

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 48(C)/2018**

(Arising out of order of the ld. JCST (Appeal), Cuttack-II  
Range, Cuttack, in First Appeal Case No.  
AA/18/CST/CUII/2016-17/10713171313000067,  
disposed of on dtd.23.11.2017)

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

M/s. Mukesh Industries,  
Jagatpur, Dist. Cuttack. .... Appellant

**-Versus-**

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

For the Appellant : Mr. S.R. Mishra, Advocate  
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 08.08.2009 to 31.08.2011)

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Date of Hearing: 08.03.2021 \*\*\* Date of Order: 09.03.2021

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**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST) in First Appeal No. AA/18/CST/CUII/2016-17/10713171313000067 dtd.23.11.2017 in confirming the assessment order passed by the learned Assessing Authority/Deputy Commissioner of Sales Tax, Cuttack-II Circle, Cuttack (in short, AA/DCST) for the assessment period from 08.08.2009 to 31.08.2011 u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules).

2. The brief facts of the case is that :

The dealer-appellant, in the instant case, is a registered dealer, who is engaged in manufacturing of different dals from out of pulses for sale. On receipt of the Audit Visit Report, learned DCST has issued statutory notice for production of books of account for assessment. In response to the statutory notice, the dealer-proprietor appeared and produced the books of account consisting of purchase stock and sales supported with the respective invoices which are examined vis-à-vis the AVR.

During the material period, the dealer has effected inter-state sale to the tune of Rs.4,56,13,561.26 on concessional rate of tax, the dealer failed to produce the relevant declaration Forms covering the aforesaid transactions for which the audit team has suggested to tax the same at appropriate rate.

Besides this, the dealer also effects sales of 'Chuni' which is obtained from the manufacturing process of Mung dal and Biri dal. In course of the assessment proceeding, the dealer has submitted declaration Form 'C' to the extent of Rs.4,55,10,483 (excluding tax). In absence of any other adverse findings, the GTO returned at Rs.4,65,25,820/- is accepted. After allowing deduction of Rs.9,12,258.85, the NTO stands determined at Rs.4,56,13,561.26. CST @2% on Rs.4,55,10,483/- and @4% on Rs.1,03,077.56 calculates to Rs.9,14,332.79. The dealer having adjusted ITC of Rs.1,47,492.85 and paid Rs.7,64,766/- is found to have paid less tax of Rs.2,073.94. Further, the dealer is liable to pay a penalty of Rs.4,147.88 u/r.12(3)(g) of the CST(O) Rules as the default is considered to be wilful. Thus, the tax

and penalty together comes to Rs.6,221.82 or Rs.6,222/- , which the dealer is liable to pay at the assessment stage.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack, who in turn, dismissed the appeal and confirmed the order passed by the learned Assessing Officer for which the demand in dispute remained as it is.

4. Being further aggrieved with the order of the learned FAA/JCST (Appeal), the dealer knocked the door of this Tribunal by way of filing of second appeal with the contention that, the order passed by the ld.FAA/JCST is illegal, arbitrary and in contravention of law and hence needs to be quashed.

5. State-respondent has filed cross objection in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The dealer has submitted the complete 'C' Forms as regard to CST transaction, which has been verified by the Assessing Authority. While at the time of assessment, the AO has not gone proper with verification as regards to submission of 'C' forms and only discussed regarding differential amount between bills and 'C' forms. The dealer-appellant while selling of its products to outside the State of Odisha has incurred some incidental expenses relating to freight and other charges against which the purchasing dealer

could not issue 'C' form. The learned Assessing Officer and First Appellate Authority have disallowed the contention made by the dealer and taxed the differential amount on the basis of non-submission of declaration forms, which is illegal and arbitrary. The order was made without affording sufficient opportunity of being heard. So, he has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The learned AO and FAA have completed the assessment/appeal based on the provision of law and factual position. Accordingly, the same cannot be treated as defective and bad in law in absence of any documentary evidence. Several opportunities were given to the dealer but the dealer did not give any satisfactory explanation in support of his contention. Finding no way out the FAA completed the appeal hearing on ex-parte basis basing on the established facts in the report and merit of the case. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant which is not sustainable in the eyes of law. So, he has prayed to dismiss the appeal and to confirm the order of the learned FAA.

8. Heard the learned Advocate Mr. S.R. Mishra appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. S.K. Pradhan on behalf of the State. Gone through

the grounds of appeal, impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case, after analysing the points raised in this appeal, I am of the view that, the points raised by the learned Addl. Standing Counsel for the State is quite satisfactory and the order of the learned FAA appears to be just and proper, which needs no interference by this Tribunal. Accordingly, it is ordered.

9. The appeal filed by the dealer is dismissed on contest. The order of the learned FAA is hereby confirmed. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

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