

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A. No. 287 of 2001-02**

(Arising out of the order of the learned ACST, Sundargarh Range,  
Rourkela, in Sales Tax Appeal No. AA 46 (RLI) 98-99,  
disposed of on dtd.08.02.2001)

**P r e s e n t :**

Shri A.K. Panda,  
1<sup>st</sup> Judicial Member

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

... Appellant

**- V e r s u s -**

M/s. K.K. Trading Co.,  
Old Station Road,  
Rourkela.

... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.  
For the Respondent ... Mr. S.B. Agarwal, Advocate

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Date of hearing: 10.08.2018                      \*\*\*\*                      Date of order: 13.08.2018  
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**O R D E R**

This appeal is directed against the order dtd.08.02.2001 passed by the learned Asst. Commissioner of Sales Tax, Sundargarh, Rourkela (hereinafter referred to as, the learned ACST) in Sales Tax Appeal No. AA 46 (RLI) 98-99, wherein and whereby, he has allowed the first appeal by reducing the balance tax demand to nil from Rs.39,619.00 raised by the learned Sales Tax Officer, Rourkela I Circle, Uditnagar (hereinafter referred to as, the learned STO) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) in respect of the respondent-dealer for the assessment year 1996-97.

2. The respondent-dealer bearing Regd. No.RL-I-636 is a trader of grocery articles. Basing upon a fraud case report submitted by the Asst. Commissioner of Commercial Taxes, Intelligence Range, Sambalpur, the

learned STO initiated a proceeding u/s.12(4) of the OST Act against the respondent-dealer for its assessment for the assessment year 1996-97 and issued a notice to appear and to produce the books of account and in response to the notice, one of the partners of the respondent-dealer firm appeared and produced the books of account which were duly been examined. As per the allegation of the fraud case report, the officials of the Intelligence Range, Sambalpur visited the business premises of the respondent-dealer on 05.02.1997 and during their visit, the respondent-dealer could not be able to produce the purchase bills relating to the physical stock in respect of Basamati rice of 62 packets, Teen Golab rice of 7 packets, Apsara rice of 7 packets and V.I.P. raw rice of 32 packets. Similarly, during their visit the visiting officials also found out excess stock of 1 packet of Guda and when the allegations of the fraud case report was confronted, the partner of the respondent-dealer firm put forth his clarification that, sale bill had already been raised relating to the sale of 1 packet of Guda and the same was to be dispatched to the purchaser by the time of the visit of the officials of the Intelligence Range. Similarly, he also put forth his clarification that, though stock of goods has properly been maintained by them, it was not possible on their part to maintain the stock account, of the raw rice in brand name-wise. On examination of the books of account though the learned STO did not find any stock discrepancy relating to the raw rice, he did not accept the clarification of the respondent-dealer, rather accepted the allegation leveled in the fraud case report to be true and genuine and determined the sale suppression to be Rs.43,600.00. Similarly, as regard the availability of excess stock of 1 packet of Guda, he did not accept the clarification of the respondent-dealer, rather accepted the allegation of the fraud case report as true and genuine and determined the sale suppression to be Rs.500.00 in that respect. Finally, after determining the actual sale suppression to be Rs.44,100.00, he determined the estimated suppression to be Rs.8,22,000.00 which is twenty times of the actual suppression and added the same to the GTO and TTO and levied tax

thereon at the appropriate rate and the same finally resulted in a balance tax demand of Rs.39,169.00, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned ACST bearing Sales Tax Appeal No. AA 46 (RLI) 98-99. On hearing and on consideration of the materials on record, the learned ACST found merit in the contention of the respondent-dealer and accordingly allowed the appeal by reducing the balance tax demand to nil from Rs.39,619.00 as raised earlier by the learned STO. Thus, being aggrieved with the order of the learned ACST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer.

5. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned ACST has not considered the matter in its proper perspective and has passed the order and as the order passed by him is erroneous and is not based upon the materials available on record, the same is liable to be set aside and the order passed by the learned STO being proper and justified is liable to be restored. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned ACST and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, the officials of the Intelligence Range, Sambalpur visited the business premises of the respondent-dealer on 05.02.1997 and during their visit the respondent-dealer could not be able to produce the purchase bills relating to the physical stock in respect of Basamati rice of 62 packets, Teen Golab rice of 7 packets, Apsara rice of 7 packets and V.I.P. raw rice of 32 packets and relating to the availability of excess stock of 1 packet of Guda and during assessment, the learned STO did not accept the clarifications put forth by the respondent-dealer, rather accepted the allegation leveled in the fraud case report to be true and genuine and determined the sale suppression to be Rs.44,100.00. Similarly, it is also seen that, the learned

STO determined the estimated suppression to be Rs.8,22,000.00 which is twenty times of the actual suppression and added the same to the GTO and TTO. But, at the first appeal stage, after a detail analysis of the entire facts and circumstances, the learned ACST found out that, the respondent-dealer has properly maintained its stock account in accordance with the provisions of the law and the discrepancy pointed out by the visiting officials is not a genuine one. The learned ACST also found out the annual turnover of the respondent-dealer to be more than Rs.3 crores and the allegation of suppression as leveled in the fraud case report on the ground of non-maintenance of stock position on brand name-wise is of very small amount. As regard the availability of excess stock of 1 packet of Guda, he found out the clarification of the respondent-dealer to be a plausible one and as such did not accept the allegation of the fraud case report to be true and genuine. On further scrutiny of the entire materials available on record, it appears that, the learned STO has not considered the matter in its proper perspective and has accepted the allegations of the fraud case report blindly. On the other hand, after considering the entire materials properly, the learned ACST has set aside the order of the learned STO by passing a well reasoned order and the same appears to be proper and justified in the facts and circumstances of the present case. As the order passed by the learned ACST suffers from no infirmity, the same needs no interference of this forum.

7. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

Sd/-  
(A.K. Panda)  
1st Judicial Member

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