

**BEFORE THE DIVISION BENCH : ODISHA SALES TAX TRIBUNAL, CUTTACK.**

**S.A. No. 560/1999-2000**

(Arising out of the order of the learned ACST, Sambalpur Range, Sambalpur in first appeal Case No. AA 37(SA.I) of 97-98 disposed of on 10.12.1998)

**Present :- Smt. Sweta Mishra &  
2<sup>nd</sup> Judicial Member**

**Shri Srichandan Mishra,  
Accounts Member-II.**

M/s Sambalpur Roller Flour Mills Pvt. Ltd.  
Dhankauda, Sambalpur.

..... Appellant.

-Vrs.-

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

..... Respondent.

For the Appellant:

: None.

For the Respondent:

: Mr. S.K. Pradhan, Addl. S.C.(C.T.)

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**Date of Hearing : 25.06.2021**

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**Date of Order : 05.07.2021**  
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**ORDER**

Previously, this second appeal was filed by the dealer-appellant against the order passed by the learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur ( in short, ld.FAA) in first appeal Case No. AA 37(SA.I) of 97-98 disposed of on 10.12.1998 who dismissed the appeal and confirmed the order of assessment passed by the learned Sales Tax Officer, Sambalpur I Circle, Sambalpur involving an extra tax demand of Rs.3,55,172.00 under Section 12(4) of Odisha Sales Tax Act for the assessment year 1995-96. The above demand was confirmed by the Division Bench of this

Tribunal on 03.08.2009 in S.A. No.560/1999-2000 against which the dealer-appellant filed STREV bearing No.50/2010 before the Hon'ble Orissa High Court. The Hon'ble Court vide their order dtd.18.03.2021 remanded the case to this Tribunal with the following order:-

*“8 Considering that the impugned order pertains to the transactions of the year 1995-96, it is directed that the appeal be listed for directions before the Tribunal on 12<sup>th</sup> April, 2021, and be disposed of by the Tribunal not later than 13<sup>th</sup> July 2021, by a reasoned order in accordance with law. If the Petitioner is aggrieved by such order, it will be open to it to seek further appropriate remedies in accordance with law.”*

2. Accordingly, the case was reopened and intimations were issued to both the parties for hearing of the case. However, the authorized representative of the dealer-appellant submitted a letter dtd.24.06.2021 by e-mail giving consent for disposal of appeal as under:

**“The undersigned A.R. do hereby give his consent to dispose off the appeal without his physical presence on the basis of exhaustive statement of facts and grounds of 2<sup>nd</sup> appeal, a written submission filed on 31.07.2009 and paper-book containing 66 pages.”**

Accordingly, the case was heard on 25.06.2021 on the basis of averments rendered by the State-respondent and documents filed by the appellant as per his letter dtd.24.06.2021. Before delving into the

issues involved, the statement of fact and grounds of appeal filed by the dealer-appellant is taken into consideration which is as under:-

“1. For that the appellant was prevented by sufficient cause to furnish certain wanting IB declaration forms to the tune of Rs.1,41,866.49 which the appellant craves leave to file the same at the time of or before hearing of the appeal.

2. For that with regard to the visit made by IST. Investigation Unit, Sambalpur along with the Sales Tax Officer of the said Unit on 6.1.96 and when shortage of four bags of Maida had been found, explanation at the spot had been given that if the goods are found to be damaged or inferior in quality, the same is rejected and accordingly re-processed. This explanation furnished at the spot was neither questioned nor any evidence to that effect had been required to be produced. The learned Assessing Sales Tax Officer while completing the assessment has not accepted the explanation and has treated the shortage as suppression which in the facts and circumstances of the case is totally uncalled for and unwarranted and the explanation could not be treated as afterthought.

2.1. For that the shortage by itself does not result in any suppression of sale as has been held by the Hon'ble Orissa High Court in the case of Mahabir Rice Mill, reported in 54 STC page 218, as under;

*“Mere shortages also will not make a dealer liable to tax on purchase or sales as decided by the Hon’ble High Court in the case-law cited by the appellant”.*

*“In the absence of any supporting material, merely on the report of the Inspector, the assessing officer should not have jumped to the conclusion that there had been purchase and ale making the assessee liable to tax”.*

*The inference of suppression drawn by the learned Assessing Officer is therefore totally wrong, illegal and unwarranted.*

3.. *For that there was a visit on 11.7.1995 at about 11.45 AM by the Inspector of the circle along with so many Sales Tax Officers of the Circle when a physical stock verification was done and in doing so they found practically no stock discrepancy whatsoever.*

*The visiting Inspector and the Sales Tax Officers collected 129 torn pcs of papers from the dustbin and simply after recording a statement from the Manager of the concern they took away those 129 torn pcs of papers without getting the same countersigned or initiated by the Manager.*

3.1.. *For that behind the back of the appellant the alleged 129 torn pcs were pasted according to the sweet-will of the concerned officer and from that it has been tried to make out a case against the appellant company without any valid ground or reasons. In so doing the alleged*

*torn pcs are made to look like challan or slips mainly used for transport of the goods or for delivery to be given by the Godown keeper. In this respect, the explanation as furnished by the appellant when the matter was confronted in the course of the assessment proceeding, is as under;*

*(i) The torn slip has lost all its evidentiary value when those were torn away when a transaction did not materialize.*

*(ii) The torn papers had been pasted in a manner which do not reflect proper making of the alleged challans or slips.*

*(iii) Even after such making certain papers had no dates which could not be correlated to the date 10.7.1995.*

*(iv) There is no evidence that the goods as per the said alleged torn challan or slips had been delivered.*

*(v) There is also no evidence that any sale had been materialized and completed and not accounted for.*

*(vi) Both the quantity, truck number and the alleged purchasers name have been inter-changed or inter-mixed which could give correct picture of the alleged would be sales or transactions.*

*(vii) No enquiry has been made from the alleged concerned purchasers if the alleged sales had materialized.*

(viii) *No enquiry has been made from the concerned check gates if the goods had passed through their checkgates or no which should have been done when specifically requested by the appellant and which could not be brushed aside on flimsy grounds.*

(ix) *No stock discrepancy had been found on the date of visit and it was not possible to make such huge sales without accounting for the production and alleged consequential sales.*

4.. *For that the learned Sales Tax Officer has unfortunately failed to take into consideration the explanation furnished by the dealer-appellant in the course of the assessment proceeding and has drawn unfortunate and unwarranted conclusions of suppression of sales to the extent of Rs.2,31,668.10 only from the said 129 pcs of torn papers which had no evidentiary value whatsoever against the appellant particularly when no stock discrepancy was found and particularly when the appellant could not produce do much unaccounted for stock.*

5.. *For that the reason of not giving any delivery as per the prepared challans even if assumed, although not admitted, was further fortified by the fact that there was certain blockade on Road at Dhankauda on that date and as such most of the vehicles could not arrive and consequently no delivery could be made.*

6.. *For that as urged by the appellant, the learned Sales Tax Officer should have caused necessary enquiries from the checkgates if*

*the goods in question had passed through such gates. This contention of the appellant could not be discarded on the plea that on certain occasions certain purchasers of the appellant have got the goods transported without getting the same counter-checked at the Laxmidungri Checkgate.*

7.. *For that in the facts and circumstances of the case, the allegation of sale suppression on account of visit on 6.01.96 and 11.7.95 could not be quantified at Rs.2,31,668.10 and on the said basis the learned Assessing Officer could not estimate the annual sale suppression of the appellant at Rs.92,66,724.00 at 40 times of the alleged sale suppression alleged to have been suppressed being 15 per-cent of the Gross turnover returned.*

8.. *For that the books of accounts of the appellant are not liable to be rejected as incomplete, understated or unreliable and there is no justification for completion of any assessment to any best of judgment.*

9.. *For that the assessment is also not a best judgment assessment but is rather most capricious, whimsical and arbitrary.*

10.. *For that the levy of surcharge in the facts and circumstances of the case is wholly wrong and unconstitutional.*

11.. *For that in the facts and circumstances of the case, the learned Asst. Commissioner has completely erred in confirming the assessment without properly considering and without verifying the*

*truthfulness or otherwise of the contentions of the appellant and without considering the evidences produced by the appellant.*

12.. *For that the leaned Asst. Commissioner has acted not like a quasi-judicial authority but has acted purely as a pro-revenue authority in confirming the assessment.*

13.. *For that the assessment is otherwise wrong, illegal and without prejudice, excessive.”*

3. The brief fact of the case is as follows:-

That, in the instant case, the dealer appellant owns a roller and flour Mill where he mills wheat into Atta, Suji and maida etc. for sale and for his day-to-day business, he maintains purchase, sale and stock account along with other relevant accounts. At the time of assessment, the LAO, after examining books of accounts with other documents filed vis-à-vis three nos. of fraud case reports duly confronted to him, observed as follows:-

- a) That, in spite of reasonable opportunities availed, the dealer failed to submit balance form I-B as well as tax exemption certificates towards him claim of exemption of tax on value Rs.1,41,866.49 which is taxed at appropriate rate of 4%.
- b) That, he confronted the fraud report (in short, FR) submitted by the Investigation Unit, Sambalpur wherein it is alleged sale suppression

of Rs.2,200.00. The Investigating Officers after verifying the available physical stock on the date of their visit on 6.1.1996 vis-à-vis books of accounts produced found shortage of four bags of Maida weighing 90KG each valued at Rs.550.00 per KG, aggregating to Rs.2200.00 against which the dealer contended before the Investigating Officers as well as at assessment that the above shortage occurred due to wastage and rejection of low quality products. However, the LAO rejected such contention as the dealer could not show rejected quantity of low quality products for verification before the Investigating Officers and thus, established suppression at Rs.2200.00.

