



to the customers on retail basis. The respondent-dealer purchased raw materials like rice, dal, oil, etc. from the local market and from outside the local area and manufactured the food items for sale purpose in his hotel. On the basis of the AVR submitted by the STO, Audit Team, Gajapati Circle, Parlakhemundi, the learned ACST found that, the respondent-dealer had disclosed purchase of goods in course of interstate for Rs.45,720.00, @ 4% goods at Rs.8,290.00, tax free goods at Rs.81,760.00 and input tax at Rs.331.80 respectively. As per the sale side, the respondent-dealer had returned sale of 12.5% tax rate of goods at Rs.2,72,160.17 and output tax collected at Rs.34,019.83 and VAT paid at Rs.33,686.00. Accordingly, the learned ACST determined the TTO as per daily average sales for the period taking into account 23 days in a month which was worked to Rs.1,15,200.00 for the year 2008-09, Rs.5,52,000.00 for the year 2009-10 and Rs.6,07,200.00 for the year 2010-11 thus totaling to Rs.12,74,400.00. Tax @ 12.5% on the determined sales figures was arrived at Rs.1,59,300.00. After adjustment of input tax at Rs.331.80, the balance output tax came to Rs.1,58,968.20. The respondent-dealer having paid tax of Rs.33,686.00 was required to pay Rs.1,25,282.00.

3. Being aggrieved by the order of the learned ACST, the respondent-dealer preferred an appeal before the learned DCST who reduced the demand to Rs.64,682.00. Being aggrieved by the order of the learned DCST, the Revenue as appellant has filed this second appeal.

4. No cross objection has been filed by the respondent-dealer.

5. Heard the learned Addl. Standing Counsel for the Revenue and the learned Counsel for the respondent-dealer. Perused the orders of both the fora below as well as the grounds of appeal. As per the appeal order, the learned DCST stated that in absence of any

detection of suppression and ignoring the books of account produced before the learned ACST by the respondent-dealer, the learned ACST was not correct to determine the sales turnover on the basis of daily average sale @ Rs.1,600.00 for the year 2008-09, Rs.2,000.00 for the year 2009-10 and Rs.2,200.00 for the year 2010-11 per day. The respondent-dealer also clarified that it incurred expenditure towards house rent, electricity charges and engagement of labourers i.e. 3 numbers of supply boys @ Rs.1,500.00 to each boy per month but the learned ACST had not taken into consideration of these aspects while determining the sale turnover as per audit report. So, the learned DCST estimated the daily average sales @ Rs.1,000.00 per day for the year 2008-09, Rs.1,200.00 for the year 2009-10 and Rs.1,400.00 for the year 2010-11 reasonably by adding over the sales turnover returned by the respondent-dealer to meet the ends of natural justice. Accordingly, the learned DCST determined the GTO and TTO of the respondent-dealer at Rs.8,88,300.00 and Rs.7,89,600.00 respectively. The resultant tax @ 12.5% on Rs.7,89,600.00 was arrived at Rs.98,700.00. The respondent-dealer was allowed input tax credit of Rs.332.00 and payment of VAT through challans for an amount of Rs.33,686.00 and calculated the actual tax payable by the respondent-dealer at Rs.64,682.00.

6. In this case the findings were arrived at making a best judgment assessment. Now the question arises whether the impugned order is passed arbitrarily and without jurisdiction. It is to be noted that the power of making a best judgment assessment is to be exercised within the framework of settled principles of justice. When the returns and the books of account are rejected the assessing officer must make an estimate and to that extent he shall make a guess but the estimate must be related to some evidence or material and it must be more than mere suspicion. From the record it is evident that no material or evidence has been produced or relied upon by the learned

ACST to come to a conclusion of average business of the respondent-dealer who is engaged in selling some food items in the hotel. The respondent-dealer had also engaged persons by paying them. The learned DCST has applied his judicious mind and rightly estimated the daily average sales reasonably. The learned Counsel for the respondent-dealer relied upon a judgment passed by our own Hon'ble High Court as reported in (2016) 91 VST 493 (Orissa) wherein it has been held as follows:-

“The power of making a best judgment assessment is to be exercised within the frame work of settled and invariable principles of justice. The judgment should not depend upon the arbitrary caprice of a quasi-judicial authority and should be based on true wisdom and meet the legal principle. Although the best judgment revolves around the element of guess-work it cannot be a wild one. It must have a reasonable nexus to the available material and the circumstances of the case. The best judgment procedure adopted by the assessing authority must be related to some evidence or material and must be more than suspicion.

It is held that the Deputy Commissioner in the order had mentioned that during personal hearing the dealer could not reconcile daily average sale of his business and he took up the best judgment assessment procedure. The order did not show how the Deputy Commissioner put the daily average business of the dealer at Rs.15,000 when the return was filed showing the sale business as Rs.2,000. No document or statement of any person or the report of the Sales Tax Officer had been placed on record by the Deputy Commissioner to determine the daily average business sale of the dealer as Rs.15,000. Moreover, when the dealer is engaged in selling low cost tiffin, and some rasgola by no stretch of imagination would the daily business reach to such an amount. The best judgment procedure adopted by the Deputy Commissioner was illegal, perverse and based on caprices and whims of the Deputy Commissioner and was liable to be quashed.”

The ratio laid down in the aforesaid judgment is squarely applicable to the facts and circumstances of the present case. So, I find no infirmity in the order of the learned DCST.

7. In the result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

Sd/-  
(A.K. Dalbehera)  
1st Judicial Member

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