

2. The brief facts of the case are that :

The dealer-appellant M/s. Gopaljew Pharmaceuticals has been assessed by the Sales Tax Officer, Cuttack-II Circle, u/s.12(4) of the OST Act on dt.31.03.2006 for the period 2002-03. In response to notice issued, the dealer did not appear as per the date fixed by the Sales Tax Officer and as the case was going to be barred by limitation of time, the learned Assessing Officer completed the assessment ex-parte basing on the available materials in record. The dealer has disclosed to have effected gross sales to the tune of Rs.92,12,850/- in his returns during the year 2002-03 and claimed as first point tax paid goods sale. As the dealer did not appear nor caused production of books of accounts, the Sales Tax Officer disallowed the above claim and considered the entire sales as taxable sales and raised an extra demand of Rs.8,10,731/- for the above period.

3. Being aggrieved by the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Deputy Commissioner of Sales Tax, Cuttack-II Range, Cuttack, who in turn, dismissed the appeal and confirmed the order of assessment as the dealer failed to produce purchase bills in support of his claim of 1st point tax paid goods purchases for his subsequent sale.

4. Being further aggrieved with the order of the learned FAA/DCST, Cuttack-II Range, Cuttack, the dealer knocked the door of this Tribunal by way of filing of second appeal with the contention that, the order passed by the Id.FAA/DCST is illegal, arbitrary and in contravention of law and hence needs to be quashed.

5. No cross objection has been filed by the State-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer challenged the order passed by the learned FAA. He vehemently argued that, the order of the learned FAA appears to be unjust and improper. The order of assessment is bereft of merit and as such liable to be quashed. The orders passed by both the forums below are violative of the principles of natural justice. The dealer-appellant as per the notice appeared on dt.14.03.2008 before the ACST, Cuttack-II Range, Cuttack and produced all the relevant documents for the year in question and the final hearing was over on the facts and circumstances of the case. That again after a period of two and half years, the Id.DCCT, Cuttack-II Range, Cuttack issued notice for hearing fixing to dt.13.09.2010. Though the dealer-appellant appeared on the date fixed the appellate authority did not took up case as the LCR was not available and kept pending, till the availability of the assessment record without adjourning the case to issue fresh notice latter on. It is surprised to note that without extending any opportunity for hearing, the learned FAA passed arbitrary order upholding the demand raised on the facts and circumstances of the case. The dealer deals in medicine, subject to first point tax paid purchases and all the purchases are confined in the State. The question of further tax does not arise. The order as passed without offering an opportunity of being heard is illegal and against the settled principles of natural justice. So, the learned Advocate for the dealer prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Standing Counsel, Mr. D. Behura for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities to produce the documentary evidence in favour of his stand taken for disposal by the learned Assessing Officer and learned FAA but the dealer failed to produce the same. Hence, his plea is not acceptable. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant which is not sustainable in the eyes of law. The demand raised by the learned FAA is as per the statute. So, he prayed to dismiss the appeal filed by the dealer-appellant and to confirm the order of the learned FAA.

8. Heard the learned Advocate Mr. J.J. Pradhan appearing on behalf of the dealer and learned Standing Counsel Mr. D. Behura appearing on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, we are of the considered opinion that this is a fit case where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer after making proper verification of all purchase bills towards its claim of first point sales tax goods purchases vis-à-vis detailed statements filed to that effect and entries made in his books of account. He may cause further enquiry for a logical conclusion of his findings. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer as per provisions of law after making proper verification of the documents of the dealer within a period of three months from the date of receipt of this order and the dealer should be given a reasonable opportunity of being heard. The dealer is also directed to produce his complete set of books of accounts with relevant documents before the learned Assessing Officer.

Dictated and Corrected by me,

Sd/-
(Sweta Mishra)
2nd Judicial Member

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S. Mishra)
Accounts Member-II