

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 18(C)/2016-17**

(Arising out of order of the Id.JCST (Appeal), Cuttack-II Range,
Cuttack, in Appeal Case No. AA/20/CST/CUIIJ/2015-16,
disposed of on dtd.25.04.2016)

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

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

.... Appellant

-Versus-

M/s. Sarala Traders,
Jagatsinghpur.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. B.B. Panda, Advocate

(Assessment Period : 05.12.2012 to 31.03.2014)

Date of Hearing: 28.12.2020 *** Date of Order: 18.01.2021

ORDER

The facts and circumstances of this case and the two orders of the learned lower fora below culminated to this second appeal.

2. The facts of this case can be briefly stated thus :

The dealer-respondent in the instant case, is a proprietorship concern dealing in wholesale and retail distribution of paddy, biri, mung, black gram, cement, sand and iron bars etc. and purchases goods from local farmers within the State of Odisha and sells the same both within and outside the State of Odisha. Upon receipt of an Audit Visit

Report, the dealer was issued with a statutory notice in Form-IV to appear before the learned Sales Tax Officer/Assessing Authority, Assessment Unit, Jagatsinghpur (in short, AA) with his books of account comprising of sale and purchase register for verification. During the assessment it was found that, the dealer got itself registered w.e.f. 05.12.2012, whereas the AVR mentions the period of audit as 01.04.2012 to 31.03.2014. So, the period of assessment is palpably to be treated from 05.12.2012 to 31.03.2014. The dealer has effected total inter-state sale of Rs.6,28,19,900/- and has been assessed CST at Rs.10,46,421.50. The dealer has furnished 51 numbers of declarations in Form 'C' at the assessment stage including both 'C' and 'E' forms, which are duly verified from the TINXSYS. The dealer has produced required C-Forms for the transaction of Rs.4,10,95,450/- and has been charged CST @2% amounting to Rs.8,21,909/- and for the rest amount of transaction amounting to Rs.44,90,250/- in absence of declaration in Form 'C', the dealer has been liable to pay CST at a higher rate i.e. @5% amounting to Rs.2,23,512.50. Thus, the total CST calculated is at Rs.10,46,421.50, out of which, the dealer has already paid Rs.9,11,724/- through challan and e-payment and further an amount of Rs.64,978/- has also been paid by the dealer vide Challan No.46 dtd.17.08.2015. Thus, the dealer is now liable to pay the balance amount of Rs.69,720/- u/r.12(f) of the CST(O) Rules, 1957 at the stage of assessment.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-

II Range, Cuttack (in short, FAA/JCST), who in turn, allowed the appeal preferred by the dealer and not only reduced the tax demand of the dealer to nil but also determined a tax of Rs.3,07,881/- as excess paid by the dealer, hence to be refunded to the dealer as per the provision of law.

4. Being dis-satisfied with the order of the learned FAA/JCST, the State-appellant knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA/JCST is illegal, arbitrary and in contravention to the provisions of law and hence needs to be set-aside.

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

6. Learned Advocate appearing on behalf of the dealer has argued that, the order passed by the learned FAA appears to be just and proper. The learned FAA as an extended forum of assessment has accepted the credit and debit notes after examining the facts that, the credit notes and debit notes were not considered by the learned Assessing Officer and nor reason was available in the order of assessment. The State-appellant has filed this appeal without going through the written note of submission filed by the dealer along with the corroborating documentary evidence such as credit and debit notes. The findings of the learned FAA at Page No.4, Paragraph No.2 is sufficient enough to find out the facts that, the learned First Appellate Authority has examined the books of account and documents submitted in the course of hearing of the appeal and thereafter passed the order, which is just and

proper. The State-Revenue carelessly filed this appeal to harass the dealer for no fault. For the irregularities under the Act and Rules, for the delay notification of the Gazetee, the bonafide interest of the respondent-dealer should not be disturbed in any manner. The learned Advocate for the dealer has filed two orders of Division Bench of this Tribunal viz. S.A.No.2489 of 1996-97/dtd.23.12.2019 and S.A.No. 282(V) of 2016-17/dtd.15.12.2017. Perused the orders. He has vehemently argued that, the order passed by the learned FAA is a genuine one. So, he has prayed to dismiss the appeal filed by the State and to confirm the order of the learned FAA.

7. On the other hand, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are genuine. The order of the learned FAA appears to be unjust and improper. It is strange to notice the observation of the learned FAA at last page that, "It is found that the credit notes and debit notes are acceptable evidence for any alteration of sale price" and the dealer has paid excess tax earlier to the tune of Rs.3,36,656/-, but from which source he has reached to this conclusion is not clarified in the order. In what condition credit sale and exempted sale were allowed is not clarified. When the demand of Rs.69,720/- was there and thereafter Rs.13,944/- was paid, then how the demand was reduced to refund figure of Rs.3,07,881/-. The adjustment of debit and credit should be made within three months as it relates to return of goods. So, it should be allowed as per provision of Act. There is reasonable merit in the second

appeal filed by the State. So, he has prayed to allow the appeal filed by the State and to set-aside the order of the learned FAA.

8. Heard learned Advocate Mr. B.B. Panda appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment, written notes submitted by both the sides, cross objection filed by the dealer-respondent, argument of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the view that, the points raised by the learned Advocate for the dealer is quite satisfactory and genuine and the order of the learned FAA needs no interference by this Tribunal. Hence, it is ordered.

9. The appeal filed by the State is dismissed on contest and the order of the learned FAA is hereby confirmed. The cross objection filed by the dealer-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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