BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 79 (C) of 2016-17

(Arising out of order of the learned Additional CST (Appeal), North Zone, Sambalpur in Appeal Case No. AA SA-II- 31/2005-06 disposed of on dated 21.10.2016)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Shree Shree Gour Sunder Rice & Oil Mill,
At/PO- Barpali, Dist. Bargarh ... Appellant

-Versus-

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

For the Appellant : Sri B.B. Panda, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 03.03.2021 ***** Date of order: 06.04.2021

O R D E R

Present appeal in terms of Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules')is at the instance of the dealer assessee challenging the impugned order dated 21.10.2016 promulgated in Appeal Case No. AA SA-II- 31/2005-06 by the learned Additional Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (in short, 'FAA') vis-a-vis order of assessment dated 18.01.2006 under Rule 12(5) of the Rules directed by the learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hence called

'AA') for QE 6/2005 and 9/2005 on the grounds inter alia that it is bad in law and thus, liable to be interfered with.

2. The dealer assessee is a rice miller, who effects purchase of rice and converts it to rice and sells in course of inter-State trade or commerce. In course of assessment, it was revealed that for the tax periods, the dealer assessee effected sale of rice as per Section 5(3) of the CST Act, 1957 for an amount of ₹9,67,950.00, but failed to substantiate it by evidence. As a result, additional demand was raised to the tune of ₹77,136.00 payable by the dealer assessee. Being aggrieved of, the dealer assessee preferred an appeal before the FAA. During the appeal, declaration in Form-H was produced before the FAA, who, however, referring to Rule 12-A of the Rules read with Rule 7A thereof remanded the matter for assessment afresh for the entire period of 2005-06. Further being dissatisfied, the dealer assessee approached the Tribunal by filing the present appeal assailing the remand and also maintainability of the fresh assessment. Per contra, State filed a cross-objection and justified the impugned order dated 21.10.2016 claiming that it needs no interference.

3. It is contended by the learned Counsel for the dealer assessee that despite furnishing declaration in Form-H, the FAA did not consider it on merit and instead, directed a remand for fresh assessment which amply proved non-application of judicial mind. It is further contended that assessment afresh could not have been directed beyond the period of limitation by referring to a ruling of the Hon'ble Court in the case of Orissa Stores Vs. State of Orissa reported in (1990) 79

STC 359 (Orissa). According to the dealer assessee, the FAA was required to consider acceptance of declaration in Form-H instead of directing a remand and furthermore, such a remand for fresh assessment to be beyond limitation and as such, not permissible. The learned Standing Counsel (CT) for the State, on the other hand, contended that the FAA did not commit any error or illegality by directing a fresh assessment, since assessment for any part or parts of a financial year was then not allowed.

4. It appears that declaration in Form-H was produced before the FAA which was, however, not considered on merit and having regard to the provisions, such as, Rule 7A and 12-A of the Rules, fresh assessment for the year 2005-06 was directed by providing the dealer assessee an opportunity of being heard. The learned Counsel for the dealer assessee challenges the action under Rule 12(5) of the Rules as invalid. Till 06.07.2006, as per Rule 12-A of the Rules, every registered dealer had to be assessed for the year in respect of which a return is furnished as per Rule 7A thereof and not for any part or parts of that year provided that the dealer may be assessed for any such part or parts of a particular year for any sufficient reason to be recorded in writing. Instant case is related to QE 6/2005 and 9/2005, which mean, as per Rule 12-A of the Rules survived till 06.07.2006, assessment for any part or parts of a financial year was impermissible, considering which, the FAA directed the remand for a fresh assessment. As per Rule 12(7) of the Rules, order assessing the amount of tax due from a dealer in respect of any period shall not be passed later than the stipulated period to which the period of

assessment relates. As per the contention of the learned Counsel for the dealer assessee, a limitation is prescribed, but then in case of a fresh assessment directed by remand, limitation is not saved which is the ratio laid down by the Hon'ble Court in the decision (supra). On a sincere reading of the aforesaid decision, it is made to understand that in case of defect or deficiency affecting jurisdiction, a protection for fresh assessment without limitation would not be available. The decision ibid is of course with reference to 3rd proviso to Section 12(7) of the OST Act, 1947. It is further held and observed therein by the Hon'ble Court that though the limitation is not saved in case of a remand, assessment is not to be annulled but it is to be confined to the returned figure. According to the Tribunal, in agreement with the dealer assessee, the initiation of assessment proceeding under Rule 12(5) of the Rules and issuance of notice in respect thereof was without jurisdiction, which was, of course, sought to be remedied by a remand. But, again, such a fresh assessment with a defect in notice cannot be sustained due to limitation. In view of the said ratio of the Hon'ble Court, fresh assessment which has been directed by the FAA for the year 2005-06 cannot save the limitation. For the discussions made herein above, the Tribunal reaches at a conclusion that the FAA though directed for fresh assessment, it would be beyond jurisdiction to entertain for limitation not being saved on account of an invalid notice. As a corollary, fresh assessment so directed shall have to be held as clearly untenable.

5. Hence, it is ordered.

6. Thus, the appeal stands allowed. As a logical sequitur, the impugned order dated 21.10.2016 passed in Appeal No. AA SA-II- 31/2005-06 is hereby set aside. The cross-objection filed by the State is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman