

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

S.A. No. 333(V) of 2017-18

(Arising out of the order of the learned JCST,
Koraput Range, Jeypore, in 1st Appeal No.
AAV (RGD)51/16-17, disposed of on dtd.23.09.2017)

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

- V e r s u s -

M/s. L.D. Modern Rice Mill,
Padmapur, Dist.- Rayagada. ... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. N. Anand Rao, A.R.

Date of hearing: 18.12.2019 **** Date of order: 04.01.2020

ORDER

This appeal is directed against the order dtd.23.09.2017 passed by the learned Joint Commissioner of Sales Taxes, Koraput Range, Jeypore (hereinafter referred to as, the learned JCST) in 1st Appeal No. AAV (RGD)51/16-17, wherein he allowed the appeal in part by reducing the demand in the assessment made by the learned Dy. Commissioner of Sales Tax, Rayagada Circle, Rayagada (hereinafter referred to as, the DCST) for the assessment period 01.04.2012 to 25.05.2015 u/s.43 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The respondent-dealer is a rice miller who undertakes milling of paddy. The firm is a proprietorship concern being managed

by the husband of the proprietress. As per the direction of the S.P., Vigilance, Koraput Division a team of officials of Vigilance Department, Civil Supplies Department and other official witnesses made a joint verification of the stock of customer milling of paddy and rice of the firm on 26.05.2015 who detected Q. 4977 of excess paddy and Q. 99.00 of shortage rice as per the stock register and physical stock. Basing on their report, the S.P., Vigilance communicated the same to the DCCT, Vigilance to take action on sales tax angle. The respondent-dealer was noticed for a confrontation of findings of report and also for production of books of account in form VAT-307 for the tax period from 01.04.2012 to 25.05.2015. The authorized representative of the firm who happens to be the husband of the proprietress along with his Chartered Accountant appeared and produced the statements relating to the business for the said tax period. On confrontation of the report, the authorized representative of the respondent-dealer stated that, at the time of verification he was present. With respect to the excess stock of paddy of Q. 4977 and shortage of rice of Q. 99.00, the authorized representative gave his reasoning. The learned DCST verified the documents so also the memorandum along with contention of the respondent-dealer and found that the vigilance officials in their memorandum had converted the shortage of rice into paddy. Therefore, the contention of the dealer was found justified and was taken into consideration. However, as per the books of account the actual stock of rice i.e. closing balance was at Q.2364.19. At the time of verification, the visiting officials had taken stock rice of Q.1348 instead of Q. 2364.19. But, according to the books of account Q.1348.55 was the progressive delivery quantity and stock of rice was Q.2364.19 as on 25.05.2015. After taking the stock position into consideration, the learned DCST found that the respondent-dealer had excess stock of paddy of Q.3312.63 as on 26.05.2015 i.e. at the time of visit. Thus, the said excess stock of

Q.3312.63 of paddy was not in the books of account. So, the stock of paddy of Q. 3312.63 held by the respondent-dealer in his godown was unaccounted. The learned DCST held that, the respondent-dealer was liable to pay appropriate rate of tax on unaccounted paddy available in his godown as per the provision of law. The value of Q. 3312.63 of paddy was calculated at Government rate as Rs.45,05,177.00 i.e. Rs.1,360.00 per quintal. Tax @ 5% of Rs.45,05,177.00 was calculated to be Rs.2,25,258.85. Hence, the respondent-dealer was liable to pay penalty of Rs.4,50,517.70 as per Section 43(2) of the OVAT Act. Thus, the respondent-dealer was required to pay tax and penalty taken together as Rs.6,75,777.00. Being aggrieved by the order of the learned DCST, the respondent-dealer had preferred an appeal before the learned JCST.

3. The respondent-dealer during first appeal stage through the authorized agent produced the relevant documents regarding the cultivators paddy and the learned JCST accepted that the stock of Q.3066 paddy of the cultivators were kept in the mill premises for milling. The same was ascertained from the confirmation letters of the respective farmers along with ROR supporting ownership of cultivators' land filed during appeal stage. After adjusting Q. 3.66 of cultivators paddy, still there was excess stock of Q.246.63 of paddy which was valued at Rs.3,35,416.80 i.e. @ 1,360.00 per quintal. Levying the tax @ 5% on it, the tax payable came to Rs.16,771.00 on which penalty of Rs.33,542.00 was imposed u/s.43(2) of the OVAT Act. So, as per the findings of the learned JCST, the respondent-dealer was required to pay the total amount of Rs.50,313.00 instead of Rs.6,75,777.00. Hence, the appeal was partly allowed and the assessment was reduced to the above extent.

