

**BEFORE THE FULL BENCH : ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**S.A. No. 212 of 2010-11**

(Arising out of the order of learned JCST, Ganjam Range, Berhampur, in First Appeal Case No. AA- 92/2007-08, disposed of on dt. 11.08.2010)

**Present :**           **Smt. Suchismita Misra, Chairman**  
**Smt. Sweta Mishra, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri Prabhat Ch. Pathy, Accounts Member-I**

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

. . . Appellant

**- V e r s u s -**

M/s. Gouri Shankar Food Processing Pvt. Ltd.,  
At-Ralaba, PO- Rangipur, Dist. Ganjam.

. . . Respondent

For the Appellant           ... Mr. M.S. Raman, Addl. S.C. (CT)  
For the Respondent           ... N o n e.

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Date of hearing: 28.11.2019 \*\*\*\* Date of order: 23.12.2019  
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**ORDER**

This appeal is directed against the order dated 11.08.2010 passed by the Joint Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, "first appellate authority") in First Appeal Case No. AA- 92/2007-08 reducing the assessment done by the Sales Tax Officer, Ganjam-II Circle, Berhampur (in short, 'assessing officer') in respect of the dealer-assessee u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period 2003-04.

2. The facts as revealed from the case record are as follows  
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The dealer-assessee in the instant case M/s. Gouri Shankar Food Processing Pvt. Ltd., Ralaba in the District of Ganjam manufactures 'Atta', 'Suji', 'Maida', 'Besan' etc. in its manufacturing Unit and sells those goods in course of its inter-State as well as intra-State trade. For the purpose of manufacturing it purchases wheat both from inside and outside the State of Odisha. In response to the notice issued u/S. 12(4) of the OST Act the Managing Director of the dealer-Company alongwith its Advocate appeared before the assessing officer and produced purchase, sale and stock register, production register, etc. relating to the tax period 2003-04 for his (assessing officer) verification. In course of assessment proceeding the assessing officer confronted the Circle Fraud Case Report (FCR) dated 19.11.2004 and also FCR dated 30.08.2003 submitted by the Intelligence Range, Berhampur to the dealer's representative present before him. Taking into account the average consumption of energy as minimum four units per quintal and applying the percentage of outturn of joint products as per standard norms of the Food & Civil Supply Department, the assessing officer estimated the actual sales suppression of different products by the dealer at `59,73,202.16 and then added the turnover to the GTO returned of the dealer. Computing the GTO, TTO and tax liability of the dealer for the relevant period the assessing

officer required it (the dealer-assessee) to pay `2,62,807.00 as per the terms and condition of the demand notice.

Being aggrieved by the order of assessment the dealer-assessee preferred an appeal before the first appellate authority who after due consideration of the grounds of appeal and contentions advanced by the dealer alongwith connected records held the minimum consumption of electricity for milling of Q.1.00 of wheat as 6 units. As such he calculated the total sale suppression of the joint products i.e. 'Atta', 'Maida', 'Suji', 'Bran', 'Chokad' by the dealer out of the total quantity of wheat milled by it during the period under appeal at `35,71,653.39. Therefore, on computation of the tax liability of the dealer he (the first appellate authority) reduced the assessment to `1,57,139.00.

3. The State being dissatisfied with the order of the first appellate authority preferred this second appeal before the Tribunal on the grounds that the energy consumption of the dealer had been worked out as 2.25 units for production of Q. 1.00 of wheat on the basis of the past records of the dealer. Therefore, the forums below were not justified in treating 4 units and 6 units respectively for production of Q. 1.00 of wheat by the dealer. Further total suppression of `1,15,78,664.68 was certainly required to be added to the GTO return for calculation of the tax liability of the dealer. In such circumstances it was urged on behalf of the State to

set aside the order of the first appellate authority as well as the order of assessment with a direction for making a fresh assessment in the instant case.

No cross-objection has been filed on behalf of the dealer-assessee in this appeal.

4. In course of hearing it was found that neither the dealer-assessee nor any of its authorized representative appeared before this forum on the date fixed for hearing of this appeal despite service of notice on the dealer by way of affixture (as per report of the Asst. CT & GST Officer, Circle-II, Ganjam, Berhampur which is kept in the record). Accordingly the appeal was heard from the side of the State only to be disposed of exparte on merit as per Rule 60(2) of the OST Rules.

5. In course of hearing the appeal learned Addl. Standing Counsel (CT) appearing on behalf of the State, however, filed a copy of order dated 01.09.2012 passed by this Tribunal in S.A. No. 210 of 2010-11 preferred by the instant dealer-assessee against the same impugned order wherein this Tribunal had allowed the appeal to be withdrawn basing on the certificate of settlement of arrears issued in favour of the dealer-assessee vide issue No. 7400 dated 31.07.2012 by the designated authority as per provision of the Odisha Sales Tax (Settlement of Arrears) Act, 2011. He thus fairly submitted that under such circumstances the present appeal has got no merit for adjudication.

6. Keeping in view the above submission of learned Addl. Standing Counsel (CT) for the State, we have no hesitation to hold that the second appeal preferred by the State is absolutely unwarranted in the present state of affairs pertaining to the dispute raised before this Tribunal. Hence, the appeal is dismissed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Prabhat Ch. Pathy)**  
**Accounts Member-I**