

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 16(C)/2015-16**

(Arising out of order of the Id. Addl. CST (Appeal), South Zone,
Berhampur, in First Appeal Case No. AA(CST)39/2013-14,
disposed of on dtd.30.01.2015)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

ICICI Bank Limited,
OCCF Building, Kharvela Nagar,
Bhubaneswar, Odisha. Appellant

-Versus-

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

For the Appellant : None
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2006 to 31.03.2011)

Date of Hearing: 30.04.2021 *** Date of Order: 30.04.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/ Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/Addl.CST) in First Appeal Case No. AA(CST)39/2013-14 dtd. 30.01.2015 in confirming the assessment order passed by the learned Deputy Commissioner of Sales Tax/Assessing Authority, Bhubaneswar-I Circle, Bhubaneswar (in short, DCST/AA) for the assessment period from 01.04.2006 to 31.03.2011 u/r. 12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The brief facts of the case are that :

The dealer-appellant M/s. ICICI Bank Limited, Bhubaneswar deals in gold coins and Bars purchasing the same from outside the State of Odisha and effects stock transfer of goods to the dealers of outside the State of Odisha. On receipt of Audit Visit Report (AVR), the learned Assessing Officer initiated audit assessment proceeding u/r.12(3) of the CST(O) Rules and in response to the notice, the dealer-appellant appeared and furnished books of accounts on the points of objection raised in the AVR which were examined by the learned AA.

As per the order of assessment, it is found that the dealer-appellant effects branch transfer of gold to outside branches of the State of Rs.74,49,22,426/- and in support of which it could be able to furnish declaration Form 'F' to the tune of Rs.74,33,08,012/-, but it could not be able to furnish the balance declarations in Form 'F' claimed stock transfer of goods worth Rs.16,14,414/-. Hence, the learned AA levied tax @1% thereon which resulted in extra demand of Rs.48,432/- including penalty of Rs.32,288/- imposed u/r.12(3)(g) of the CST(O) Rules.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur, who in turn, dismissed the appeal and confirmed the order of assessment.

4. Being further aggrieved with the order of the learned FAA/Addl.CST (Appeal), the dealer-appellant has knocked the door of this Tribunal by way of filing this second

appeal with the contention that, the order passed by the Id.FAA/Addl.CST (Appeal) is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the State-respondent in this case.

6. Despite due service of notice on the dealer, for reasons best known to him, he neither engaged a counsel nor anybody on his behalf remained present before this Tribunal on the schedule date of hearing. This Tribunal, therefore, left with no other alternative except to hear the argument of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing on behalf of the State and to dispose of the matter on ex-parte basis.

7. Perused the assessment order as well as first appeal order, all the materials available in the record, grounds of appeal submitted by the dealer-appellant, cross objection filed by the State-respondent. During the course of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA appears to be just and proper. Despite availing several opportunities, the dealer-appellant could not file the wanting declaration forms before the learned FAA. Hence, the learned FAA is justified in confirming the demand raised by the learned Assessing Officer. This Tribunal vide Order dtd.23.05.2018 in S.A.No.4(C)/2017-18 in case of **Gupta Trading Co. –vrs. State of Orissa** observed that, payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form. The grounds raised in the appeal petition being erroneous and misconceived, are liable to be dismissed in toto.

Since the learned AA and FAA have completed the assessment/appeal based on the provision of law, the same cannot be treated as defective in the absence of any documentary evidence. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. So, the learned Addl. Standing Counsel has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment, cross objection filed by the State-respondent and argument of the learned Addl. Standing Counsel at the time of hearing. The dealer has not adduced any evidence on his behalf nor he has appeared before this Tribunal to substantiate the grounds of appeal filed by him. Despite reasonable opportunity the dealer did not appear before this Tribunal. No reasonable excuse is also explained by the dealer. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, penalty should be deleted in this case but the dealer is liable to pay the tax due and interest as per provisions of law and this is a fit case where the matter should be remanded back to the learned Assessing Authority to re-compute the tax liability of the dealer. Accordingly, it is ordered.

The appeal filed by the dealer-appellant is allowed in part. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned

Assessing Authority to re-compute the tax liability of the dealer as per the observations made above within a period of three months from the date of receipt of this order, giving the dealer a reasonable opportunity of being heard. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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