

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A.No. 545/2007-08**

(Arising out of order of the Id.ACST, Koraput Range, Jeypore, in  
First Appeal Case No. AA (KOII) 137/2004-05,  
disposed of on dtd.02.05.2005)

**Present: Sri S.K. Rout**  
**2<sup>nd</sup> Judicial Member**

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

.... Appellant

**-Versus-**

M/s. Shiva Shankar Rice Mill,  
Kolliguda, Dist. Rayagada.

.... Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel (C.T.)  
For the Respondent : Mr. N.A. Rao, A/R

(Assessment Period : 2002-03)

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Date of Hearing: 04.03.2022 \*\*\* Date of Order: 22.03.2022

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**ORDER**

Challenge in this second appeal is the order  
dtd.02.05.2005 passed by the learned First Appellate  
Authority/Asst. Commissioner of Sales Tax, Koraput Range,  
Jeypore (in short, FAA/Addl.CST) in First Appeal Case No.  
AA(KOII) 137/2004-05 wherein the order of assessment passed by  
the learned Sales Tax Officer/Assessing Authority, Koraput-Ii  
Circle, Rayagada (in short, STO/AA) u/s.12(8) of the Odisha Sales  
Tax Act, 1947 (in short, OST Act) for the year 2002-03 leading to

a tax demand of Rs.37,492/- including penalty of Rs.18,000/- was allowed in part.

2. The case at hand is that, the dealer-assessee was running a rice mill at Rayagada and was doing his business in manufacture and sale of rice, broken rice and bran. He was assessed to pay tax u/s.12(4) of the OST Act on dtd.25.06.2003. After the assessment, a fraud case report was received which was submitted by the Investigation Unit, Jeypore. The dealer could not be able to explain properly for the variations to the satisfaction of the visiting officials as well as to the Assessing Authority for which a tax demand of Rs.37,492/- including penalty of Rs.18,000/- was imposed on him.

3. Being dis-satisfied with such assessment order, the dealer preferred first appeal before the Id.ACST, Koraput Range, Jeypore on the grounds that the order of the learned AA was unjust and not in reference to the facts and circumstances of the case. The enhancement was high and arbitrary. The contention of the dealer was not considered, no opportunity was given to him and that the imposition of penalty was illegal. Learned FAA reduced the tax amount to Rs.13,492/- and penalty to Rs.2,000/- in-toto Rs.15,492/- instead of Rs.37,492/- assessed by the learned AA.

4. Being aggrieved with the order of the learned FAA, State has preferred this appeal on the grounds that the order of the learned ACST is not just and proper. That a fraud report can be considered within five years of the year to which that period

relates. That the dealer admitted that certain transactions were not entered in the books of account. That the penalty imposed was within the statutory provision and the order of learned STO was correct.

5. No cross objection is filed by the dealer-respondent in this case.

6. Despite due service of notice on dealer, he neither engaged a counsel nor anybody on his behalf remained present before this Tribunal to defend him against the grounds of appeal. So, this Tribunal having no other alternative, proceeded to dispose of the matter on ex-parte basis on merit. Heard the argument of Mr. M.L. Agarwal, learned Standing Counsel appearing for the Revenue.

7. Heard the submission of the learned Standing Counsel for the Revenue, perused the impugned orders of the fora below, grounds of appeal vis-à-vis the materials on record.

8. The sole point in the instant case is, whether the enhancement should be to the extent of suppression. Prior to this, such aspect has already been decided by the Division Bench of this Tribunal while deciding the case of **Prakash Timber** vide S.A.No.949-951/2002-03 and S.A.No.956-958/2002-03 wherein learned Division Bench came to a conclusion that the enhancement be restricted to the suppression detected. The Hon'ble Division Bench of Sales Tax Tribunal arrived at this conclusion relying upon the decision reported in 8 STC Page 77, 33 STC Page 98, 39 STC Page 484 and 58 STC Page 77. The

learned FAA took note of these authorities and considered that the enhancement was high and imposition of penalty for late receipt of the fraud case report was unjust. Learned FAA has rightly appreciated all these aspects in consonance with the settled proposition of law and as such, the order needs no interference.

9. In the result, the appeal filed by the State is disallowed. As a corollary the order dtd.02.05.2005 passed by the learned ACST in First Appeal Case No. AA (KOII) 137/2004-05 is hereby confirmed.

Dictated and Corrected by me,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

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