

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

**S.A. No. 214/2003-04**

(Arising out of the order of the learned ACST, Bolangir Range, Bolangir in first Appeal Case No. AA-105(KA) of 2002-03, disposed of on 29.09.2002)

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

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

... Appellant.

-Vrs.-

M/s. Baijnath Prasad,  
AT/Po-Jaipatna, Kalahandi.

... Respondent.

For the Appellant:    :                      Mr. D. Behura, SC (C.T.)

For the Respondent:    :                      None

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**Date of Hearing : 02.02.2022    \*\*\*    Date of Order :23.02.2022**  
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**ORDER**

This second appeal has been filed by the State against the order dtd.29.09.2002 passed by the learned Assistant Commissioner of Sales Tax, Bolangir Range, Bolangir (in short, Id. FAA) in Sales Tax Appeal No. AA-105(KA) of 2002-03, allowing appeal in part thereby reducing the assessment to Rs.8,46,939.00 from Rs.18,64,730.00 raised by the Sales Tax Officer, Kalahandi Circle, Bhawanipatna (in short, LAO) under Section 12(4) of the Odisha Sales Tax Act (in short, OST Act) for the year 2000-01. Moreover, by his corrigendum order dtd.30.11.2002 framed U/r.83 of OST Rules, the Id. FAA further reduced the tax demand to Rs.7,66,488.00 for the impugned period.

Being aggrieved by the impugned orders of Id. FAA, the State preferred appeal before this Tribunal challenging the orders of the Id. FAA as wrong, illegal, arbitrary and prejudicial to the interest of Revenue.

2. The brief fact of the case in hand is that, the dealer-respondent, in the instant case, is a manufacturer of country liquor who runs as many as 8 out-still shops in different area in the district of Kalahandi. It purchases Mahua Flower and distills country liquor out of it. The LAO observed that the dealer-respondent hadn't filed regular returns nor paid correct tax for which he initiated proceeding U/s.11(3) of OST Act. Moreover, despite issue of notice and intimations, the dealer-respondent didn't turn up for assessment U/s.12(4) of OST Act. As such, considering this one as productive case, he completed the assessment on ex-parte as per figures obtained from the Office of the Superintendent of Excise, Kalahandi. As per excise figures, he observed that the dealer-respondent had purchased 6184Qntls. of Mahua Flower, the purchase price of which was assessed by him @ Rs.450 per quintal, totaling to Rs.27,82,800.00. Further, on sale of 188188 L.P.L. of Country Liquor during the impugned period, he determined the sale price at Rs.94,09,400.00 @Rs.50/- per liter. Thus, he determined the GTO at Rs.1,21,92,200.00 out of which he allowed a sum of Rs.23,52,350.00 towards tax-free sale (i.e. sale of liquor from 01.04.2000 to 30.06.2000) and accordingly determined the TTO at Rs.98,39,850.00 and taxed it at different rates as provided in the Rate Chart.

Moreover, due to non-payment of admitted tax, he levied interest of Rs.90,770.53 U/s. 12(4)(a) of the OST Act. He also charged surcharge @15% on tax due. All these resulted in an extra demand of Rs.18,64,730.00 which was challenged by the dealer-respondent before the Id. FAA.

3. At first appeal, after examining the case in detail with reference to books of account and other relevant documents produced, the Id. FAA reduced the demand finally to Rs.7,66,488.00 in his appeal order read with corrigendum order as per his following observations:

- i. Against the total purchase of Mahua flower of 6184qntls, the dealer-respondent has purchased Mahua Flowers of 1691qntls valued Rs.5,87,300.00 from registered dealers which he allowed towards deduction from GTO as per provisions of law. However, by taking the quantity of Mahua flower consumed at 4314qntl, he determined the local purchase of such flower from un-registered dealer at 1707qntl @Rs.375.00 per quintal.
- ii. He determined the sale of country liquor @Rs.30.00 per ltr.
- iii. He allowed set-off of tax of Rs.94,476.00 on PT paid Mahua flower consumed in manufacturing and sale of country liquor.

However, being aggrieved by the aforesaid order, the second appeal has been filed by the State before this Tribunal mainly on following grounds:-

- a) "That, the Id. ACST without bringing anything on record to support his view, has arbitrarily reduced the purchase value of

Mahua flower and sale value of country liquor fixed by the Id. STO.

- b) That, the Id. ACST incorrectly fixed the quantity of purchase of Mahua Flower from unregistered dealer at 1707qntls. instead of 4493qntls. (6184Q.-1691Q.) with the result that GTO got reduced to that extent.
- c) That, the Id. ACST also illegally allowed set-off of P.T. paid amounting to Rs.94,476/- vide his corrigendum order though such set-off was not allowed for the present period”...

4. However, when the matter was called on for hearing, none appeared on behalf of the dealer-respondent in spite of valid service of notice. Moreover, since, the instant appeal relates to the period 2000-01, which is more than two decades, it was taken up for ex-parte hearing in presence of Id. Standing Counsel representing the State.

