

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

S.A. No.594 of 2011-12

(From the order of the Id. ACST, Balangir Range, Balangir,
in First Appeal Case No. AA-120 (KA/KR) of 2007-2008,
disposed of on 05.06.2008)

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 2nd Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III**

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

... Appellant

- V e r s u s -

M/s. Shankar Agro Industries,
Parkod,
Dist.- Nuapada.

... Respondent

For the Appellant : Mr. M.S. Raman, A.S.C.
For the Respondent : N o n e

Date of Hearing: 22.02.2019 **** Date of Order: 22.02.2019

ORDER

What should be the quantum of penalty u/s.12(5) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) is the moot question raised for decision in this appeal preferred by the Revenue.

2. Briefly stated the facts in case are, the instant dealer, a rice miller was assessed u/s.12(5) of the OST Act for the period of assessment 2003-04. The assessing authority in course of the assessment rejected the books of accounts as the same found not reliable and then completed the assessment applying the principle of best judgment assessment. He determined the GTO/TTO at Rs.2,42,71,610.20, then taxed it @ 4% which came to Rs.9,70,864.40, whereas, surcharge on sale of bran and gunnies determined at Rs.2,243.94. Besides, the dealer was imposed with penalty as per sec.12(5) of the OST Act calculated to Rs.1,00,000.00. Thus, in total an

amount of Rs.10,73,108.00 was determined towards tax, surcharge and penalty. After allowing set off to the tune of Rs.3,56,569.80 and the tax already paid at Rs.3,40,000.00, the dealer asked to pay balance amount of Rs.3,76,536.00.

3. In appeal at the instance of the learned ACST, Balangir Range, Balangir as first appellate authority re-determined the GTO/TTO and tax liability. After reconciliation of set-off, the balance tax due was calculated at Rs.6,12,824.54. Above it, penalty of Rs.10,000.00 was imposed. Adjusting the tax already paid the dealer was asked to pay balance tax amount of Rs.2,82,825.00. However, the first appellate authority vide the impugned order finally determined the amounts payable by the dealer at Rs.93,714.00 (the order is not specific how the amount is reduced from Rs.2,82,825.00 to Rs.93,714.00).

4. When the matter stood thus, Revenue has preferred this appeal challenging the calculation of penalty by the first appellate authority to be wrong imposed in-contravention to the provision u/s.12(5) of the OST Act which was in force during the period of assessment.

5. The appeal is heard in absence of the dealer since, the dealer did not participate in the hearing in spite of receipt of the notice of hearing.

Findings and reason thereof

6. The provision u/s.12(5) of the OST Act w.e.f. 03.10.2010 reads as follows:-

“(5) If upon information which has come to his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless, without sufficient cause, failed to get himself registered, the Commissioner may, at any time within five years from the expiry of the year to which that period relates, call for return under sub-section (1) of Section 11, and after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and may also direct that the dealer shall, pay, by way of penalty, in addition to the amount so assessed, a sum equal to one and half times that amount:

Provided that no penalty shall be levied for the quarter during which the dealer first or again becomes liable to pay tax under this Act and for the period between the date of application for registration and the date of registration.”

The provision above says, in the event, the penalty shall be a sum one and half times of the tax due from the dealer determined in the assessment.

Adverting to the assessment order, it is found that, the assessing authority has imposed penalty at Rs.1,00,000.00, whereas, the first appellate authority, on the other hand imposed penalty at Rs.10,000.00. Needless to mention here that, both the fora below have gone wrong in determining the amount of penalty which is not in accordance to the provision. So, it can safely be said that the impugned order of FAA and the assessment order of the assessing authority as well, both are wrong to the extent of calculation of penalty. In consequence thereof, it is held that the matter should be remanded to assessing authority for re-computation of the liability by imposing penalty in accordance to the provision i.e. at one and half times of the amount of tax due.

In the result, it is ordered.

7. The appeal preferred by the Revenue is allowed. The penalty imposed by the FAA is wrong. The assesee-dealer is required to pay penalty at one and half times of tax due. The impugned order is modified accordingly.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
2nd Judicial Member

Sd/-
(Subrata Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III