

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK

S.A.No.36/16-17

(Arising out of the order of the learned DCST, Balasore Range, Balasore, in First Appeal Case No. AA-73/BA-2005-06(OST), disposed of on 09.11.2016)

Present:

**Shri Subrat Mohanty
Judicial Member-II**

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

-Versus-

M/s. Mahadevi Traders,
At/Po-Sahadevkhunta, Balasore. ... Respondent.

For the Appellant: :Mr. S.K. Pradhan, Addl. S.C. (C.T.)
For the Respondent: :None.

(Assessment Year- 2001-02)

Date of Hearing: 18.12.201 ***** Date of Order: 18.12.2018

ORDER

The present second appeal has been directed against the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'FAA/DCST') in First Appeal Case No. AA-73/BA-2005-06(OST dtd.09.11.2016 in reducing the order of assessment passed by the learned Sales Tax Officer/ Assessing Authority, Balasore Circle, Balasore (in short, 'STO/AA') for the assessment year 2001-02 Under Section 12(4) of the Odisha Sales Tax Act, (in short, 'OST Act').

2. Facts in brief giving rise to present appeal are in an assessment U/s.12(4) of the OST Act for the period 2001-02 relating to the assessee-dealer which was passed setting the dealer exparte for non-cooperation of the dealer, the assessing authority found that the dealer had disclosed GTO at Rs.30,542.00 for quarter ending for a quarter 30/06/2001 and nil for quarter

ending 30.09.2001 and 31.12.2001. The assessing authority added Rs.30,000.00 to the GTO applying reasonable guess work and thereafter determined GTO at Rs.60,542.00. In absence of any books of accounts and in absence of any proof that the goods are first point tax paid goods or tax suffered goods, the assessing authority treated the entire GTO amount as TTO and then taxed the same at 12%. The tax as such calculated at Rs.7,265.05, surcharge at 10% on the tax calculated at Rs.726.00 was also added to it, thereby, the total tax due was calculated at Rs.7,991.54. The dealer was found having paid nil the entire amount was raised against him.

3. Being aggrieved with such demand the dealer had preferred appeal before the first appellate authority. Ld. Deputy Commissioner of Sales Tax, Balasore as first appellate authority in the impugned order had held that the dealer was dealing with electronic goods which were first point tax paid goods. Being an authorised agent of the M/s. Philips India, the dealer was found to have disclosed his sale at Rs.30,542.00 in the return filed for quarter ending 06/2001 whereas, he has shown nil return for the rest two quarters of the year. If that be, according to the first appellate authority there is no reason to enhance the GTO as done by the assessing authority. As a result, the demand is reduced to nil that is to return figure.

4. Being aggrieved with such deletion of tax demand the State has preferred this appeal. It is contended by the State that without verification of the Registration Certificate nos. of the registered dealer from whom the instant dealer has effected purchase it was not correct on the part of the first appellate authority to hold that the goods were first point tax paid goods so the impugned order need to be set aside.

5. The appeal has heard without cross objections from the side of the dealer.

6. In an exparte order the dealers return was enhanced by Rs.30,000.00. The assessment order was found to be the assumption and presumption of the assessing authority i.e. the dealer had shown his turnover of Rs.30,542.00 in the quarter ending 06/2001 but has not shown any turnover in the next quarters so Rs.30,000.00 was added to the GTO. Similarly, it is also presumed that in absence of any proof of first point tax paid goods. The dealer was found liable to pay the tax under OST Act. In appeal, the first appellate authority has scrutinised the return of the dealer and has arrived at a conclusion that the goods dealt by the dealer was first point tax paid goods and the dealer has not effected any sale purchase in the next quarters after quarter ending 06/2001. These are subjective satisfaction of the first appellate authority on scrutiny of the documents submitted before him. If the Revenue is aggrieved with such findings then burden is on the Revenue to establish that there is no basis for such finding by the first appellate authority. In absence of any rebuttal from Revenue it cannot be presumed that first appellate authority has acted mala fide. In the case in hand the assessment order was an exparte order. So the order of the first appellate authority who has gone into the details scrutiny of the documents, the findings cannot be rejected on the surmises that the first appellate authority has not verified the documents. Particularly, when there is no rebuttal from the side of the Revenue it will be unreasonable to interfere with the findings of the first appellate authority. Hence ordered.

7. The appeal by the State sans merit, is dismissed.

Dictated & Corrected by me,

Sd/-
(Shri Subrat Mohanty)
Judicial Member-II

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(Shri Subrat Mohanty)
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