

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 50 of 2016-17

(Arising out of order of the learned JCST (Appeal), Ganjam Range, Berhampur in First Appeal No. AA- 905/95-96, disposed of on dated 25.01.2017)

Present: **Shri A.K. Das, Chairman**

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

... Appellant

-Versus-

M/s. Janata Rice Mill,
Gosaninuagam, Berhampur

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri R.P. Sahu, Advocate &
Sri K. Choudhury, Advocate

Date of hearing: 25.07.2022 *** Date of order: 26.07.2022

ORDER

This second appeal, at the behest of the State, is directed against the order dated 25.01.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Berhampur Range, Ganjam (hereinafter called as 'first appellate authority') in Appeal No. AA-905/95-96 thereby reducing the assessment to ₹1,270.00 from ₹19,010.00 raised by the Sales Tax Officer, Ganjam-I Circle, Berhampur, (in short, 'assessing authority') for the period 1994-95 in the

assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. The relevant facts leading to the filing of the present second appeal are that the dealer-assessee is a rice miller who is engaged in purchase of paddy and sale of rice, broken rice and bran. The dealer-assessee in response to the notice issued u/s. 12(4) of the OST Act appeared before the assessing authority with the books of accounts, on examination of which, it (assessing authority) found the dealer to have disclosed the GTO at ₹1,06,89,566.51. The IST, Investigation Unit, Berhampur visited the place of business of the dealer on 25.04.1994, verified the stock and examined the books of accounts. It was opined by the IST, Investigation Unit, that the dealer sold excess stock of Q. 2.50 of broken rice and suppressed purchase of Q. 3,125 of paddy during the period from 01.04.1994 to 25.04.1994. When the dealer was confronted with the allegations made in the Fraud Case Report (FCR) bearing No. 11 dated 30.04.1994, it could not offer any explanation regarding excess stock of Q. 6.62 of paddy and shortage of Q. 4.17 of rice.

2(a). Again on 27.10.1994, the Sales Tax Officer along with IST, Vigilance Unit, Berhampur visited the business premises of the dealer and verified the stock. The books of account could not be verified to ascertain the actual stock position due to non-availability of the same, which was examined on 31.12.1994. On examination of the account the STO found no discrepancy. It was only alleged that the dealer-assessee to have suppressed purchase of paddy of 1259 bags, i.e. Q. 944.45. The allegation contained in the second FCR bearing No. 172 of 1994-95 submitted by the STO, Vigilance, Berhampur on being confronted to the dealer-assessee, it explained that it had not purchased any paddy during the October, 1993 and had not withheld the books of account intentionally from being produced before the assessing authority. It was further explained that as per the procurement policy of 1994-95 of Government of Odisha, the millers were given liberty for inter-State movement of rice without any permit to sell the same in open market, if target fixed was fulfilled.

2(b). The assessing authority on verification of the books of account and other materials on record produced by the dealer-assessee raised extra demand of ₹19,010.00

holding that the dealer has suppressed purchase of Q. 25.00 of paddy; that the dealer has not maintained the books of account correctly in course of business and accordingly, the same are rejected and the assessment is completed to the best of judgment. Suppression of purchase of paddy determined at Q. 1000.00 during the relevant year and purchase price of said paddy and sale price of broken rice and bran were added to the GTO of the dealer, which was determined at ₹7,40,550.00. The dealer-assessee was allowed deduction of ₹45,816.00 towards sale of bran. Accordingly, the assessing authority raised an extra demand of ₹19,010.00.

2(c). The dealer-assessee challenging the demand raised by the assessing authority, preferred appeal before the first appellate authority, i.e. Asst. Commissioner of Sales Tax, Ganjam Range, Berhampur vide Appeal No. 905/1995-96 dated 23.12.1996. In the first appeal, learned first appellate authority though confirmed the discrepancy established by the assessing authority, reduced the enhancement of turnover from ₹7,40,550.00 to ₹2,50,000.00 and determined the tax at ₹33,263.00 as against ₹19,010.00 raised by the assessing authority. The dealer-assessee being

further aggrieved with the demand raised by the first appellate authority, preferred second appeal before this Tribunal, which was remanded back to the first appellate authority for recomputation of the tax liability. The first appellate authority after remand, recomputed the tax liability of the dealer-assessee and reduced the tax demand to ₹1,270.00 as against ₹19,010.00 raised by the assessing authority.

2(d). The State being aggrieved against the order of the first appellate authority reducing the demand raised by the assessing authority, preferred this second appeal. No cross-objection has been filed by the dealer-respondent.

3. Learned Standing Counsel (CT) for the revenue challenged the impugned order of the first appellate authority as illegal, arbitrary, unjust and against the sanction of law. The first appellate authority did not recompute the tax liability of the dealer-assessee in just and proper manner and reduced the tax demand whimsically. He submitted to set aside the impugned order of the first appellate authority.

4. On the other hand, learned Counsel for the dealer-assessee supporting the impugned order of the first

appellate authority vehemently urged that the recomputation of tax liability of the dealer-assessee made by the first appellate authority is just, reasonable and as per law. There is no illegality or impropriety warranting interference of this Tribunal.

5. I have heard the rival contentions of the parties, gone through the grounds raised in memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The dealer-assessee, who is a rice miller, is engaged in purchase of paddy and sale of rice, broken rice and bran. The assessing authority basing on two FCRs enhanced the turnover by ₹7,40,550.00 and raised tax demand of ₹19,010.00. In appeal preferred by the dealer-assessee though the enhancement of turnover was reduced to ₹2,50,000.00 from ₹7,40,550.00, the tax liability of the dealer-assessee was computed at ₹33,263.00 as against ₹19,010.00 raised by the assessing authority. In the second appeal preferred by the dealer-assessee, the matter was remanded to the first appellate authority, who recomputed the tax liability of the dealer-assessee at ₹1,270.00. I have carefully gone through the impugned order of the first appellate authority and the calculation made by it with

regard to the tax liability of the dealer-assessee. In course of hearing of the appeal, learned Standing Counsel (CT) for the revenue could not point out any fault or mistake in the recomputation of tax liability of the dealer-assessee made by the first appellate authority. The calculation of tax liability of the dealer-assessee made by the first appellate authority appears to me just and reasonable and according to law. I do not find any illegality or impropriety in such computation made by the first appellate authority warranting interference of this Tribunal. The State-appellant has not raised any good ground in the memorandum of appeal warranting interference of this Tribunal with the impugned order of the first appellate authority.

6. For the foregoing discussions and analysis, the appeal filed by the State being devoid of any merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman