

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 12/2014-15

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore, in Appeal No. AA-44/BA-1997-98 (OST), dtd.19.02.2014, allowing the assessment order of the Assessing Officer)

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

**Sri R.K. Rout
Accounts Member-II**

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

.... Appellant

-Versus-

M/s. Odisha Forest Development Corpn.,
Baripada.

... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (C.T.)
For the Respondent : Mr. A. Mohanty, Advocate

(Assessment period : 1995-1996)

Date of Hearing: 28.07.2018 Date of Order: 28.07.2018

ORDER

This is an appeal preferred by the Revenue challenging the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) as not sustainable on the plea like, the FAA has wrongly accepted photo copy of the declaration form without insisting for original.

2. The instant dealer OFDC, Baripada was subjected to assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the assessment period 1995-96. In course of assessment it was found that, the dealer had claimed transaction of goods worth of

Rs.31,000/- supported by Form-IV, but failed to produce the declaration form. As a result, the tax rate as claimed (concessional rate) was not allowed and the dealer was asked to pay full rate of tax with surcharge. After adjusting tax already paid, the balance tax due demanded at Rs.50,300/-.

3. In appeal preferred by the dealer, the FAA had accepted the Xerox copies of the Form-IV on production by the dealer and thereby he allowed the rate of tax claimed against the declaration Form-IV and re-calculated the tax liability, which was ended with the refund of Rs.1,365/- to the dealer.

4. When the matters stood thus, the Revenue being aggrieved with the order of FAA has preferred this appeal. It is contended by the Revenue that, production of the declaration form should not have accepted by the FAA in absence of original and in consequence thereof the order of AA should be restored by setting aside the order of FAA.

5. In cross objection, the respondent-dealer has submitted before the FAA that, on verification of the original, kept the copy in record and returned the original to the dealer. The genuineness of the Form-IV was duly verified and accepted. So, the appellant have no reason to reagitate the issue again.

6. The only question to be decided in this appeal is: Whether the FAA was wrong in allowing the concession against declaration Form-IV basing the photocopy of the same without verifying the original?

7. At the outset, it is pertinent to mention here that, the dealer has produced the original of the declaration Form-IV before this Tribunal. The Revenue was asked to ascertain the genuineness of the

declaration form, to which the Revenue only orally submitted that, it should be sent to the AO for verification. This is a matter relating to the period 1995-96. The dealer is also a Government of Odisha undertaking. It has sold goods to another registered dealer. Declaration Form-IV was issued by the purchasing dealer. The AO denied the claim because there was no declaration form produced before him, whereas the FAA allowed the claim on the basis of Xerox copy of the declaration form. The original declaration form is produced before this forum.

8. Learned Addl. Standing Counsel, Mr. Pradhan vehemently disputed the genuineness of the document. It is apt to mention here that, when the original filed, Revenue was asked to verify the genuineness of the document but the Revenue was silent. However, learned Addl. Standing Counsel submitted that, the matter should be remitted back to the AA for verification of the genuineness and in the event the form is found to be correct and genuine, then the dealer should be held entitled for the concession as claimed.

Per contra, learned Counsel for the dealer argued that, when the FAA being an extended forum of assessment has verified the original and accepted the Xerox. There is no reason to doubt his opinion in a question of fact. There is considerable force in the argument advanced by the dealer. Revenue has preferred this appeal. But has not discharged the initial burden by adducing any evidence that the declaration form accepted by FAA was a fake one. Mere taking a ground as such the Revenue can't raise question on the function of the FAA, a responsible officer under the act. Hence, it is held that, the finding of the FAA regarding his subjective satisfaction can't be

questioned on surmises. Accordingly, it is held that, the impugned order calls for no interference. Hence, ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

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

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

I agree,

Sd/-
(R.K. Rout)
Accounts Member-II