

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 55(C)/2019**

(Arising out of order of the Id.Addl.CST (Appeal), Balasore, in  
First Appeal Case No. AA-37/BAC-2018-19 (CST),  
disposed of on dtd.20.02.2019)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

M/s. Krishi Rasayan,  
Maitapur, Ranital,  
Dist. Balasore.

.... Appellant

**-Versus-**

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

.... Respondent

For the Appellant : Mr. A. Kedia, Advocate

For the Respondent : Mr. M.S. Raman, A.S.C. (C.T.)

(Assessment Period : 01.04.2016 to 30.06.2017)

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Date of Hearing: 19.04.2021 \*\*\* Date of Order: 20.04.2021

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**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Balasore (in short, FAA/Addl.CST) in First Appeal No. AA-37/BAC-2018-19 (CST) dtd.20.02.2019 in reducing the assessment order passed by the learned Assessing Authority/Deputy Commissioner of Sales Tax, Balasore Circle, Balasore (in short, STO/DCST) for the assessment period from 01.04.2016 to 30.06.2017 u/r.12(3) of Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The brief facts of the case are that :

The instant dealer-company M/s. Krishi Rasayan having its principal place of business at Maitapur, Ranital, Balasore engaged in manufacturing and sale of pesticides, bio-fertilisers and organic manure. The dealer effects purchases of materials from registered dealers of Odisha as well as from outside the State of Odisha by way of branch transfer, inter-state purchase and in course of import. The dealer sells the same inside the State of Odisha through its branches situated in the State of Odisha as well as by way of branch transfer to its branches situated outside the State of Odisha, inter-state sale and export outside the country.

The dealer-company has made branch transfer to its own branches situated outside the State of Odisha to the tune of Rs.550907337/-. Against such branch transfer the dealer-company has produced original 'F' forms covering the entire amount of Rs.550907337/-. After verification of 'F' forms, claim of exemption from tax on Rs.550907337/- was allowed by the learned Assessing Officer. The dealer-company has made consignment sale to outside the State of Odisha to the tune of Rs.28175868/-. Against such consignment sale, the dealer able to produce one original 'F' form for Rs.24815369/-. After verification, claim of exemption from tax on Rs.24815369/- was allowed by the learned Assessing Officer and the dealer failed to furnish 'F' form for Rs.33.60,499/- which was taxed at the appropriate rate i.e. State rate @5%. Besides this the dealer-company has made inter-state sales to outside the State of Odisha at concessional rate of tax against 'C' form condition

for net value amounting to Rs.69317110/-. The dealer could not produce 'C' forms covering an amount of Rs.60506919/-. On verification of 'C' forms, inter-state sales amounting to Rs.60506919/- at concessional rate of tax was allowed and the dealer failed to furnish 'C' forms for inter-state sales amounting to Rs.8810191/-, which was taxed at the appropriate rate i.e. State rate @5%.

The dealer-company has effected direct export sale of Rs.863860/- u/s.5(1) of the CST Act. In support of his export sales, the dealer has produced copy of ARE - 1 duly endorsed by Central Excise and Custom Department, bill of lading, etc. for verification. After verification of the export documents, claim of exemption from tax on Rs.863860/- was allowed by the Assessing Officer.

Accordingly, the GTO of the dealer-company of the tax period from 01.04.2016 to 30.06.2017 is determined at Rs.650896518/-. After allowing deductions of Rs.550907337/-, Rs.24815369/-, Rs.863860/-, Rs.65000/- and Rs.1409264/- towards branch transfer, consignment sale, export u/s.5(1) of the CST Act, freight charged separately and sales tax collected respectively totalling to Rs.578060830/-. The Net Taxable Turnover determined at Rs.72835688/-. Tax @2% on Rs.60506919/- ('C' form produced), @5% on Rs.8810191/- (non-production of 'C' form), @14.5% on Rs.158079/- and @5% on Rs.3360499/- (non-production of 'F' form) calculates to Rs.1841594/-. The dealer having paid a sum of Rs.1409264/- through e-challans, is assessed to pay the balance amount of Rs.432330/-. Further, interest of Rs.51879/- is levied u/s.9(2B)

of the CST Act on the differential amount of tax payable due to non-submission of declaration forms. Tax together with interest calculates to Rs.484209/- which shall be paid by the dealer-company.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Balasore, who in turn, allowed the appeal in part and the assessment was reduced to 162852/-.

4. Being further aggrieved with the order of the learned FAA/Addl.CST (Appeal), Balasore, the dealer knocked the door of this Tribunal by way of filing of second appeal with the contention that, the order passed by the Id.FAA/Addl.CST (Appeal) is illegal, arbitrary and in contravention of law and hence needs to be quashed.

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

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The dealer-appellant had sold goods to registered dealers in course of inter-state trade and commerce and out of the said sales so effected, declaration Form 'C' amounting to Rs.4434972/- could not be furnished, which has been taxed applying the local rate of tax @5% instead of 2%. The concessional rate of tax ought to have been applied by the forums below. The dealer-appellant had sought time to grant opportunity to obtain and furnish the wanting

forms as sincere steps for collection of the same was taken by the dealer-appellant. The forums below should not have passed order hastily. The levy of tax for wanting declaration forms is illegal and is violative of the principles of natural justice. The imposition of penalty interest amounting to Rs.29802.93 by a non-speaking order is illegal and arbitrary. The learned Advocate for the dealer has filed one petition for additional evidence Copy of the petition was served to the learned Addl. Standing Counsel. The petition was heard from both the sides. and the petition was allowed. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Raman for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities to produce the documentary evidence in favour of his stand taken in the grounds of appeal for disposal by the learned FAA, but the dealer failed to produce the same. Hence, his plea is not acceptable. 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. Heard the learned Advocate Mr. A. Kedia appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. M.S. Raman appearing 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 arguments of both the sides 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 view that, this is a fit case where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer as per provision of law. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned Assessing Officer and he is to consider the additional evidence filed by the dealer after verifying the genuineness of the documents thoroughly and accordingly re-compute the tax liability of the dealer as per provisions 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)  
2<sup>nd</sup> Judicial Member

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