- c) That, the dealer was also confronted with circle fraud report bearing No.15 dtd.18.07.1995. As per the said report, the Circle IST along with the STO visited the business premises of the dealer on 11.07.1995 and verified the books of accounts produced. In course of inspection, the IST recovered 129 pieces of torned paper from the dustbin kept inside the office room of the appellant and took the same for verification. The IST, with careful observation, related each torned paper and brought them to their original shape (before being torned) thus forming 10 number of chalans issued by the instant appellant against sale of Atta, Maida, Suji and wheat bran to different dealers of Sambalpur and Bargarh. Moreover, from the torned papers, 16 number of slips were re-constituted. Dispatch of

Atta, Suji, Maida and wheat bran to different dealer of Sambalpur, Bagarh, Brajrajnagar and Talcher by the appellant-dealer clearly appears to be noted down in the said 16 numbers of slip. On cross verification of the above said challans and slips issued by the dealer-appellant, it was noticed that the said transactions have not been accounted for by the appellant in the sale register, nor sale bills against the chalans and slips were issued. Against such irregularities, the Manager of the appellant contended before the visiting officials that those papers did not relate to their business transaction. In course of assessment hearing, on being confronted with the above said allegations, the appellant resorted to various explanation that the torned papers were of no relevancy to his business transaction, that those were not countersigned by the Manager on the spot, that the torned papers have been pasted together according to the sweet-will of the reporting I.S.T., that the unused or undelivered chalans or slips are of no use of the company, that he has got loose slip system of maintaining the chalans and any chalan or slip cancelled or destroyed loses its significant, that on getting orders for supply of goods, the Manager prepares chalans and if not delivered tears away the chalans at the close of the day, that if only the vehicle turns up and take delivery of the goods, the sale bills are prepared and entered into the sale register. That on 10.07.95 four numbers of such bills have been prepared against

delivery of goods as found mentioned in the torned chalans and slips. But the contention of the dealer was rejected by the LAO treating the same as deliberation of falsehood. The chalans torned and recovered from the business premises of the appellant were printed chalans of the dealer-appellant on which the R.C.No. granted under the OST Act, the Telephone No. of the dealers, description of the goods sold, quantity, rate amount and terms and conditions of sales printed. The slips recovered also bear the printed serial number. At a belated stage, the dealer submitted before the LAO that there was a bandh observed by the people of Dhankauda on 10.7.95 as a mark of protest against disruption of supply of electricity to the village as a result of which the National highway was seized by villagers for a long period and communication was disrupted. Hence, the number of vehicle which was due to arrive at the appellant's godown, did not turn up on 10.7.95 resulting in the destruction of the said chalan. The LAO rejected this explanation with the observation that the chalans could have been cancelled or re-dated but because of the inspecting officials on 11.7.95, the same were torned out. The appellant also requested the Assessing officer to enquire regarding the passing of the vehicle mentioned in the alleged chalans from the Departmental Check-gate. In the refuttal of the appellant's request, the LAO relied upon another report of the Circle. In his report No.57 dt.30.3.96, the IST of the Circle reports that he

along with the STO of the Circle intercepted the vehicle No.OIS-8902 at Gosala area (after Laxmidunguri checkgate) on 2.12.95. The driver in-charge of the goods produced chalan No.408 issued by the instant appellant against sale/dispatch of 5 bags Maida, 10 bags Suji, 20 bags Atta to M/s. Bikash and Co., Bargarh and another chalan No.409 dt.2.12.95 issued by the appellant to M/s. Bikash and Co., Bargarh against sale of 10 bags whole mill atta. Also, he intercepted the vehicle No.MP-26-9101 at Gosala area on the same date and the driver in support of goods produced chalan No.410 dt.2.12.95 issued by the appellant against sale of 5 bags of Maida, 10 bags of Suji, 25 bags atta and 5 bags super fine atta to M/s. Bhagwati Store, Bargarh. But, the chalan in both the trucks were not checked at Laxmidunguri Check-gate en-route. The driver stated that he brought the goods by-passing the Laxmidunguri check-gate on the instruction of the owner of the goods. This was a proof that all the goods dispatched by the appellant does not en-route through the departmental check-gate to have a cross-verification for ascertaining whether the goods have been sold or not. Accordingly, out of 10 nos. of challans and 16 nos. of slips in which allegations of transactions are made, the LAO, after proper examination and due confrontation, established suppression of sale in 10 challans and 6 nos. of slips amounting to Rs.2,29,468.10 in toto. Thus, he established total suppression of sale of Rs.2,31,668.10 which he enhanced by 40

times and estimated total suppression at Rs.92,66,724.00, taxing it @4%, resulting in a total demand of Rs.3,55,172.00 for the impugned period.

