

2. Being aggrieved by the impugned order of the ld. FAA, the State has preferred second appeal before this Tribunal assailing the order of the forum below as unjust, illegal, arbitrary and not maintainable.

3. The brief fact of the case is that the dealer-respondent is a rice-miller and supplies rice to FCI and also effects free trade by purchasing paddy from cultivators which it converts into rice, broken rice and bran. The dealer-respondent was originally assessed to tax U/s. 12(4) of the OST Act by the order dtd.27.03.2002 in which the STO determined the GTO at Rs.67,93,690.36 and after deduction of STC of Rs.1,35,911.89, the TTO was determined at Rs.66,57,778.47 and thereby raised an extra demand of Rs.83,935.00 that includes interest of Rs.3,401.00. Subsequently, on receipt of an adverse report from the AG Audit Team in which it is alleged that the dealer-respondent has sold rice of Qntls.4791.39 to FCI for an amount of Rs.41,66,180.72 against book value shown in books of account at Qntl 3125.16 of rice for an amount of Rs.26,25,446.91 resulting in escapement of turnover, assessment U/s. 12(8) of the OST Act for the self-same period was initiated against the dealer. In order to ascertain the correctness of the allegation made in the said adverse report, the LAO requested the District Manager, FCI, Titlagarh to furnish the delivery figures of rice supplied by it to FCI for the year 2000-01. Accordingly, the said DM furnish the figures vide letter

No. Proc/Policy/03-04/3775 dtd.23.11.2004 in which he confirmed the above figures of AG Audit Team. Thus, the LAO, after conducting necessary enquiry, assessed the dealer determining the GTO at Rs.1,05,54,924.10 and after allowing deduction of STC at Rs.1,60,237.72 determined the TTO at Rs.1,03,94,686.38 and raised a demand of Rs.1,99,747.00 in his assessment order dtd.28.07.2005 which was challenged by the dealer in first appeal before the ld FAA. The ld. FAA after detail examination of the case with reference to grounds of appeal and books of accounts produced confirmed the order of assessment by his reasoned order.

4. However, when the matter was called on for hearing, none appeared on behalf of the dealer-respondent in spite of valid service of notice. Moreover, since, the instant appeal relates to the year 2000-01, which is more than 21 years, it was taken up for ex-parte hearing in the presence of ld. S.C. (C.T.) representing the State.

5. During the course of hearing, the ld. SC.(C.T.) vehemently argued against the appeal order passed by the ld. FAA claiming it as unjust, in-appropriate and not in accordance with the provisions of the statute. Further, he argued that both the orders of the forums below lack clarity in presenting the case factually. He further argued that penalty as envisaged in Section 12(8) of the OST Act has not been imposed without assigning any reason

thereto. Accordingly, he prayed for re-computation of tax taking into consideration the allegation made in the adverse report vis-à-vis books of account maintained by the dealer.

6. We, now, feel necessitated to properly address the issues involved in the instant case in order to reach at a logical conclusion. It is a fact that the AG Audit Team submitted a report in which it is alleged that the dealer has sold 4791.39 Qntls. of rice to FCI against Qntl 3125.16 shown in the books of account resulting in escapement of turnover and assessment under section 12(8) was initiated accordingly. The LAO cross verified the above allegation by obtaining the figures on supply of rice to FCI relating to the impugned year from the DM, FCI, Titlagarh who confirmed the above allegation. This resulted in an extra demand of Rs.1,99,726.00 in the assessment order passed by the LAO and later confirmed by the Id. FAA.

It has been stated in assessment order that, as per the Circular No.29186(30) dtd.24.10.2000 of Govt. of Orissa in Food Supply and Consumer Welfare Department, the miller agent participating in procurement operation will be obliged to sell and deliver 75% of the procurement stock in shape of rice to the FCI and sell the balance 25% levy free rice in the open market. Moreover, it is seen that the yield ratio in course of milling of paddy is rice @68%, broken rice @1% and rice bran @4%. In the instant case, suppression of sale of rice to FCI of 1666.22 Qntls has been

established by the forums below which was not challenged by the dealer-respondent before this Tribunal in shape of cross objection. If 1666.22 Qntls of rice have been sold to FCI unaccounted for that constitute 75% of the total sale of rice, then the dealer-respondent must have sold 555.41 Qntls of free rice in open market that constitute 25% of total sale. Thus, a reference is drawn that the dealer-respondent has made total sale of 2221.64 Qntls of rice unaccounted for that will be assessed U/s. 12(8) of the OST Act only as an escaped turnover and not adding the turnover of original assessment made U/s. 12(4) of the OST Act as done by the forums below which is against the provisions of the statute. On the basis of the suppression established on sale of rice, the LAO is to determine sale suppression on broken rice and bran as per percentage of conversion stated above. Moreover, on sale suppression of 2221.64 Qntls of rice, the LAO is to make a back calculation in determining the quantum of procurement of paddy with its gross value. All these exercises are to be made by the LAO for re-computation of tax relating to the impugned year. Lastly, the LAO is to examine the case and to ascertain on levy of penalty on tax re-assessed as envisaged in Section-12(8) of the OST Act and will take action accordingly.

7. Hence, it is ordered.

The appeal filed by the State is allowed in part and the order passed by the Id. FAA is set-aside with a direction to the LAO

for re-computation of tax in the light of our above observation and to complete re-assessment preferably within three months from the date of receipt of this order, giving reasonable opportunity to the dealer-respondent of being heard.

Dictated and corrected by me.

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

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