

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 120(V)/2018**

(Arising out of order of the Id. JCST (Appeal), Balasore Range,  
Balasore, in First Appeal Case No. AA-110/BA-2016-17 (VAT),  
disposed of on dtd.02.01.2018)

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

M/s. Jasoda Agro Foods (P) Ltd.,  
Talanagar, Soro,  
Dist. Balasore. .... Appellant

**-Versus-**

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

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

(Assessment Period : 01.04.2012 to 31.03.2014)

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Date of Hearing: 15.03.2021 \*\*\* Date of Order: 16.03.2021

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**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/ Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore in First Appeal Case No. AA-110/BA-2016-17 (VAT) dtd.02.01.2018 in reducing the assessment order passed by the learned Sales Tax Officer/Deputy Commissioner of Sales Tax, Balasore Circle, Balasore (in short, STO/DCST) for the assessment period from 01.04.2012 to 31.03.2014 u/s.43(1) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The brief facts of the case is that :

The dealer-appellant in the instant case is a private limited company deals in processing of rice from paddy procured inside the State of Odisha. It transpires from the record that, after verification of detailed books of account and on confrontation of one tax evasion report submitted by the learned DCST, Vigilance, Balasore Division, Balasore, the learned DCST, Balasore Circle, Balasore completed the assessment to the best of judgment raising demand of Rs.1,14,916/- basing on the sale suppression reported in the tax evasion report.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore, who in turn, allowed the appeal in part and the assessment was reduced to Rs.75,639/-.

4. Being further aggrieved with the order of the learned FAA/JCST (Appeal), Balasore Range, Balasore, the dealer 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. Cross objection has been filed by the State-respondent in this case.

6. Despite due service of notice on the dealer, for reasons best known to it, neither engaged a counsel nor anybody on its behalf remained present before this Tribunal. 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 dealer, cross objection filed by the State-respondent. During the course of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA is just and proper. So it should be confirmed by this Tribunal. Despite reasonable opportunities, the dealer has not appeared before this Tribunal. There are unaccounted paddy of 608.98 Qtls. of Rs.7,85,540/- and sale suppression of rice, broken rice and rice bran of Rs.5,04,264/- respectively. But the learned FAA has considered the unaccounted paddy with stated reasons in his order but rightly assessed the sale suppression turnover of Rs.5,04,264/- against which the dealer-appellant has neither issued any sale bills nor entered in the regular books of account as admitted by the supervisor Sri. Sapan Kumar Patra as stated in Paragraph-2 of Page-4 of the first appeal order. Hence, taxed @5% with penalty u/s.43(2) of the OVAT Act comes to Rs.75,639/-. The escapement of turnover as per u/s.43(2) is established and the *mens rea* of the dealer-appellant is proved by the learned FAA. Hence, the penalty as per the statute is justified. There are various judgments regarding imposition of penalty u/s.43(2) such as **R.S. Joshi –Vrs. – Ajit Mills Ltd. (1971) 4 SCC, Page 110, Para-19** and **Gujarat Travancor Agency –Vrs.- C.I.T.(2)**

**(1989), Securities and Exchange Board of India –Vrs.- Cabot International Capital Corporation (2005) 123.**

The grounds taken by the dealer-appellant u/s.43 cannot be justified without u/s.39, 40, 42 or 44 is without any substance since self-assessment u/s.39 is completed and the dealer has been self-assessed through filing of returns and the same is accepted by department. Hence, the grounds taken by the dealer-appellant are liable to be rejected in toto. The determination of tax and penalty is determined based on the report of Vigilance Wing. The appellant agreed with the detections of the facts in the course of report, assessment and appeals stated in paragraph-2 of page-4 of the first appeal order. The grounds raised in the appeal petition being erroneous, unreasonable, unfair and misconceived are liable to be dismissed in toto. Having participated in the assessment proceeding without any objection as was required to do in terms of Rule 50 read with Rule 49(3) of the OVAT Rules, after finalisation of the assessment, the dealer-company is not competent to raise the issue of infirmity in notice. Learned Addl. Standing Counsel has cited one order of this Tribunal bearing S.A.No. 244(V)/2013-14 dtd.03.09.2018. Perused the order. The learned Addl. Standing Counsel has prayed to dismiss the appeal filed by the dealer and to confirm 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, cross objection filed by the State-respondent 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 substantiate the grounds of appeal filed by him. 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 points raised by the learned Addl. Standing Counsel for the State is quite satisfactory and I don't find any defect in the order passed by the learned FAA and it needs no interference by this Tribunal. Accordingly, it is ordered.

9. The appeal filed by the dealer is dismissed and the order of the learned First Appellate Authority is hereby confirmed. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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