.2001 and impugned order dated 14.09.2010, for that matter, do not suffer from any serious infirmity and, therefore, are to be confirmed. As a necessary corollary, the appeal stands dismissed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree,

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

I agree,

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