5. During the course of hearing, the Id. SC(C.T.) vehemently argued against the appeal order passed by the Id. FAA claiming it as wrong, illegal, arbitrary and prejudicial to the interest of Revenue as per above grounds of appeal.

6. We, now, felt necessitated to address the main grounds taken by the State as appended in its appeal memorandum while filed before the Tribunal taking into consideration the materials available in this record including the record of lower forum.

It is revealed from the lower forums' records that the dealer-respondent has purchased 6184qntls of Mahua Flower from both registered and unregistered dealers during the impugned period out of which 1691qntls have been purchased from registered dealers at

different rates ranging from Rs.220/- to Rs.600/- per quintal i.e. 500qntls at Rs.600/- per quintal; 100qntls at Rs.400/- per quintal; 91qntl at Rs.300/- per quintal and 1330qntl at Rs.220/- per quintal. As per copies of purchase invoices available in lower forum record, it is revealed that 1330qntls @Rs.220/- per qntl have been purchased from one M/s. Baijnath Prasad, Muniguda, RC No.KA-II 861 that appears to be the same dealer-respondent with different OST RC number at other Circle. Hence, we are of the considered view that the LAO has rightly estimated the purchase of Mahua Flower @Rs.450/- per quintal that doesn't require any further interference, being just, reasonable and proper. Similarly, on sale of country liquor, the dealer-respondent has disclosed such sale @Rs.20/- per ltr whereas the ld. FAA has determined it at Rs.30/- per ltr. However, the assessment order revealed the fact that the LAO determined such sale @Rs.50/- per L.P.L. basing on previous year's assessment record. We don't find any infirmity in determining the sale of country liquor @Rs.50/- per ltr by the LAO. However, sale of country liquor was tax-exempted from 01.04.2000 to 30.06.2000 during which period the dealer-respondent has sold 48,921.60 ltr estimated at Rs.24,46,080.00 that qualifies deductions from the GTO. Moreover, purchase of 1691 qntls of Mahua Flowers valued Rs.5,87,300.00 from different registered dealers also qualifies deductions from the GTO, being tax paid goods. Accordingly, the balance purchase of 4493 qntls of Mahua Flowers from unregistered dealers estimated at Rs.20,21,850.00 is taxable @8% as per entry Sl. No.13 of the

schedule relating to list of goods liable to tax on purchase turnover in OST Rate Chart.

Addressing to the query as to whether set off of purchase tax paid amounting to Rs.94,476.00 on Mahua Flower as determined by the ld. FAA in his corrigendum order is allowable as per provisions of the law, it is observed that as per FD Notification No.14687 CTA 37/01(pt) F dtd.31.03.2001 (SRO No.149/01), the following relevant entry is made in the rate of tax on sale of goods :

Sl. No.	Description of goods	Rate of tax
24	country liquor including out-still liquor	20% subject to reduction by the amount of tax under the OST Act paid on Mahua Flower out of which it is distilled.

The above notification was made effective from 1<sup>st</sup> day of April, 2001.

As such, the dealer-respondent is not entitled for any set off of tax paid on purchase of Mahua Flower as the impugned period relates to 2000-01 whereas, the set off of tax was allowed w.e.f. 01.04.2001. The ld. FAA has grossly erred in allowing set off while assessing the dealer-respondent which is prejudicial to the provisions of law.

With above facts and circumstances of the case, the following re-calculation of tax is made for justice and equity:

a.	Purchase of Mahua Flowers from registered dealers	1691qntl.	Rs.5,87,300/-
b.	Purchase of Mahua Flowers from un-registered dealers	4493qntl. @Rs.450/- per qntl	Rs.20,21,850/-
c.	Sale of country liquor	188188 L.P.L.	Rs.94,09,400/-
		<b>GTO(D)</b>	<b>Rs.1,20,18,550/-</b>
d.	(-) tax-free sale of liquor (from 4/2000 to 6/2000)	48921.60ltr	Rs.24,46,080/-
e.	(-) purchase of Mahua Flower from registered dealers	1691qntls	Rs.5,87,300/-
		<b>TTO(D)</b>	<b>Rs.89,85,170/-</b>
	Tax @ 8% on Rs.20,21,850/- (purchase of Mahua Flower from unregistered dealer i.e. 4493qntls)		Rs.1,61,748/-
	Tax @ 20% on Rs.69,63,320/- (sale of country liquor for the period 07/2000 to 03/2001)		Rs.13,92,664/-
	Total tax assessed		Rs.15,54,412.00
	(+) surcharge @15% on tax assessed		Rs.2,33,161.80
	(+) interest on tax withheld		Rs.36,230.80
	<b>Grand Total</b>		<b>Rs.18,23,604.60</b>
	(-) already paid U/r. 36 of OST Rules		Rs.1,05,180.00
	Balance payable		Rs.17,18,424.60 or Rs.17,18,425.00

7. In the result, the appeal filed by the State is partly allowed and the demand raised by the LAO in his assessment order is reduced to Rs.17,18,425.00 for the impugned year.

The case is disposed of accordingly.

Dictated & corrected by me,

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

I agree,

Sd/-  
**(A.K. Das)**  
Chairman

I agree,

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