

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 154(V)/2017-18**

(Arising out of order of the Id. JCST, Cuttack-I Range, Cuttack,  
in First Appeal Case No. 106121512000139,  
disposed of on dtd.29.04.2017)

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

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

-Versus-

M/s. Liebigs Agro Chem Pvt.Ltd.,  
Dist. Cuttack. .... Respondent

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

(Assessment Period : 01.04.2012 to 31.03.2014)

Date of Hearing: 22.04.2021 \*\*\* Date of Order: 26.04.2021

**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/ Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, FAA/JCST) in First Appeal Case No. 106121512000139 dtd.29.04.2017 in reducing the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Cuttack-I City Circle, Cuttack (in short, STO/AA) for the assessment period from 01.04.2012 to 31.03.2014 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case are that :

The dealer-respondent in the instant case is a private limited company engaged in trading of insecticides, pesticides

and bio-fertilisers on wholesale basis. The dealer-respondent in this case has been assessed to pay a sum of Rs.1,67,393.85 and the dealer has been imposed with penalty for an amount of Rs.3,34,787.90 and accordingly the liability of the dealer both against tax and penalty has been assessed at Rs.5,02,182/- by the learned STO.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack, who in turn, allowed the appeal in part and the tax demand was reduced to Rs.2,97,699/-.

4. Being dis-satisfied with the order of the learned FAA/JCST, the State-appellant has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the ld.FAA/JCST is unjust, improper and not based on facts and law.

5. No cross objection has been filed by the dealer-respondent in this case.

6. Despite affixture service of hearing notice on the dealer, for reasons best known to it, he neither engaged a counsel nor anybody on its behalf remained present before this Tribunal on the schedule date of hearing. This Tribunal, therefore, left with no other alternative except to hear the argument of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing on behalf of the State and to dispose of the matter on ex-parte basis.

7. Perused the assessment order as well as first appeal order, all the materials available in the record, grounds of appeal submitted by the State-appellant. During the course

of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA appears to be unjust and improper. As the dealer did not produce any books of accounts, the learned Assessing Officer accepted the allegation levelled against the dealer and add 5% profit margin to determine the sales suppression. At the first appeal stage, the dealer could file one work order given to Liebigs Agro Chem Pvt. Ltd., 3A, Dharmadas Row, Kolkata-700026, but the dealer's place of business is Holding No.552/W/584W.No.28, Friends Colony, Cuttack, Odisha-753001. It is also clear from his registration certificate that he has no branches or other place of business. He has only one godown, which is situated at Plot No.119B, Jagatpur Industrial Estate, Jagatpur, Cuttack. Hence, the learned FAA should not have entertained the work order which is not in the name of the present dealer-respondent. The learned FAA has also erred in law thereby taking Vermi Manure, Korean grass and mud as tax exempted items. As the dealer could not produce any books of account regarding payment of labour and services, the claim may be restricted to 20% as per Appendix to Rule 6(e) of the OVAT Rules. So, the learned Addl. Standing Counsel has prayed to allow the appeal filed by the State and to set-aside the order of the learned FAA.

8. Heard the learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment and arguments of the learned Addl. Standing Counsel at the time of hearing. The dealer has not adduced any

evidence on his behalf nor he has appeared before this Tribunal to defend himself against the grounds of appeal filed by the State-appellant. No reasonable excuse is also explained by the dealer. It is also observed that the dealer neither participated himself nor through his counsel and no documentary evidence was produced before this Tribunal. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the argument advanced by the learned Addl. Standing Counsel is quite genuine and satisfactory and this is a fit case where the matter should be remanded back to the learned FAA to re-compute the tax liability of the dealer as per provisions of law after verifying the work order. Accordingly, it is ordered.

The appeal filed by the State-appellant is allowed. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned FAA with a direction to verify the work order whether it belongs to the dealer or not and thereafter to re-compute the tax liability of the dealer as per provisions of law giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order.

Dictated and Corrected by me,

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

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