

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 46(C)/2019**

(Arising out of order of the Id.JCST (Appeal), Balasore Range,
Balasore, in First Appeal Case No. AA-7/BAC-2015-2016
(CST), disposed of on dtd.16.01.2019)

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

M/s. Tirupati Enterprises,
Simulia Bazar, Baliapal,
Dist. Balasore.

.... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. M.P. Jena, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 2008-09)

Date of Hearing: 16.04.2021 *** Date of Order: 16.04.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/ Joint Commissioner of Sales Tax (Appeal) Balasore Range, Balasore (in short, FAA/JCST) in First Appeal Case No. AA-7/BAC-2015-2016 (CST) dtd.16.01.2019 in confirming the assessment order passed by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, STO) for the assessment year 2008-09 u/r. 12(3)(a) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. Facts of this case can be briefly stated thus:-

The appellant-dealer in the instant case deals in groundnut, groundnut seeds, coconut brooms and betel leaf and decorticating groundnut to seeds for sale on wholesale and retail basis. It transpires from record that after confrontation of one tax Evasion Report submitted by the Sales Tax Officer, Enforcement Range, Balasore, the ld.STO, Balasore Circle, Balasore has completed the assessment by establishing the escaped turnover to the tune of Rs.58,32,430/- basing on the tax evasion report and raised the demand of Rs.6,99,891/- at the assessment stage.

3. Being aggrieved with the order of assessment the dealer preferred first appeal before the ld. First appellate authority/ Joint Commissioner of Sales Tax (Appeal) Balasore Range, Balasore, who in turn, confirmed the order of assessment and hence the tax demand remained unaltered.

4. Being further aggrieved with the order of the ld. FAA the dealer knocked the door of the this Tribunal by way of filing this second appeal with the contention that the order passed by the ld. FAA is illegal, arbitrary and in contravention of provisions of law and hence needs to be quashed.

5. State-respondent has filed cross objection in this case.

6. Though the learned Advocate for the dealer Mr. R.M. Mishra did not appear before this Tribunal on the date of hearing but he has submitted a written note of submission for perusal of the Tribunal and prayed that the case may kindly be disposed of taking into consideration his written note of

submission. In his written note of submission, the learned Advocate for the dealer has submitted that, in the assessment order the learned STO has clearly mentioned that the appellant has paid excess amount of tax of Rs.1,68,216/- and the learned JCCT has mentioned Rs.1,79,985/- as excess paid in his first appeal order. Here one thing may be noted that the amount of Rs.1,79,985/- is not an input tax credit but an excess tax paid in cash by the dealer-appellant. But unfortunately the learned JCCT has directed the appellant to carry forward the excess paid amount instead of giving refund of Rs.1,79,985/- directly. Under OVAT Act and CST(O) Rules, only input tax credit can be carried forward and excess paid amount should be refunded. Further, to mention here that, the excess paid amount relates to the period of 01.04.2013 to 31.03.2015 and the first appeal order with excess paid amount has been passed on dt.27.02.2017. Therefore, now it is not possible to file return in E-return filing system. The said amount of Rs.1,79,985/- is clearly refundable. So, he has prayed in his written note of submission to modify the first appeal order with a direction to refund the excess paid amount of Rs.1,79,985/-.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The learned AO and FAA have completed the assessment/appeal based on the provision of law and factual position. Accordingly, the same cannot be treated as defective and bad in law in absence of any documentary evidence. The dealer had failed to provide statutory forms within the stipulated period as envisaged in Rule 12(7) of CST (R&T) Rule, 1957. So, no more further

extension of time should be allowed to him. The order of the learned FAA is crystal clear with respect to the other points raised by the dealer. He has dealt each and every item which is self-explanatory in nature and requires no further interference by this Tribunal. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant which is not sustainable in the eyes of law. So, he has prayed to dismiss the appeal and to confirm the order of the learned FAA.

8. Gone through the written note of submission filed by the learned Advocate for the dealer Mr. R.M. Mishra and heard the learned Addl. Standing Counsel Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment, cross objection filed by the State-respondent and argument of the learned Addl. Standing Counsel at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the opinion that, the points raised by the learned Advocate for the dealer in his written note of submission is quite 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 giving him a reasonable opportunity of being heard. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned FAA and he is to re-compute the tax liability of the dealer and to refund the excess paid amount if any as per provision of law after giving the dealer a reasonable opportunity of being heard within a period of three

months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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(S. Mishra)
2nd Judicial Member