

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.
S.A.No. 1126/2005-06**

(From the order of the Id.ACST, Sambalpur Range, Sambalpur, in
Appeal No. AA.169(SAII) 2004-05, dtd.27.05.2005,
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. Sri Laxmi Rice Mill,
At- Brehmantukre, P.O. Kuttatukra,
Dist. Bargarh. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

For the Respondent : Mr. B.P. Mohanty, Advocate

Date of Hearing: 21.07.2018 Date of Order: 21.07.2018

ORDER

Revenue has questioned the order of learned First Appellate Authority/Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, FAA/ACST) in First Appeal Case No.AA.169(SAII) 2004-05 when vide impugned order learned FAA deleted the enhancement as determined by AA (Assessing Authority) in a proceeding u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act).

2. The instant dealer is a rice miller. In a proceeding u/s.12(4) of the OST Act for the assessment year 2003-04, the Assessing Authority/Sales Tax Officer, Sambalpur-II Circle, Bargarh (in short, AA/STO) held the shortage of stock leading to suppression relates to paddy and rice as reported by the STO, Vigilance to the extent of Rs.22,740/- and then he enhanced the same by 30 times. Similarly the AO has also adjusted purchase tax paid on paddy out of

which, rice was obtained and sold to FCI and on free trade separately. In ultimate calculation, the dealer was asked to pay balance tax due of Rs.1,05,796/-.

In appeal before the FAA preferred by the dealer vide impugned order, the ld.ACST, Sambalpur as FAA deleted the enhancement to the TTO as against the allegation of shortage in stock leading to sale suppression but upheld the order of adjustment of purchase tax paid on the paddy by the appellant separately on his sale turnover of rice obtained and sold to FCI and on free trade.

3. When the matters stood thus, State has preferred this appeal questioning the deletion of enhancement.

4. The appeal is heard without cross objection but at the hearing the dealer through his counsel, learned Mr. B.P. Mohanty submitted that, in a separate appeal bearing S.A.No.967/2005-06 decided on 02.05.2011 by the Division Bench of this forum, the impugned order was set-aside and the matter was remitted back to the STO for fresh assessment as per the direction therein. On this development relating to the lis between the parties, he argued for dismissal of the appeal since the remand assessment proceeding is still sub-judice.

Per contra, learned Addl. Standing Counsel, Mr. Pradhan argued that, the earlier decided appeal relates to the adjustment of purchase tax paid on paddy but the present appeal relates to the deletion of enhancement by the FAA.

5. Perused the order of the Division Bench in S.A.No.967/2005-06 dtd.02.05.2011. The order as it reveals, the Division Bench has not dealt with the matter relating to the enhancement of TTO and deletion of it by the FAA. The appeal order does not indicate whether the State had raised any cross objection in that appeal before the Division Bench or not ? In that event, even though it is believed that, the impugned order has been set-aside and

the matter is remitted back to the AO for assessment afresh, but when the remand assessment is a close remand for limit purpose without any expressed or implied opinion on the question of deletion of penalty given by the Division Bench, I am of the considered view that, the present appeal is maintainable.

6. Adverting to the merit of the case in hand, the claim of the Revenue is, the FAA has deleted the enhancement without assigning any reason. The impugned order is very explicit on this issue. The FAA has taken care of the factors in as much as shortage due to natural factors within the permissible limit and then doubting the correctness of the physical verification on eye estimation as adopted in the case in hand, has arrived at a conclusion that, the enhancement is unreasonable, irrational having no nexus between the actual suppression and the enhancement. Such subjective satisfaction of the FAA on a question of fact, which is also an extended forum of assessment, cannot be disbelieved without any cogent and reliable rebuttal evidence. State has mechanically raised a ground without any supporting evidence. In that case, it will be unsafe to disturb the findings of FAA. As a result, it is held that, the findings of the FAA relating to the deletion for penalty calls for no interference. Accordingly, it is ordered.

The appeal stands dismissed as of no merit. However, the AO is at liberty to proceed with the remand assessment as per the direction given in Second Appeal No.967/2005-06 dtd.02.05.2011.

Dictated and Corrected by me,

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

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