

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 185(V)/2017-18**

(From the order of the Id.JCST (Appeal), Balasore Range,
Balasore, in Appeal Case No. AA-89/BA-2016-2017 (VAT),
dtd.23.05.2017, modifying the assessment order of the
Assessing Officer)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

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

-Versus-

M/s. Shiv Charanji Sitaram,
Dist. Balasore. Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : None

(Assessment Period : 01.04.2005 to 30.09.2010)

Date of Hearing: 16.07.2019 *** Date of Order: 20.07.2019

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/JCST) in First Appeal Case No. AA-89/BA-2016-2017 (VAT) dtd.23.05.2017 in reducing the order of assessment passed by the Assessing Authority/Deputy Commissioner of Sales Tax, Balasore

Range, Balasore (in short, AA/DCST) to its return figure for the assessment period from 01.04.2005 to 30.09.2010 u/s.42(4) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The fact of the case in brief is that:

The dealer-assessee in the instant case is a registered dealer carries on business in grocery goods on wholesale basis both intra-state and inter-state purchases for resale purpose. Basing upon a tax evasion report submitted by the Audit team, Balasore Range, Balasore on 18.01.2011, the dealer-assessee was issued with statutory notice in Form VAT-306 for production of his books of account and other supporting documents for verification. On receipt of notice in Form VAT-306, the Advocate of the dealer appeared before the AA and produced the books of account comprising purchase and sale register, purchase and sale invoice, sale memos and stock register for verification. On careful scrutiny of those documents and as per the AVR submitted by the Audit team, the AA basing on the AVR, found the dealer charged with two numbers of

allegations. The Audit team pointed out that, the dealer has received gram dal, arhar dal, masur dal and toor dal against declaration Form 'F' and disclosed a sum of Rs.2,97,91,096/- in his return whereas in the books of account the same has been shown as Rs.3,06,26,527/-. Hence, an unaccounted sale of Rs.8,35,431.56 was found against the dealer, which was added to the TTO of the dealer and tax was levied accordingly. Further, the Audit team detected that, the dealer has not collected output tax on sale of unmanufactured tobacco (motihar) worth of Rs.21,47,542.06 for the financial year 2005-06 treating the same as tax exempted goods. In this context, the Audit team suggested that, the goods 'unmanufactured tobacco (motihar) comes in Sl.No.35A of Schedule-A to OVAT Act as tax exempted goods vide Finance Department Notification/dtd.31.05.2007 w.e.f.01.06.2007, but prior to that, the same found place in Sl.No.123 of Part-II of Schedule-B to OVAT Act and hence taxed the same @4% from 01.04.2005 to 30.06.2005. The AA after carefully perusing all the documents and going through the

allegations levelled against the dealer, found the Audit team has wrongly taken into consideration the unaccounted for sale against Form 'F' against the dealer, as the dealer has duly paid the tax due and filed returns in time. Similarly, he also found the mismatch of Form 'F' in utilisation statement as compared to the books of account is also a misconceived one. But as regards to the output tax payable on un-manufactured tobacco (Motihar), he discovered that the dealer has deposited the tax due on 01.03.2011 i.e. after six months of the tax audit elapsed. Thus, the AA after allowing deduction of Rs.1,92,98,945/- towards sale of tax exempted goods, determined the GTO and TTO of the dealer at Rs.62,62,24,503.88 and Rs.60,69,25,557.97 respectively. Tax @4% on the TTO was calculated at Rs.2,42,77,022.31. Besides tax, penalty was also imposed twice of the tax due u/s.42(5) of the OVAT Act to the tune of Rs.1,71,804/-. Thus, tax due along with penalty became calculated at Rs.2,44,48,826.31. Since the dealer has already paid Rs.2,42,77,129.73 at the time of filing of his return, the balance amount to the tune of

Rs.1,66,289.58 which is rounded off to Rs.1,66,290/-, became payable by the dealer at the assessment stage by the order of the Assessing Authority.

3. Being aggrieved with the assessment order passed by the AA, the dealer-assessee filed first appeal before the FAA as JCST, who in turn, reduced the entire tax demand to Nil.

4. Feeling aggrieved with such illegal, arbitrary and non-judicious order passed by the FAA, the State-appellant has come up with this second appeal by filing grounds of appeal with a prayer to set-aside the impugned order and restore the order of assessment with the contentions that, the FAA in his order has mentioned that, the assessment order was passed on ex-parte basis, but indeed the assessment order was a contested one. Moreover, he has drawn the attention of this forum on the sole point that, the assessment order and first appeal order does not correlate with each other and thus the imaginary demand in dispute has raised in this appeal mechanically and with non-application of mind.

5. Heard the learned Standing Counsel for the State-appellant, Mr. M.L. Agarwal whereas none appeared on behalf of the dealer-respondent during the course of argument. Perused the assessment order as well as first appeal order and the grounds of appeal filed by the State-appellant. In this context, it is pertinent to mention here that, before delving into the details of the case and deciding the issue involved in the dispute, this Tribunal finds it redundant to go through the matter, as the assessment order and the first appeal order does not correlate with each other at any point and there is no nexus between them. As the first appeal is passed arbitrarily and without proper application of mind hence it has legs to stand. Accordingly, it is ordered.

6. In the result, the appeal filed by the State is allowed on merit and the impugned order passed by the FAA is hereby rejected.

Dictated and Corrected by me,

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

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(S. Mishra)
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