

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK

S.A.No.1333/2001-02

(Arising out of the order of the learned ACST, Balasore Range,
Balasore, in First Appeal Case No. AA-333/MB-99-2000,
disposed of on 26.11.2001)

M/s. Shree Mayur Biscuits Co.(P) Ltd.
At-Hemchandrapur, Po-Sankhabhanga,
Dist-Mayurbhanj. ... Appellant.

-Versus-

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

For the Appellant: : Mr. M.P. Jena, Advocate.
For the Respondent: : Mr. M. S. Raman, Addl. S.C. (C.T.)

Date of Hearing: 01.05.2018 ***** Date of Order: 03.05.2018

ORDER

This second appeal has been preferred by the dealer-appellant under section 23 of the Odisha Sales Tax Act,1947 (in short, ‘the OST Act’) against the impugned order passed on 26.11.2001 by the Assistant commissioner of Sales Tax, Balasore Range, Balasore (in short, ‘the Ld. ACST’) confirming the demand of Rs.6,47,333.00 raised by the Ld. Sales Tax Officer, Mayurbhanj Circle, Baripada (in short, ‘the Ld. STO’)under section 12(4) of the OST Act for the period 1998-99.

2. The brief history of the case is that the dealer-appellant runs a small scale industry manufacturing biscuits for sale. The industry was allowed incentive under IPR, 92 and for the relevant year the appellant was eligible to get tax exemption of Rs.4,82,397.00. The Ld. STO in course of examination of the books of accounts, confronted the

adverse report of the STO, Vigilance, Balasore in respect of the business transactions of the dealer-appellant, who had detected purchase suppression of Rs.10,000.00 and sale suppression of Rs.2,70,000.00 on surprise inspection to the place of business of the dealer-appellant on 27.01.1999. The ld. STO also confronted the dealer-appellant with the contents of another report submitted by the Sales Tax Officer, Balasore Circle, Balasore alleging that the dealer-appellant had sold 870 cases of biscuits and had transported the said goods in vehicle No.OR-11-0757 on 29.10.1998 but had issued sale bill for 150 cases of biscuits only thereby suppressing sale of 720 cases of biscuits, the sale value of which was estimated at Rs.66,000.00. The contention of the dealer-appellant was not accepted by the Ld. STO on the ground that the detected suppressions were properly established so far as the adverse report of vigilance is concerned. In respect of the report of the STO, Balasore Circle, Balasore the contention of the dealer-appellant was not accepted on the ground that the driver of the vehicle carrying goods of the dealer-appellant categorically denied to have received any other sale bill excepting the sale bill for 150 cases produced by him. Keeping in view the suppression established beyond reasonable doubt to the tune of Rs.3,36,000.00 (Rs.2,70,000.00 + Rs.66,000.00), the Ld. STO considered the books of accounts maintained and produced by the dealer-appellant as incomplete and not worthy of credence and hence, completed the assessment to the best of judgement by enhancing the gross turnover disclosed by 10% to approximate the possible sale suppression for the entire year. Accordingly, the assessment was completed raising demand of Rs. 6,47,333.00.

3. Being aggrieved with the order of the Ld. STO the dealer-appellant preferred first appeal with the following grounds:-

The assessment order passed by the Ld. STO as illegal and arbitrary on the grounds that the Ld. STO completed the assessment by allowing exemption of Rs.4,82,397.00 instead of Rs.6,83,414.00 towards sales tax exemption under IPR,92. The ld. STO accepted the alleged suppression of Rs.2,70,000 without considering the factual position and he further argued that so far as report of the STO,

Balasore Circle, Balasore alleging the sale suppression of Rs.66,000.00, is concerned the dealer-appellant had handed over the relevant sale documents to the driver but the driver could not produce the relevant documents in full to the inspecting authority. It was also contended that the enhancement of turnover by 10% of the gross turnover is totally on the higher side and without proper examination of the facts.

