

***BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.
S.A.No. 37/2016-17***

(From the order of the 1d.DCST (Appeal), Balasore Range, Balasore, in Appeal No. AA-65/BD-1996-97 (OST), dtd.22.11.2016, modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Naresh & Co.,
Dist. Bhadrak. ... Respondent

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

Date of Hearing: 24.07.2018 Date of Order: 24.07.2018

ORDER

In a proceeding u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act), when the Assessing Officer/Sales Tax Officer, Bhadrak Circle, Bhadrak (in short, AO/STO) vide ex-parte order dtd.30.03.1996 declined the claim of first point tax paid goods dealt by the dealer during the assessment period and then levied tax by enhancing the GTO to the tune of Rs.20,000/- as against the GTO shown by the dealer in return at Rs.1,36,747/-, the dealer preferred regular appeal whereby and wherein, the First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (inshort, FAA/DCST) on scrutiny of the books of account and connected documents of the dealer deleted the enhancement and tax as raised by the AO.

2. Revenue being aggrieved has preferred this appeal with the contentions like, in absence of any list of the registered dealers

from whom the assessee-dealer had purchased the first point tax paid goods, the FAA has gone wrong in deleting the tax liability. In this appeal when the Revenue prayed for restoration of the assessment order by setting aside the order of FAA, the dealer even did not choose to contest the appeal and set ex-parte.

3. Here, it is to be seen that, whether, in the facts and circumstances of the case, the FAA was wrong in deleting the enhancement and levy of tax net as done by the AO ?

4. Learned Addl. Standing Counsel, Mr. Pradhan advancing the argument on behalf of the Revenue has submitted that, the FAA has not ascertained who are the selling dealers of the assessee-dealer and whether those dealers were registered dealers and whether goods dealt by the assessee-dealer were first point tax paid goods. So, the order of the FAA is not sustainable.

On perusal of the assessment order passed u/s.12(4) of the OST Act, it was found that it was an ex-parte order. The AO on application of the best judgment principle enhanced the turnover by Rs.20,000/- and thereafter calculated the tax liability of the dealer, which was determined at Rs.8,570/-. The dealer's plea before the FAA was, the goods purchased by him were first point tax paid goods. So, he was not required to pay the tax. The FAA had the occasion to see the details of the documents like cash box, ledger, purchase register, purchase bill, sales tax register, sales tax bill and stock register. In consideration of these registers, documents and on scrutiny of the periodical return filed by the dealer, he has came to a conclusion that, the purchases by the dealer were first point tax paid goods. So, the enhancement as well as tax liability as determined by the AO is wrong. Once the books of account and connected documents were verified and accepted by the FAA, which is an extended forum of assessment, in that case, there is no scope before

this Tribunal to take a contrary view that, the books of account should have been rejected and assessment should have been made by applying best judgment principle. Similarly when it is the subjective satisfaction of the FAA who is appointed under the provision to act as an extended forum of assessment, then it is a presumption under law that, he has acted bona-fide. Without any clinching evidence to the effect that, he has not verified the documents, then without any evidence rebuttal to his satisfaction that the goods were not first point tax paid goods, the irresistible conclusion is, the findings on the facts by the FAA calls for no interference.

In consequence thereof, it is held that, the impugned order should not be disturbed in absence of any positive and cogent evidence laid by the Revenue. As per the discussion above, it is hereby ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

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

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