4. Being aggrieved with the order of assessment, the dealer preferred first appeal before the Id. FAA and argued to reduce the assessment to the return figures as the order is otherwise wrong, illegal, without prejudice and excessive as per his grounds of appeal with documents filed. However, the Id. FAA with his exhaustive observation in his appeal order dtd.10.12.98 dismissed the appeal and confirmed the assessment order passed by the LAO.

5. Being further aggrieved by the orders of both the fora below, the dealer preferred second appeal before the Tribunal who by their order dtd.03.08.2009 confirmed the order of Id. FAA against which the dealer filed STREV before the Hon'ble Orissa High Court bearing No. 50 of 2010. The Hon'ble High Court by their order dtd.18.03.2021 directed the Tribunal to dispose of the case by a reasoned order in accordance with law.

6. Accordingly, the case was heard on 25.06.2021 on the basis of averments rendered by the State-respondent and documents filed by the appellant as per his letter dtd.24.06.2021. After careful examination of all the information available on record, the tribunal observes as follows:-

- i. That, the dealer-appellant could not file/ submit the balance required form 1B for Rs.1,41,866.19 at assessment and first appellate stage towards his claim of exemption of tax. In the meantime, more than 24 years have been elapsed since the order of assessment. Hence, craving leave to file the same is rejected. The dealer-appellant is directed to pay the required tax on the above value.
- ii. That, shortage of 4 bags of Maida detected by the Investigation Unit, Sambalpur for which the dealer contended that it occurred due to rejection of low quality products and wastage. This contention is rejected as the appellant could not show rejected quantity of low quality products for verification before the IOs of investigation Unit, Sambalpur and hence suppression to the tune of Rs.2200.00 is established.
- iii. That, after thorough examination of available documents on record, the LAO dropped some allegations in the Circle Fraud Report bearing No.15 dtd.18.07.1995 and established sale suppression of Rs.2,29,468.10 with his detailed reasoned order that does not require further interference being just, proper and in accordance with the Statute. Moreover, in course of hearing, it is observed that the grounds of appeal taken at this level have already been taken by the dealer-appellant before the forums below. Both the LAO and the Ld.

FAA have taken due consideration of these grounds in their respective orders. Before this Tribunal, the dealer-appellant has neither filed any new grounds nor produced any further relevant documents in support of his contention. Moreover, it is noticed that each point of contention and explanation of the dealer-appellant has already been taken into consideration by the LAO in course of assessment hearing and reasonable as well as meaningful findings have been adduced in the assessment order. By force of argument and reasoning, the explanation offered by the appellant are refuted and sale suppression established. No further materials in support of his contention have been placed before the Tribunal for consideration. Accordingly, actual sale suppression of Rs.2,29,468.10 as established by both the fora below is upheld.

- iv. That, addressing on the question of enhancement, it is observed by the Tribunal that there must be a proper nexus between actual suppression and enhancement made, taking into consideration the volume of transaction and other relevant factors involved. In this connection, the Tribunal refers to the following case laws of Hon'ble Apex Court on the principles of best judgment assessment:

- a) In case of State of Kerala Vrs. C.Velukutty reported in (1966) 17 STC 465 (SC), it is held by the Hon'ble Apex Court that Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon arbitrary caprice of a judge but on settled and invariable principles of justice. Though there is an element of guess work in a best judgment assessment, it shall not be a wild one, but shall have a reasonable nexus to the available materials and the circumstances of each case.
- b) The Hon'ble Supreme Court in case of CST Vrs. H.M.Esufali H.M. Abdulali reported in (1973) 32 STC 77 (SC) held that there must be some guess work in estimating an escaped turnover. The authority should arrive his conclusions in best judgment without any bias but on a rational basis. It should not be vindictive or capricious. If the estimates by the authority is bonafide estimate and is based on rational basis the fact that there exists no good proof in support of that estimate is immaterial.

Taking into consideration the above judgments along with nature of goods dealt in; volume of suppression vis-à-vis annual turnover disclosed for the material year; month of suppression detected in the relevant year ; modus operandi of dealer-appellant and circumstantial evidences produced, the Tribunal now reduces the

enhancement to 20 times of actual suppression detected. Accordingly, it is ordered.

7. The appeal filed by the dealer-appellant is allowed in part. The case is set-aside with a direction to LAO to make re-computation of tax in the light of above observations of the Tribunal and issue demand notice afresh to the dealer-appellant within a month from the date of receipt of this order.

The case is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(Srichandan Mishra)  
Accounts Member-II

Sd/-  
(Srichandan Mishra)  
Accounts Member-II

I agree,

Sd/-  
(Sweta Mishra)  
Judicial Member-II