4. The ld. ACST after careful consideration of the grounds and the material evidence available in the record and clear cut admission of suppression as evident from the report submitted by the vigilance authorities and admission of excess stock of 720 cases of biscuits on interception of vehicle as reported by the Ld. STO, Balasore Circle, confirmed the order as the enhancement of turnover was proper considering the suppression established. The Ld. ACST upheld the enhancement of 10% in view of the established suppression and was not inclined to interfere in the assessment order of the Ld. STO as the Ld. Advocate on behalf of the dealer-appellant failed to adduce necessary evidence in connection with claimed sales tax exemption of Rs.6,83,414.00 under the IPR,1992.

Dissatisfied with the order of the ld. ACST the dealer has preferred appeal before this forum on the following grounds:-

- i) The Ld. ACST Balasore Range, Balasore is not just and proper in rejecting the appeal of the dealer-appellant without any reason.
- ii) The appellant is covered under IPR, 92 and is entitled for sales tax exemption to the tune of Rs.6,83,414.00 and ignoring the said tax exemption, the Ld. STO allowed exemption to the tune of Rs.4,82,397.00.
- iii) The Ld. STO has enhanced the GTO by 10% of the gross turnover without examining report submitted by the STO, Vigilance as well as the report submitted by the STO, Balasore Circle, Balasore. The alleged suppression of Rs.2,70,000.00 is without jurisdiction and having no nexus.
- iv) The report submitted by the STO, Balasore Circle, Balasore alleging suppression of Rs.66,000.00 is totally irrelevant as the appellant despatched its finished product in the truck and handed over all the

documents to the driver. The way investigation was made is totally irregular and with no basic materials and how the STO, Balasore investigated the matter was not brought to the notice of the dealer-appellant.

- v) Enhancement of turnover by 10% of the gross turnover is totally on the higher side and without proper examination of the facts.

5. The respondent-State has filed memo of cross objection with the contentions that the order of the Ld. ACST in confirming demand raised by the Ld. STO is appropriate in view of the fact that the person in-charge clearly admitted the discrepancies relating to purchase and sale and that the under-assessment of sale is clearly proved and that the enhancement is very reasonable considering the total suppression estimated at Rs.3,36,000.00 and that no evidence as to tax exemption was submitted.

6. The Ld. Advocate, Shri M. P. Jena appearing on behalf of the dealer-appellant vehemently contended that the confirmation of order of the Ld. STO by the Ld. ACST is not just and proper. He has reiterated the grounds previously taken before the Ld. ACST. The Ld. Advocate forcefully argued that enhancement of turnover by 10% of the gross turnover was arbitrary and is in the higher side.

7. Per contra, Mr. M S Raman, Ld. Addl. S.C. (C.T.) for the respondent-State in terms of cross objection filed, contended that the suppression being fully established, non-submission of cogent evidence having not submitted in respect of claim of tax exemption under IPR 1992, enhancement of 10% of the gross turnover return by the forum below is reasonable and does not warrant any interference.

8. Considered the rival contentions, gone through the impugned order as well as the order of the Ld. STO, grounds of appeal and the cross objection filed. The Ld. Advocate could not adduce cogent evidence in support of claim of tax exemption to the tune of Rs.6,83,414.00 as per IPR,1992. In absence of relevant documentary evidence it is not possible to consider the claim of tax exemption under IPR 1992. The Ld. Advocate on behalf of the dealer-appellant failed to furnish

any cogent evidence in support of the contention that the sale suppression detected by the Vigilance Authorities and the detection of excess stock of 720 cases of biscuits on interception of vehicle on 29.10.1998 was produced but not considered by the Ld. STO on the date of inspection. In absence of adducing any documentary evidence to the contrary the findings of the fora below cannot be disturbed. Thus, the findings relating to tax exemption under IPR,1992, understatement of sale reported by the STO, Balasore Circle, Balasore and the sale suppression reported by the STO, Vigilance Balasore consequent upon surprise inspection on 27.01.1999 are found to be just and proper. However, considering the nature of business, and the number of occasions of detection made, it is considered just and proper to reduce the enhancement to 5% against 10% adopted by the fora below.

9. In the result, the appeal is partly allowed and the impugned order is set aside. The matter is remanded to the Ld. STO to re-compute the tax liability in light of the observation made above within a period of four months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated and Corrected by me,

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

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

I agree,

**Sd/-
(Sashikanta Mishra)
Chairman**

I agree,

**Sd/-
(Subrat Mohanty)
Judicial Member-II**