



on payment of monthly consideration money to excise department. The dealer respondent has maintained registers and records as prescribed by the excise department. He has also maintained purchase and sale accounts. At the time of assessment, the learned assessing officer accepted the purchase price of mohua flower disclosed by the respondent at Rs.250/- per quintal. He also determined the sale price of liquor at Rs.30/- per L.P.L. The assessing officer also demanded surcharge without adjusting purchase tax paid on mohua flower which has been consumed in distillation of liquor prior to calculating surcharge resulting an extra demand of Rs.1,03,758.00.

3. Being aggrieved with such demand raised by the learned assessing officer, the dealer respondent preferred first appeal before the learned ACST, Sambalpur Range, Sambalpur who allowed the appeal in part reducing the demand to Rs.59,663.00.

4. Being dis-satisfied with the order of the learned first appellate authority, the State has preferred the present second appeal as per the grounds stated in the memorandum of appeal.

5. Cross objection is filed by the dealer respondent in this case.

6. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal and the cross objection. Learned Standing counsel for the revenue during course of argument vehemently contended that the report of the auditing authority reveals that the dealer respondent has paid Rs.23,44,262.00 as consideration money to Excise department and he had purchased mohua flower for Rs.10,82,500.00 and has paid Rs.15,000/- to the excise department as storage fees. So the total cost of expenditure comes to Rs.34,41,762.00 but the dealer has shown the GTO at Rs.32,54,129.00 which should not be accepted as per prevailing market condition during that period. But such aspect is ignored by the learned ACST without considering expenditure and receipt. That the

learned first appellate authority has reduced the sale price of liquor and determined it @Rs.28/- per L.F.L in average in comparison to Rs.30/- per L.F.L. as determined by the learned assessing authority. Further contention of the State is that the dealer respondent may be instructed to produce the income tax return, profit and loss account, bank statement, sales invoices for the year 2001-02 since the purchase value including excise duty and storage charges are higher than the sales price shown for the year. On the other hand, the submission of the dealer respondent is that the purchase price of mohua flower returned as per the books of account at Rs.250.00 per quintal is correct and based on the materials available on record. Further submission on behalf of the dealer respondent is that purchase price of mohua flower is influenced by the factors like situation of the manufacturing unit, availability of mohua flower in local area, availability of people collecting the flower, weather condition of the area for availability of mahua flower, quantum of yield of flower in those areas etc. In the case of respondent, mahua flower is abundantly available where the manufacturing unit is situated. Moreover, mohua flower is available at a low price due to huge yield in the area where liquor is manufactured and the local people supplied at the door step of the respondent for which the direct expenses are not to be borne by it (respondent). So looking into all these factors learned first appellate authority rightly accepted the purchase price of moha flower at Rs.250.00 per quintal during the year under challenge and the sale price of liquor was fixed at Rs.28/- per L.P.L. being true was accepted by the learned first appellate authority.

So now it is to be seen whether acceptance of the purchase price of mohua flower at Rs.250/- per quintal and fixation of sale price of liquor at Rs.28/- per L.P.L is just and proper or not?

It reveals from the first appeal order that there is no dispute in the purchase price of mohua flower after scrutiny of the regular books of account and the return filed by the dealer respondent. With regard to determination of sale price of liquor the reason is assigned

by the learned first appellate authority that the sale price of liquor is bound to differ from place to place depending upon the series of extraneous factors like the demand and supply of the commodities, location of outstill shops, the purchasing capacity of the consuming public and the establishment and other expenditure incurred by the dealer. This apart, it is also observed by the learned assessing officer in the assessment order that sale price of liquor manufactured by different outstill shop are not determined by Government. There is no fixed price of out still liquor. The claim of the dealer respondent is that he has maintained true and correct account of his purchase and sales and has furnished stock position showing the opening and closing balance for the year under challenge. But the claim of the dealer respondent was not accepted by the learned assessing officer in absence of any sale memo/ sale bill issued by the dealer in respect of the sales effected to the customers. But taking into consideration, the monthly consideration money paid by the dealer respondent to excise department, establishment cost, transportation and other incidental expenses, the sale price of liquor was determined at Rs.28/- per L.P.L. during the previous year for which the learned assessing officer estimated the sale price at Rs.30/- per L.P.L for the assessment year in question. Determination of sale price of liquor by the learned assessing officer appears to be not genuine as no reason is assigned on that score rather based on surmises and conjectures. On the other hand, learned first appellate authority determines the sale price at Rs.28/- per L.P.L. assigning the reason that the sale price of liquor differs from place to place depending upon series of extraneous factors like demand and supply of commodity, consideration money paid to the excise department, location of out still liquor shop, the purchasing capacity of the people consuming liquor, establishment and other expenditure incurred in manufacturing of liquor and price of the liquor fixed for the previous assessment year. So considering the facts and circumstances and after examining the books of accounts of the respondent, learned

ACST, Sambalpur has rightly passed an order in first appeal case No.AA.20(SAIII) of 2003-04 which needs no interference.

7. In the result, we are of the unanimous view that the present second appeal deserves no merit for acceptance. Hence, the present second appeal preferred by the State is dismissed and the order of the learned first appellate authority is hereby confirmed. Accordingly, the cross objection is dispose of.

Dictated and Corrected by me,

Sd/-  
**(Shri S.K.Rout)**  
**Judicial Member-II**

Sd/-  
**(Shri S.K.Rout)**  
**Judicial Member-II**

I agree,

Sd/-  
**(Shri A.K.Das)**  
**Chairman**

I agree,

Sd/-  
**(Shri M.Harichandan )**  
**Accounts Member-I**