

**BEFORE THE DIVISION BENCH : ODISHA SALES TAX TRIBUNAL, CUTTACK.**

**S.A. Nos. 148 & 149 of 2008-09**

(Arising out of the order of the learned ACST, Balasore Range, Balasore in first appeal Case Nos. AA 200 & 201/BA-2006-07 disposed of on 25.01.2008 & order of Hon'ble Odisha High Court dtd.22.03.2021 in STREV No.92 & 93 of 2010 against S.A. No.148 & 149 passed on 16.11.2009 in a common order by Division Bench of Tribunal)

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

M/s Annapurna Modern Rice Mills,  
At-Mahagabachhak,  
Dist-Balasore.

..... Appellant.

-Vrs.-

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

..... Respondent.

For the Appellant:

: None.

For the Respondent:

: Mr. M.L. Agarwal, S.C. (C.T.)

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**Date of Hearing : 04.12.2021**

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**Date of Order : 28.12.2021**  
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**ORDER**

In the instant case, the Hon'ble Odisha High Court in STREV No.92 & 93 of 2010 adjudicated on the application of the instant dealer i.e. M/s. Annapurna Modern Rice Mill, Balasore relating to the assessment years 2003-04 & 2004-05 in which the common order dtd.16.11.2009 passed by the Division Bench of Odisha Sales Tax Tribunal (in short, OSTT) in S.A. No.148 & 149 of 2008-09 that confirmed the orders of the ld. Assistant Commissioner of Sales

Tax(Appeal) (in short, Id.FAA), Balasore Range, Balasore in first appeal case No. AA 200 & 201/BA-2006-07 was challenged. The Hon'ble Court Vide their orders No.4 & 5 dtd.22.03.2021 remanded the case to this Tribunal with the following observation:-

“1.The short grievance in the present revision is that the Tribunal has dismissed the Second Appeal without notice to the Petitioner.

2. On 27<sup>th</sup> August, 2015, the following order was passed:

“Heard Mr. P.K. Mishra, learned counsel for the petitioner and Mr. R.P. Kar, learned Standing Counsel on behalf of the revenue.

This revision has sought to be filed against the common order dated 16.11.2009 passed by the Orissa Sales Tax Tribunal, Cuttack in S.A. Nos.148 and 149 of 2008-09

Mr. Mishra asserts that no notice was ever served on the petitioner during the pendency of the first appeal as contended in paragraph-7 of the impugned order and he further asserts that no person far less a Supervisor was accompanying the goods carried in the vehicle.

Learned Standing Counsel is directed to obtain the records of assessment and first appellate authority by the next date.

List this matter two weeks after.”

3. Since then no reply has been filed in the present revision to dispute the above assertions of the Petitioner, in that view of the matter the impugned order dated 16<sup>th</sup> November, 2009 passed by the Orissa Sales Tax Tribunal is set aside and S.A. Nos.148 and 149 of 2008-09 are restored to file of the Tribunal and be listed for direction on 3<sup>rd</sup> May, 2021.

4. Counsel for the Department states that he has the complete record of the first appeal. That record shall be placed by the Department before the Tribunal when the matter is listed on 3<sup>rd</sup> May, 2021.....”

2. The brief fact of the case is that the instant dealer is a Rice Miller who used to use purchase of paddy from the local cultivators and converts the same into Rice, boiled Rice and bran for the purpose of sale. Basing on one Circle fraud case report No.10 dtd.27.10.2003 and another fraud case report No. Nil dtd.31.10.2004, the learned Taxing Authority (in short, LAO) , Balasore Circle, Balasore issued notice u/s. 12(4) of the OST Act separately for the period 2003-04 and 2004-05. After due confrontation of the said fraud reports with reference to the books of accounts and other documents filed, the LAO raised an extra demand of Rs.1,92,231.00 and Rs.1,21,276.00 respectively for the period 2003-04 & 2004-05 . These demands raised in respective assessment orders were confirmed by the Id. FAA in a common order bearing first appeal Case No. AA 200 & 201/BA-2006-07 passed on ex-parte dtd.25.01.2008. Being further aggrieved, the dealer preferred second appeal before the Division Bench of this Tribunal who after proper hearing from the sides of the appellant as well as respondent and having gone through the materials available in the record confirmed the common order passed by the Id. FAA in S.A. No.200 & 201/BA-2006-07. The dealer-appellant, challenging the said order of the Tribunal, preferred STREV bearing No.92 & 93 of 2010 before the Hon'ble Odisha High Court which was disposed of on 22.03.2021 with a direction to the Tribunal to place the relevant Lower Court Records before the Tribunal to address the grievances of the dealer in a proper manner.

3. It is worthwhile to mention here that the main grievance of the dealer before the Hon'ble Court was that no notice was ever served on the petitioner during the pendency of the first appeal & the common order was passed by the Ld.FAA on ex-parte.

In order to address the aforesaid grievance, notice from Tribunal was issued to the dealer-appellant and the State-respondent which was duly served on both the parties. However, when the matter was called on hearing, none appeared on behalf of the dealer-appellant. Hence, this

case was taken up for ex-parte hearing in presence of Ld.SC(CT) representing the State.

4. At the time of hearing, the ld. S.C. (C.T.) produced the relevant assessment records and appeal record relating to the impugned periods. On scrutiny of the appeal record, it is observed that soon after filing of appeal Memorandum annexing grounds of appeal, the dealer was issued with notice for hearing of his stay petition which was disposed of by the ld. FAA vide his order dtd.21.02.2007 with a direction to the dealer to pay Rs.90,000.00 for the year 2003-04 and Rs.60,000.00 for the year 2004-05 by 20.03.2007 realization of which will lead to stay of the balance amount till disposal of the first appeal. Thereafter, the ld. FAA issued notice for hearing of appeal vide letter No.6969 dtdt.17.12.2007 fixing date of hearing on 28.12.2007 with a direction that in the event of failure for appearance on the designated date, order of appeal will be passed ex-parte on merit. Due to non-appearance by the appellant, he issued another notice bearing No.306 dtd.15.01.2008 fixing date of hearing on 25.01.2008. It appeared to ld. FAA that no response from the dealer-appellant was there on the relevant date fixed for hearing who after assigning valid reasons, passed a common order to dispose of the appeal ex-parte on merit basing on materials from record. Perusal of assessment orders and impugned order with relevant lower forums records, it indicates that the appellant had not produced books of account before the first appellate forum in order to verify the genuineness of its claim raised in the grounds of appeal or adduced any additional evidence even before the Division Bench of this Tribunal in S.A. No. 148-149 of 08-09 in support of its claim during hearing of second appeal. It is further observed that when the Hon'ble Court remanded the case for hearing and notice was accordingly issued to both the appellant and respondent, the said notice was served on the appellant which was received by the person in-charge of the Mill on 13.08.2021 in the absence of the proprietor with the report of the process server that the said mill is closed which is

looked after by the above person who happens to be a relative of the proprietor. It appears from the above factual position of the case that the appellant has knowingly and deliberately avoided his proceeding on remand by the Hon'ble Court in a dilly-dallying manner and since the case is more than 17 years old, We have no other option but to restore the earlier order of the Division Bench of the Tribunal passed in S.A. No.148-149 of 2008-09 on 16.11.2009.

5. Accordingly, it is ordered.

The order passed by the Division Bench of this Tribunal on 16.11.2009 in S.A. No.148-149 of 2008-09 is restored.

Dictated & corrected by me,

Sd/-  
(Srichandan Mishra)  
Accounts Member-II

Sd/-  
(Srichandan Mishra)  
Accounts Member-II

I agree,

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