

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

S.A. No.308 (V) of 2012-13

(From the order of the ld. DCST, Koraput Range, Jeypore,
in First Appeal No. AA (NGP) 29/08-09,
disposed of on 02.02.2012)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

- V e r s u s -

M/s. P. Durga Rao,
Main Road, Nbarangpur.

... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C.

For the Respondent : Mr. S. Sundaram, Advocate

Date of hearing: 23.02.2019

Date of order: 23.02.2019

ORDER

In this appeal the taxing authority has questioned the modification of the tax liability on reduction of the enhancement of suppressed turnover by the First Appellate Authority, Sambalpur Range, Sambalpur (Appeal) against the order of assessing authority in an audit assessment to be unjust and improper.

2. The audit team brought the allegation of purchase suppression of Rs.1,949.00 in the audit visit report, basing on which audit assessment

for the period 01.04.2005 to 31.03.2007 relating to the dealer M/s. P. Durga Rao, Nabarangpur, a registered dealer dealing with grocery items was taken up. As the dealer remained absent before the assessing authority, the assessment was completed setting him ex parte and thereby applying the principle of best judgment assessment. In ultimate analysis, the assessing authority treated the GTO at Rs.12,80,472.00 and TTO at Rs.10,25,536.00. Tax liability on TTO was calculated at Rs.18,017.00. The dealer having paid Rs.2,102.00 was determined at the balance tax due of Rs.18,017.00. Penalty was levied at twice of the tax due calculated to Rs.36,034.00 and thus the total demand raised to Rs.54,051.00 under the head of tax and penalty.

3. In the appeal, at the behest of the dealer, the first appellate authority had the occasion to verify the books of account of the dealer, where he found that during the period under assessment the dealer has made total purchase of goods from inside the state at Rs.12,04,571.88 out of which he purchases MRP goods at Rs.5,737.50, tax free goods at Rs.2,08,041.46, 4% tax paid goods at Rs.4,62,605.91, 12.5% tax paid goods at Rs.4,64,049.75 and claimed ITC at Rs.76,322.48. Besides this, he purchases goods from outside the state at Rs.51,072.76. Similarly, he disclosed his total sale at Rs.11,50,608.48, out of which MRP sale at Rs.1,474.00, tax free sale at Rs.2,11,486.53, 4% sale at Rs.4,60,367.70 and 12.5% sale at Rs.4,78,280.26 and disclosed output at Rs.78,098.87. Regarding ITC, in appeal hearing stage the dealer has produced purchase register, purchase invoices and sale statement; which are examined and found correct by the first appellate authority and finally the dealer was allowed ITC of Rs.76,322.00.

While arrive at, as above, the first appellate authority held the dealer guilty of suppression of Rs.20,000.00 and as a result, the suppression as determined by the assessing authority at Rs.2,00,000.00 became reduced to Rs.20,000.00. The fresh calculation of tax liability by the first appellate authority accordingly reduced to the tax due from the dealer

to Rs.2,150.67, penalty of Rs.4,301.34 thereby, ended with total demand reduced to Rs.6,452.00 as against the demand raised by the assessing authority at Rs.54,051.00.

4. Felt aggrieved, by such reduction in demand, the Revenue has questioned the impugned order to be whimsical as the first appellate authority reduced the enhancement from Rs.2,00,000.00 to Rs.20,000.00 without any basis.

5. The appeal is heard without cross objection.

6. Advancing argument for the Revenue, the learned Addl. Standing Counsel submitted that, the assessing authority had applied the principle of best judgment assessment since the dealer did not appear before him and the enhancement by Rs.2,00,000.00 is reasonable. Here, the audit assessment was necessarily passed u/s.43 (2) of the OVAT Act since the dealer was absent before the assessing authority, whereas the appeal was heard in presence of the dealer on scrutiny of the books of account and connected documents relating to the sale/purchase turnover of the dealer.

7. Gone through the impugned order, it is found that, the first appellate authority has accepted the books of account and held that, since the dealer has failed to explain the suppression detected by the audit team for the day, the suppression is limited to Rs.20,000.00 only. The audit team had reported about suppression at Rs.1,949.00. It is not made clear how this amount was enhanced to Rs.2,00,000.00 by the assessing authority. Orders of assessing authority is found to be whimsical and without proper application of conscious to the volume of transaction of the dealer for a particular assessment period and possible suppression in comparison to the actual suppression detected. But, the order as it revealed the first appellate authority has taken consideration of the actual detected suppression and the period of assessment and thereafter arrived at a conclusion that, the suppression should be limited to Rs.20,000.00. This is a subjective satisfaction of the first appellate authority when he has the opportunity to scrutinize the books of account in comparison to the allegations by the

audit team. So, the reasonable guess work by the first appellate authority seems to be more just and proper in comparison to the guess work by the assessing authority who has passed an exparte order. In the ultimate analysis, it is held that the suppression as determined by the first appellate authority is quite reasonable. In consequence thereof, the assessment by the first appellate authority who is an extended forum of assessment is as per law. Accordingly, it is ordered.

8. The appeal sans merit. Hence, dismissed.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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