4. Being aggrieved by the order of the learned JCST, the State has preferred this second appeal on the following grounds:-

- (i) The order of the learned first appellate authority appears to be unjust and improper.
- (ii) The respondent-dealer is a rice miller who undertakes milling of paddy.
- (iii) The initial demand of Rs.6,75,777.00 was raised on the basis of the report submitted by the vigilance authority who had reported the discrepancy pertaining to excess stock of paddy of Q.4977.09 and shortage of rice of Q.99.00. After confrontation the learned DCST upheld the excess stock of Q.3312.63 of paddy as unaccounted for transaction basing on which he had raised the said demand.
- (iv) The first appellate authority had reduced the demand to Rs.50,313.00 by way of accepting the contention of the respondent-dealer that the said excess stock which was derived from the physical stock was of different cultivators who had brought to the dealer's mill for milling purpose. In support of the claim of the dealer a list of cultivators along with the quantity of paddy brought for milling was submitted before the first appellate authority as per the appellate order. The first appellate authority had reduced the excess stock to the extent of Q.26.63 to which he had valued at Rs.3,35,416.00 basing on which the reduced demand as stated above was raised by him.
- (v) The contention of the State is that the dealer had failed to provide the documentary evidence in support of his claim before the reporting authority as well as the learned DCST. Further, the statements given before the reporting authority as well as the first appellate authority are contradictory to each other. Hence, the contention taken by the dealer has been substantiated by manipulating the

documents by the dealer at the later stage which was an afterthought activity.

- (vi) The order of the first appellate authority should be set aside and the order of the learned DCST should be restored.

5. The respondent-dealer filed the cross objection stating that the first appellate authority after probing the facts and circumstances of the case, on production of valid documentary evidence have reduced the assessment. The contentions and the grounds submitted by the State-appellant are not sustainable in the eye of law. As such, the respondent-dealer prayed before this Tribunal not to entertain and consider the contentions of the State-appellant and further prayed to restore the order passed by the learned first appellate authority.

6. It was submitted by the learned Standing Counsel that, if stock is there the person who has such stock are his goods for which there is no logic in reducing by the first appellate authority. It was further submitted that there is no evidence about stock for which cross objection cannot be accepted. Moreover, the respondent-dealer has come with new ground in cross objection which is not acceptable as submitted by the learned Standing Counsel.

In the first appeal the respondent-dealer took the plea that, the excess stock of paddy belonged to the cultivators which were sent for milling and had been kept in the mill premises and adduced evidence of the same for 6132 bags i.e. Q.3066. The learned JCST accepted the same and allowed the appeal to that extent and the balance excess stock of Q.246.63 was taxed, thus reducing the demand to Rs.50,313.00. Needless to mention that, the joint inspection was conducted in presence of the respondent-dealer where no objection was raised by the respondent-dealer. Thereafter the statement was duly signed by the proprietor without any objection. It

indicates that in the proceeding at first instance before the inspecting officials when the suppression was detected, the respondent-dealer did not raise any such objection nor at any time thereafter. The respondent-dealer had also not objected before the inquiring vigilance staff and other officials subsequently with any objection and the report was forwarded. The respondent-dealer had also not raised objection before the assessing officer. The respondent-dealer taking such plea at the first instance before the learned JCST seems to be afterthought. The learned JCST had failed to take into account the vigilance report dtd.30.06.2015 wherein the respondent-dealer had casually denied of excess stock which was disbelieved by the reporting officer of the said report. Thereafter, the self-same report was also confronted by the learned DCST during assessment, wherein the respondent-dealer had not taken any such plea nor had furnished any evidence in support of such stand.

7. From the aforesaid discussion it is apt clear that, the learned JCST erred in accepting the plea of the respondent-dealer that the dealer purchased paddy from the cultivators and converted it to rice and bran and sold the same. Moreover, receipt of milling charges has never been disclosed by the respondent-dealer. The statement of receipt of paddy as detailed by the learned JCST at page-3 of his report casts doubt on the veracity of the respondent-dealer as because the goods which were received on 05.01.2015 could not remain till 26.05.2015 for milling. The ownership of the paddy remained with the respondent-dealer. As per Section 95 of the OVAT Act presumption with regard to ownership of goods rests with the dealer. As stated beforehand, the respondent-dealer was carrying on business in purchase of paddy and sale of rice. The transactions are in the course of business and are therefore liable to tax under the Act. The factum of excess stock was upheld by the forums below. Therefore, the assessment regarding suppression of purchase and sale is proved

beyond reasonable doubt. Hence, taking resort to the best judgment assessment by the learned DCST in enhancing the turnover ought not to have been interfered with by the learned JCST. Thus, the learned JCST has committed error in reducing the enhancement without any cogent and valid reason. Hence, it is necessary to restore the assessment order by allowing the appeal.

8. In the net result, the appeal is allowed on contest. The impugned order is set aside and the order of assessment is upheld. The cross-objection is disposed of accordingly.

Dictated & corrected by me,

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

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