

**BEFORE THE FULL BENCH, ODISHA SALES TAX  
TRIBUNAL: CUTTACK**

**S.A. No. 437 of 2008-09**

(Arising out of order of the learned Asst. Commissioner of Sales Tax (Appeal), Balasore Range, Balasore, in First Appeal Case No. AA-366 & 367/MB-2007-2008, disposed of on dated 15.04.2008)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri S.M. Dash, Accounts Member-III**

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

**-Versus-**

M/s. Niraj Kumar Gupta,  
Baxabazar, Baripada,  
Mayurbhanj. ... Respondent

For the Appellant : Sri D. Behura, S.C. &  
Sri M.S. Raman, A.S.C.  
For the Respondent : N o n e

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Date of hearing: 14.12.2021 \*\*\* Date of order: 15.12.2021

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**O R D E R**

The State has filed this appeal against the order of the Asst. Commissioner of Commercial Tax, Balasore Range, Balasore dtd.15.04.2008 in Appeal Case No. AA-366 & 367/MB-2007-2008 for the period 2003-2004 and

2004-2005 u/s.23 of the Orissa Sales Tax Act, 1947, in short, the OST Act.

2. The basic question that arises for consideration in the instant case is whether the dealer-appellant who deals in manufacture and sale of outstill liquor out of mohua flower will be assessed u/s.5(1) of the OST Act or u/r.90AA of the OST Rules. In the initial assessment the learned Sales Tax Officer, in short, the STO held that the dealer is liable for payment of consolidated tax u/r.90AA of the OST Rules on the ground that the dealer-appellant has eight branches in Baripada and the excise authority has fixed the consideration money for all the branches at Rs.2,62,200.00 per month. Thus, for the year 2003-04 the net tax payable by the dealer-appellant was decided at Rs.3,73,914.00 and for the year 2004-05 the net tax payable was decided to be Rs.8,88,312.00.

3. Being aggrieved with such order, the dealer-appellant filed the first appeal wherein he pleaded that the dealer-appellant is not liable to pay tax as per the compounding principles u/r.90AA of the OST Rules as he has exercised options u/s.5(1) of the OST Act to be assessed in ordinary manner as per Sec.12 of the OST Act. The instant dealer-appellant had produced xerox copies of option exercised u/s.5(1) of the OST Act which as per the first appellate authority, in short, FAA to have been received in the Circle office on 22.04.2003 for the year 2003-04 and on dtd.25.08.2004 for the year 2004-

05. This observation by the learned FAA appears in the page-2 of his order at paragraph-3 and the said xerox copies of the option exercised u/r.90AA of the OST Rules is kept in the appeal record.

4. Upon consideration of the options exercised by the dealer-appellant and having reference to circular of Commissioner of Commercial Taxes bearing No.12534 dtd.20.06.2003, the learned FAO held that the dealer-appellant is legally correct to exercise his option to be assessed in the regular manner. Thereafter, the learned FAA assessed the instant dealer-appellant for the year 2003-04 and 2004-05 raising a demand of Rs.1,38,698.00 for the year 2003-04 and a sum of Rs.2,87,580.00 for the year 2004-05 respectively.

5. Being aggrieved with the order of the learned FAA, the State has filed this appeal for the year 2003-04 and 2004-05 on the ground that the dealer is liable to be compounded as per Rule 90AA of the OST Rules and the order of the learned FAA deciding to the contrary is incorrect in law.

6. Though the notice for hearing has been served on the respondent-dealer nobody appeared on his behalf on the date of hearing. The counsels of the Revenue urged that the matter be disposed of as the pleadings are already completed. The counsel on behalf of the Revenue drew the attention of the Court to the option exercised by the respondent-dealer to be assessed on regular manner for

two years i.e. 2003-04 and 2004-05. We have seen that the so-called option exercised by the respondent-dealer for the year 2003-04 which has been allegedly received by the office, is a manipulated document wherein, the month and year has been overwritten. It appears that the number representing the month and the year has been manipulated and the said application is undated and the seal is not initialled by any government functionary. Similarly, another option has been exercised u/s.5(1) of the OST Act for the year 2004-05, wherein the dates is severely manipulated so far as number representing day, month and year are concerned. Upon such manipulated documents, the learned FAA had accepted the claims of the respondent-dealer to be assessed u/s.12 of the OST Act instead of u/r.90AA of the OST Rules. It is established that the fraud vitiates the proceedings. In this case the documents produced before the FAA is manipulated and therefore a fraud has been committed on the Revenue. As a result, we have no hesitation to say that the first appellate order being founded on manipulated records, cannot be sustained in law. No contention was raised before the assessing officer regarding exercise of option u/s.5(1) of the OST Act for which there is no discussion in the assessment order to that effect.

7. In the result, we are of the considered view that the State appeal has to succeed and consequently the

order of the first appellate authority is hereby set aside.  
The order of the STO for the respective years is restored.

Dictated & Corrected by me

Sd/-  
(S.M. Dash)  
Accounts Member-III

Sd/-  
(S.M. Dash)  
Accounts Member-III

I agree,

Sd/-  
(A.K. Das)  
Chairman

I agree,

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