

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 35/2016-17**

(Arising out of order of the Id. DCST (Appeal), Balasore Range,
Balasore, in First Appeal Case No. AA-230/BD-1993-94 (OST),
disposed of on dtd.15.11.2016)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Chiranjilal Harishnarayn,
Dist. Bhadrak.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)

For the Respondent : None

(Assessment Period : 1985-86)

Date of Hearing: 28.04.2021 *** Date of Order: 29.04.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/ Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/DCST) in First Appeal Case No. AA-230/BD-1993-94 (OST) dtd. 15.11.2016 in reducing the assessment order to return figure passed by the learned Sales Tax Officer/Assessing Authority, Bhadrak Circle, Bhadrak (in short, STO/AA) for the assessment year 1985-86 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act).

2. The brief facts of the case are that :

In the instant case, the dealer-respondent carries on business in grocery goods on retail and semi-wholesale basis.

The dealer is filing monthly returns. Returns for all the months during the year have been filed and admitted tax has been paid. It transpires from the record that, after verification of books of accounts and confrontation of a fraud case report submitted by the STO, Vigilance Wing, Balasore, the learned Assessing Officer, Balasore Circle, Balasore has completed the assessment raising a demand of Rs.7,630/-.

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

4. Being dis-satisfied with the order of the learned FAA/DCST, the State-appellant has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the Id.FAA/DCST is unjust, improper and not based on facts and law.

5. No cross objection has been filed by the dealer-respondent in this case.

6. Despite due service of notice on the dealer, for reasons best known to him, he neither engaged a counsel nor anybody on his behalf remained present before this Tribunal on the schedule date of hearing. 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 State-appellant. During the course of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA appears to be unjust and improper. Being an extended forum of assessment, the learned FAA might have made the third party confrontation or else he could have set-aside the order for making third party confrontation. Instead of doing so, he has simply reduced the demand to return figure, which is quite illegal because after necessary verification Vigilance Authority has reported the fact and allegation. It cannot be simply ignored due to want of third party confrontation, because public interest must override any personal loss and again as observed by Hon'ble Apex Court. So, the learned Addl. Standing Counsel has prayed before this Tribunal to allow the appeal filed by the State and to set-aside 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 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 defend himself against the grounds of appeal filed by the State-appellant. No reasonable excuse is also explained by the dealer. 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 argument advanced by the learned Addl. Standing Counsel is quite genuine and satisfactory and this is a fit case where the matter should be remanded back to

the learned FAA to re-compute the tax liability of the dealer as per provision of law after making third party confrontation with M/s. Utkal Roller & Flour Mills, Bhadrak. Accordingly, it is ordered.

The appeal filed by the State-appellant is allowed. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned FAA to confront with the third party i.e. M/s. Utkal Roller and Flour Mills, Bhadrak, whether he has sold goods to the instant dealer or not and thereafter to re-compute the tax liability of the dealer as per provision of law giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order.

Dictated and Corrected by me,

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

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