

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

S.A. No. 111 (C) of 2013-14

(From the order of the Id. JCST, Sundargarh Range, Rourkela,
in First Appeal Case No. AA 53 (RL-II-C) of 2010-2011,
disposed of on dtd.14.08.2013)

Present: Sri S. Mohanty
2nd Judicial Member

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

.... Appellant

- V e r s u s -

M/s. P.A. Construction,
D/314, Koelnagar,
Rourkela.

... Respondent

For the Appellant : Mr. M.S. Raman, ASC
For the Respondent : N o n e

Date of hearing: 25.01.2019 **** Date of order: 25.01.2019

O R D E R

Revenue has challenged the order of the First Appellate Authority, Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, the FAA) in First Appeal Case No. AA 53 (RL-II-C) of 2010-2011 who set aside the order of the assessing authority, Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, the AA).

2. The facts giving rise to the present appeal are, the assessee-dealer was subjected to assessment u/r.12(4) of the CST(O) Rules for the tax period 01.04.2006 to 30.06.2006. The assessing officer on due verification of the accounts of the dealer found the dealer had effected 6(2) sales of Rs.3,81,647.69. The dealer failed to furnish declaration form 'C' and E-1 as

against the 6(2) sales. In ultimate analysis, the GTO of the dealer was determined at Rs.3,81,647.69 which was also treated as NTO and the amount was taxed at full rate @ 12.5% calculated to Rs.47,706.00. The dealer having paid nil against this amount of 6(2) sales, the entire tax amount determined above was raised against him.

3. The matter was carried in appeal before the first appellate authority by the dealer. The FAA in turn set aside the demand by accepting the declaration forms produced before him. When the demand is deleted, State being aggrieved preferred this second appeal on the ground that since the declaration forms were not produced within the stipulated period of three months as per Rule 12(7) of the CST (R&T) Rules read with Rule 7(a) of the CST(O) Rules, the first appellate authority has committed wrong in accepting the forms. It is further contended that the first appellate authority had no jurisdiction to accept the declaration forms.

The appeal is heard without cross objection from the side of the dealer but the dealer stood by the impugned order in the final hearing.

In the case in hand, the Revenue has challenged the order of the first appellate authority on two grounds such as, the first appellate authority has no jurisdiction to accept the declaration forms produced before him for the first time and since the declaration forms were not produced within the stipulated period of three months, same should not have accepted by the first appellate authority. To answer these two questions, learned Counsel for the dealer argued that the first appellate authority being an extended forum of assessment it is within his competency to accept the documents/declaration forms produced before him. The plea of the Revenue on this score is found to be inconceivable. As regards the acceptance of the declaration forms after three months of

stipulation period as raised by the Revenue the plea is not sustainable for the reason that the authority has the jurisdiction under law to accept the declaration forms filed in late but with reasonable explanation of dealer. It is not the case that, the dealer has failed to produce the declaration forms. Here in this case, the dealer has produced the declaration forms but in late and the delay is very often for the non-cooperation of the purchasing dealers. From the discussion above, it is held that this is an appeal by the Revenue for sake of appeal against the first appellate authority when the demand is deleted and the appeal being devoid of merit the impugned order calls for no interference. Accordingly, it is ordered.

4. The appeal is dismissed on contest is of no merit.

Dictated & corrected by me,

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

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2nd Judicial Member