

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 7(C)/2015-16

(From the order of the Id.DCST (Appeal), Sambalpur Range, Sambalpur, in
Appeal No. AA-65/BGH/CST/12-13, dtd.28.02.2015, setting aside 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. Bhawani Paddy Processors (P) Ltd.,
Bhursipali,
Dist. Bargarh.

... Respondent

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

(Assessment period : 01.04.2006 to 30.06.2006)

Date of Hearing: 28.07.2018

Date of Order: 28.07.2018

ORDER

When the demand raised in a proceeding u/s.12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules) by the Assessing Officer, Bargarh Circle, Bargarh (in short, AO) was reversed by the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) at the instance of the dealer, the Revenue being aggrieved has filed this second appeal.

2. The instant dealer was subjected to assessment u/s.12(4) of the CST(O) Rules for the assessment period 01.04.2006 to 30.06.2006 basing on the report of the AG (O) and during the assessment proceeding, the report of the AG to the fact that the dealer had claimed concession in rate of tax against declaration Form 'C' for the goods worth of Rs.1,61,600/- illegally since the issuing dealer of the declaration Form 'C' was a fake one. In consequence thereof, the tax due was determined at Rs.28,928/-.

Adjusting the tax already paid, the balance tax due was calculated at Rs.11,200/-.

3. In appeal before the FAA, the dealer produced the Xerox copies of the declaration Form 'C' issued by the purchasing dealer, which was rejected and the copy of another declaration form issued by the same purchasing dealer, which was accepted by the AO. In consideration of both these declaration forms, the FAA allowed the claim of the dealer and as such the extra demand of tax as assessed by the AO was set-aside.

4. Being aggrieved with such deletion of tax due by the FAA, this appeal is preferred by the State. It is contended that, in absence of original declaration Form 'C', the present dealer should not have been given concession in rate of tax. Further it is the selling dealer liable to be penalised when the purchasing dealer is a fake one.

5. The appeal is heard without cross objection.

Since the appellant remained absent in spite of the receipt of notice of hearing of the appeal, the appeal is heard setting aside the matter ex-parte.

6. Heard in this case, it is to be seen that, if the FAA has committed wrong in allowing the concession by accepting the declaration Form 'C' produced before him.

The learned Addl. Standing Counsel, Mr. Pradhan argued that, the purchasing dealer is a fake dealer. So, the declaration Form 'C' submitted by the assessee-dealer does not make him eligible for rate of tax as claimed. The impugned order as it revealed, the FAA has held that, if the purchasing dealer is a fake one, no penal action can be drawn against the selling dealer. It is also found that, the AO had accepted declaration Form 'C' bearing No. Z 0742127 issued by the same purchasing dealer during the same quarter of assessment as genuine. But at the same time disputed the genuineness of the declaration Form 'C' issued by the same purchasing dealer. In consideration of the above facts and the principle laid down by the authorities in **State of Madras Vrs. Radix Electricals Ltd., 18 STC, 222 (1966)** and in **Sastha Enterprises Vrs. Appellate Authority,**

Commissioner (C.T.), Chennai and another (2011) 37 VST 94, the FAA has accepted the declaration Form 'C' produced by the assessee-dealer and allowed the rate of tax as claimed.

7. Here in this case, the assessment was re-opened on the report of the AG. The AG has reported that, the declaration form issuing dealer was a fake dealer and it was ascertained by the AG from the concerned authority of Chhatisgarh. There is no doubt that penal action is contemplated under law for action against the issuing dealer if the declaration form is a fake one. It is not understood under what circumstances one declaration form issued by the dealer when accepted, how the other declaration form issued by the same dealer were rejected. There is no materials in the record to show that, the concerned authorities of Chhatisgarh has reported the fact that, the purchasing dealer was a fake one. However, it is made clear that, once it is held that, the issuing dealer is a fake one, then in no case the assessee-dealer is entitled to get the rate he claimed. Similarly because one declaration form is accepted that does not mean the second one is to be accepted without verification. There is no reason to held that, the second declaration form cannot be a fake one. However, it is a subjective satisfaction of the authority competent under the Act. When one declaration form was accepted, then it can be presumed that, the purchasing dealer had his existence at the relevant time. But the assessment in this case is re-opened on the report that, the purchasing dealer was a fake one. The reporting authority i.e. the audit team remained silent on one declaration form issued by the same dealer but they raised objection on the other declaration form. On verification of the copies of both the declaration forms available in the LCR as it indicates, there is a discrepancy between the two in respect to the TIN number but that itself cannot justify the plea that, the issuing dealer has no existence. To sum up here it is believed that, the AO has gone in slipshod manner relying on the AG report and passed the assessment order without application of mind, whereas the FAA by an in-depth analysis, arrived at a conclusion that the

instant dealer/selling dealer should not be held responsible for any defect or illegality committed by the issuing dealer. Accordingly, it is held that, the impugned order suffers from no illegality, hence calls for no interference.

The appeal by the State is dismissed as of no merit.

Dictated and Corrected by me,

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

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