

2. The brief facts of the case are that, the respondent-dealer was engaged in custom milling of paddy supplied by M/s. Odisha Civil Supplies Corporation Ltd. (in short OSCSC Ltd.) and Odisha State Cooperative Marketing Federation Ltd. (in short MARKFED Ltd.). On the basis of Vigilance report submitted by Sales Tax Officer, Vigilance Division, Sambalpur, the respondent-dealer produced the books of account before the learned DCST for verification. On confrontation, the respondent-dealer stated that the visiting officials had failed in proper counting of the stock of rice, broken rice and rice bran. Further, rice was stacked in 100 kgs. and 75 kgs. packets but the visiting officials had taken note of 50 kgs. per packet and also loose stock of rice was not taken by the visiting officials. But, the learned DCST did not accept the contention of the respondent-dealer and established the sale suppression at Rs.26,86,255.00 treating such stock discrepancies as unaccounted sales. The learned DCST calculated tax @ 5% on Rs.26,86,255.00 which came to Rs.1,34,312.75 and imposed penalty of Rs.2,68,625.50 on the respondent-dealer u/s.42(5) of the OVAT Act. So, the tax and penalty together came to Rs.4,02,938.00.

3. Being aggrieved by the order of the learned DCST, the respondent-dealer preferred an appeal before the learned JCST who reduced the demand to Rs.13,800.00. Being aggrieved by the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer. The respondent-dealer did not remain present at the time of hearing. Hence, the matter was heard exparte.

5. Heard the learned Addl. Standing Counsel on behalf of the Revenue and the matter was heard exparte but on merit. Perused

the case record, grounds of appeal and the LCR. I also perused the materials available on record. I have also carefully gone through the orders of both the learned fora below. On perusal of the order of the learned JCST it is seen that he has taken dual stand for determining the suppression with regard to rice and rice bran and broken rice. On the one hand, he deleted the demand on rice suppression by applying the case of Haribhagat Agarwal Vrs. State of Orissa and on the other hand he upheld the suppression on rice bran and broken rice by determining the value of suppression at Rs.92,000.00. The learned JCST has also failed to substantiate as to how the entire thing was not verified physically but verified by a sample method. It is surprising to see that when the same reporting authority on similar basis reported suppression both on rice as well as rice bran and broken rice how the principle applies in one case and does not apply in the other case. Hence it creates suspicion on determination of suppression and its basis. At the time of taking physical stock by the reporting officer, the authorized representative/dealer was very much present. Without the presence of the authorized representative/dealer it would not have been possible to take the physical stock of the goods by the reporting authority. The dealer had not pressed his contention before the authority regarding the stacked packets containing 100 kgs., 75 kgs. and 50 kgs. Had he raised objection the matter would have been settled then and there. Before the learned DCST the dealer had raised the contention which appears to be afterthought and hence the findings of the learned DCST should not be interfered with. In fact, the learned DCST has rightly calculated the suppression as revealed from his order at page-3. The learned JCST has totally deleted the sale suppression of rice of Rs.26,85,165.00 calculated by the learned DCST and gave a contradictory finding on the sale suppression of rice and broken rice by levying tax thereon. In view of such discussion the

order of the learned JCST needs to be set aside by restoring the order of the learned DCST.

6. In the result, the appeal is allowed and the order of the learned JCST is set aside. Accordingly, the order of the learned DCST is hereby confirmed.

Dictated & corrected by me,

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

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