

BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 134/2008-09

(Arising out of order of the Id.ACST (Appeal), Puri Range, Bhubaneswar, in Appeal No. AA.246/BH.II/05-06, disposed of on dtd.08.12.2007)

P R E S E N T :

Sri Sashikanta Mishra Sri S. Mohanty & Sri P.C. Pathy
Chairman Judicial Member-II Accounts Member-I

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

... Appellant

-Versus -

M/s. Nigam Associates,
A/19, Sahidnagar,
Bhubaneswar.

... Respondent

Appearance :

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

For the Respondent ... Mr. D.B. Jena, Advocate

Date of Hearing: 04.05.2018

Date of Order: 05.05.2018

ORDER

This second appeal is directed against the order of learned First Appellate Authority/Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (in short, FAA/ACST) in First Appeal Case No. AA.246/BH.II/05-06 dtd.08.12.2007 in confirming the assessment order passed by Assessing Officer/Sales Tax Officer, Bhubaneswar-II Circle, Ward-E (in short, AO/STO) for the assessment year 2000-01 u/s.12(8) of the Odisha Sales Tax Act, 1947 (in short, OST Act).

2. The assessee-dealer was initially subjected to regular assessment u/s.12(4) of the OST Act for the tax period 2000-01. However, on the strength of AG Audit report, the assessment was re-opened as per the provision u/s.12(8) of the OST Act. The Audit team has leveled the charge against the dealer to the effect that, in course of scrutiny of the assessment of another registered dealer M/s. Banzfab Technologies Pvt. Ltd., the return filed by the dealer indicates purchase of first point tax paid goods to the tune of Rs.22,79,508.91 from the said dealer during the tax period in question. However, on cross verification of the return of the said dealer, it is found that, the present dealer had shown taxable turnover of Rs.8,78,751.22 with first point tax paid sale at Rs.15,000/- during the said period. The discrepancy to the tune of Rs.13,85,757.69, was suggested as sale suppression by the dealer.

3. During re-assessment, the AO found the allegation established as the goods sold to M/s. Benzfab Technologies by the instant dealer were not reflected in the sale account, no bills were issued against those alleged transactions. The dealer's plea that, because the purchasing dealer M/s. Benzfab Technologies had not made payment, so the bills were not raised was not accepted by the AO and in consequence thereof, he rejected the books of account of the dealer and proceeded with the assessment on best judgment. He enhanced the return figure of the dealer by Rs.13,85,757.69. On calculation of tax at appropriate rate, the tax together with surcharge was determined at Rs.3,78,471. Adjusting the tax already paid, the balance tax due was raised to Rs.2,43,911/-. Besides the tax due, penalty to the tune of Rs.3,65,867/- was levied and thereby, the total demand was raised to Rs.6,09,778/-.

4. Being aggrieved by the assessment as above, the dealer preferred first appeal whereby the FAA remanded the matter for assessment afresh with the reasoning that the AA had based his calculation on the report submitted by the AG without taking into consideration the actual return figure of the dealer. There was some mis-matching in calculation of figures between the two. The impugned order further reveals that the assessment record was not made available to the FAA. In this circumstances, the FAA had remanded the matter to the AA for assessment afresh.

While the matters stood thus, State being aggrieved, preferred this appeal on the contention that, the discrepancies found by the AA is correct and therefore, the order of the FAA should be set-aside.

5. As mentioned above, the audit team had reported the fact of sale suppression by the instant dealer and it was detected by them in course of verification of the return of the purchasing dealer i.e. M/s. Benzofab Technologies Pvt. Ltd. The assessment was accordingly re-opened and during the re-assessment the AA found the allegation in audit report established. However, the FAA has detected that there was wrong calculation and no proper verification of the return of the dealer was done. Therefore, he remanded the matter to the AO for assessment afresh on proper verification of the books of account and the audit report. The FAA has not given any findings on the question of allegation of sale suppression. He has detected some arithmetical error and wrong committed in consideration of the sale figure of the dealer. We do not find any reason to hold the impugned order illegal in any manner. No evidence whatsoever is adduced by the State to substantiate that the findings of the FAA is not as per record. It is for the AA to verify the exact amount of sale suppression basing on the AG Audit report. So, in no case it can be said that, any wrong has been committed by the FAA

and accordingly it is held that, the impugned order calls for no interference. Accordingly, it is ordered.

The appeal preferred by the State is dismissed on contest as of no merit.

Dictated & corrected by me,

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

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

I agree,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I