

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 12/2017-18

(Arising out of order of the Id.JCST (Appeal), Cuttack-I Range, Cuttack, in
Appeal No. AA/470/CUIW/2006-07,
disposed of on dtd.27.02.2017)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Uma Enterprisers,
Hanuman Ghat, Near Petrol Pump,
Baimundi Marg,
Dist. Cuttack

... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. Mukesh Agarwal, Advocate

For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 05.05.2018 *** Date of Order: 05.05.2018

ORDER

The present appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-I Range, Cuttack (in short, FAA/JCST) in First Appeal Case No. AA/470/CUIW/2006-07 dtd.27.02.2017 in reducing the order of Assessing Officer/Sales Tax Officer, Cuttack-I West Circle, Cuttack (in short, AO/STO) for the assessment year 2004-05 u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act).

2. The crux of the dispute in this appeal is, basing a fraud case report submitted by IST, Cuttack-I Circle, Cuttack, proceeding U/s.12(4) of the OST Act for the tax period 2004-05 relating to the assessee-dealer was taken up by the AO. It was reported by the Intelligence Wing that, on the date of visit to the dealer's unit, they detected sale suppression of Rs.1,000/- as no sale bill/memo was issued against such sale. The Intelligence Wing, detected this sale suppression as per the goods received by the dealer through courier service, which was not duly entered in the connected register. In consideration of the volume of the purchase effected by the dealer i.e. Rs.1,40,26,966/- during the tax period, the AO enhanced the sale suppression by 520 times and enhanced the GTO by Rs.5,20,000/-.

3. Being aggrieved, the dealer preferred first appeal challenging the findings of suppression and exorbitant enhancement. The FAA though confirmed the findings of suppression but reduced the enhancement to 180 times. As a result, extra demand of tax and penalty reduced to Rs.15,634/- as against Rs.48,136/- determined by the AO. Still not satisfied, the dealer preferred this second appeal with the contention like, the enhancement of turnover by Rs.1,80,000/- basing suppression of Rs.1,000/- is quite high and unreasonable having no reasonable nexus to the dealer's turnover.

4. In this appeal it is to be seen that, whether the enhancement by the FAA applying the best judgment principle is reasonable and just? If not, what should be the reasonable enhancement?

5. As mentioned above, there was detection of sale suppression to the tune of Rs.1,000/- as against goods received by the dealer through courier service. The explanation of the dealer is, since it is a very small amount it was not entered in the register on the very day, but they used to enter the goods received through courier service at the end of the month in regular basis. They occasionally receive goods, through courier service, in that case, the suppression of Rs.1,000/- should not be enhanced to Rs.1,80,000/-. At best, it should be stick to the exact amount what was detected.

Contended contra, learned Additional Standing Counsel vehemently argued that, keeping in view the large volume of transaction by the dealer, the enhancement by 180 times is not in higher side. It is the dealer when caught by the Intelligence Wing, has advanced the explanation that, it used to enter the goods received through courier service in the end of every month. Such practice is not in accordance to law. Hence, no leniency should be extended to the dealer. It is found that, the dealer had received medicine of Rs.1,000/- through courier service which is not reflected in the register. This is a very small amount in comparison to the volume of transactions shown by the dealer. Similarly, it is also believed that, the medicine received through courier service are necessarily small in quantity and less in price keeping in view the volume. It is also noticed that, the Intelligence Wing could detect only one suppression and to that effect explanation of the dealer is, it is only due to oversight and mistake, such entry was made and all the entries were finally made and cross verified in the end of

every month. Keeping in view the rival submissions, I am of the considered view that, the authority below has acted whimsically and arbitrarily while raising the enhancement by 180 times. In normal course, there should not be any replacement of best judgment assessment. But in the case in hand, when the suppression amount is very low i.e. Rs.1,000/-, it is believed that the enhancement should be confined to 100 times, which will be more reasonable and just as the case in hand. Accordingly, it is ordered.

The suppression as determined by both the fora below are confirmed, whereas the enhancement of the GTO by Rs.1,80,000/- is reduced to Rs.1,00,000. Demand of tax with penalty be raised accordingly on re-computation by the AO. The matter is remitted back to the AO for re-computation of the tax liability and raise demand accordingly.

Dictated and Corrected by me,

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

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(S. Mohanty)
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