

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.
S.A.No. 1227/2004-05**

(From the order of the Id.ACST, Appellate Unit, Bhubaneswar, in
Appeal No. AA.337/BH-I/03-04, dtd.18.05.2004,
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Shree Lingaraj Timber Depot,
Garrage Chhack, Samantarapur,
Bhubaneswar. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : None

Date of Hearing: 11.07.2018 Date of Order: 11.07.2018

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (in short, FAA/ACST) in First Appeal Case No. AA.337/BH-I/03-04 dtd.18.05.2004 challenging the determination of the amount of first point tax paid goods in the impugned order as erroneous.

2. The facts of the case in brief are : In the case in hand, the dealer/respondent M/s. Shree Lingaraj Timber Depot, Bhubaneswar was originally subjected to assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the period 2001-02. In the assessment, the taxing authority found, during the year the dealer had actually effected purchase of first point tax paid goods worth of Rs.1,18,496/- against the dealer's claim of Rs.1,90,077/-

advanced by the dealer. The dealer's claim was not accepted and thereafter the AO added 10% profit margin on the said amount of Rs.1,18,469/- and disallowed the balance claim of Rs.59,731.40 from the tax paid sales and levied appropriate rate of tax on it. In ultimate analysis, the dealer was asked to pay the balance tax due of Rs.22,458/-.

3. Felt aggrieved, the assessee-dealer preferred first appeal whereby the Id.ACST as FAA had accepted the claim of the dealer that, the dealer had stock of first point tax paid goods worth of Rs.1,90,077/- and in consequence thereof, he reduced the tax due to Rs.14,573/-.

4. When the matter stood thus, State has assailed the impugned order on the ground that, the FAA has mechanically accepted the amount relating to the first point tax paid goods as claimed by the dealer and has prayed for restoration of the assessment order by setting aside the impugned order.

5. The impugned order as it revealed, the FAA has rejected the findings of the AO relating the amount of first point of tax paid goods. As per the order of AA, on scrutiny of the document arrived at a conclusion that, the dealer had a stock of first point tax paid goods amounting to Rs.1,18,496/-.

To appreciate the facts in question, the relevant portion of the impugned order may be reproduced as follows :

“I have carefully examined the impugned order of assessment, the grounds of appeal, the material available on record and averments put forth before me at the time of hearing of appeal petition. On an objective consideration the facts and circumstances of the case, the contentions of the dealer regarding sale of first point tax paid goods amounting to Rs.1,90,077.00 is accepted in this forum as correct. However, the levy of interest by the Assessing Officer amounting to Rs.350.70 u/s.12(4-a) of the OST Act is upheld in this forum as correct”.

Bare perusal of the observation of the FAA as above, it can safely be said that, the FAA has mechanically accepted the claim of the dealer. There is nothing in the order to infer that, the FAA had perused the documents or evidence and then came to a conclusion regarding the amount of first point tax paid goods. So, here in the case in hand, when the impugned order is found to be mechanical as it is apparent on its face, then by necessary consequence thereof, the same cannot be withstand in the eye of law. Resultantly, it is held that, this is a fit case where the matter should be remitted back to the FAA for determination of the amount of first point tax paid goods by giving proper opportunity of being heard to the dealer with a reasoned order. Accordingly, it is ordered.

The appeal by the State is allowed. The impugned order under challenge is set-aside. The matter is remitted back to the FAA to determine afresh the amount of first point tax paid goods in the stock by the dealer during period under assessment as per the observation above and thereafter to calculate the tax due to which dealer is found liable if any.

Dictated and Corrected by me,

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

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