

2. The brief facts of the case are that, the appellant-dealer is a rice miller who carried on processing of rice, broken rice and rice bran out of milling of paddy. The appellant-dealer undertook custom milling of paddy on behalf of different Govt. agencies like OSCSC Ltd., Odisha and NAFED for supply of the resultant rice to those agencies on payment receipt towards custom milling charges as decided by the Govt. authorities. It also carried on processing of paddy receipt from the private parties and sells the resultant rice, broken rice and rice bran in the open market. Initially the appellant-dealer was assessed u/s.39 of the OVAT Act for the period 01.04.2011 to 10.04.2013 where no discrepancy of the appellant-dealer was found. On receipt of a fraud case report submitted by the STO Vigilance, Koraput Division, Jeypore, the appellant-dealer was again reassessed u/s.43(1) of the OVAT Act where the appellant-dealer did not appear. As per the fraud case report (available in the LCR) it is evident that the proprietor of appellant-dealer firm produced the paddy stock register of OSCS Ltd. and NAFED for the year 2011-12 to 2013-14 showing opening stock as nil on 01.04.2011. Likewise, rice stock register, broken rice stock register and bran stock register on account of OSCD Ltd. and NAFED were also up to date showing opening stock as nil and tax invoice/retail invoice were also maintained as per book balance. Finally, before the investigating officials he in his statement stated that the discrepancy detected in case of paddy, rice, rice bran, broken rice might have arisen because of the method of approximation adopted by the visiting officials and the non-uniform size of the bags containing the paddy. Hence there was no intention of suppression or out of account of purchase or sale of these goods in any manner. But the learned ACST beyond the fraud case report calculated the sale suppression at Rs.5,60,570.00. After allowing deduction of Rs.58,395.00, the GTO and TTO were determined at Rs.20,20,999.00 and Rs.19,62,604.00 respectively. Tax @ 4% on Rs.11,70,854.00 and

tax @ 5% on Rs.7,91,750.00 came to Rs.46,834.16 and Rs.39,587.50 respectively. Tax was calculated at Rs.86,421.66. Further, penalty u/s.43(2) of the OVAT Act on the tax due came to Rs.56,057.00. Tax along with penalty together came to Rs.1,15,247.00.

3. Being aggrieved by the order of the learned ACST, the appellant-dealer preferred an appeal before the learned JCST who reduced the total demand to Rs.48,081.00. Being further aggrieved by the order of the learned JCST, the appellant-dealer preferred this second appeal.

4. The respondent-Revenue has filed cross objection supporting the order of the learned JCST.

5. Heard both the learned Counsels. Perused the case record, the grounds of appeal and the LCR. I also perused the materials available on record and the plea taken in the cross objection. I have also carefully gone through the orders of both the learned fora below. During the course of hearing, the learned Counsel for the appellant-dealer stated that the physical stock of paddy and rice was determined manually. The learned Counsel also submitted that there was excess stock of Q. 360 of paddy and shortage of Q. 86 of rice which were less than 1% of the total stock and hence negligible. But the learned Counsel failed to explain the reason of the shortage of such smaller quantity. In the grounds of appeal the learned Counsel for the appellant-dealer admitted that the STO Vigilance, Koraput visited the business premises and took the physical stocks manually from the staff and gave a fraud report regarding excess stock of paddy of Q. 360.60 and shortage of raw rice of Q. 86.85. As per the contention of the appellant-dealer the visiting officials took physical stock manually which was not fully systematic and scientific. Hence there is possibility of 1% mistake in stock discrepancy as submitted by the learned Counsel for the appellant-dealer. Similarly, it was also stated in the grounds of appeal that the total book balance of paddy of

Q.32651.70 was weighed and 1% excess stock i.e. Q. 360.60 was found which was negligible and not a valid ground to point out excess stock. It was further stated that the book balance of raw rice of Q.3864.85 was weighed and 2% of shortage i.e. Q. 86.85 was found which was negligible and not a valid ground to point out shortage in stock. It was also stated in the grounds that the same was the case with broken rice and bran. The learned Standing Counsel appearing for the Revenue stated that the appellant-dealer has admitted in the grounds of appeal about the shortage and excess in stock of different items for which there is no further proof of the same and the impugned order suffers from no infirmity. On analysis of the details of the case it is seen that the excess stock and shortage in stock were rightly detected by the STO Vigilance, Koraput and the appellant-dealer could not give cogent reasons for such excess or shortfall. On the other hand, the appellant-dealer has admitted the same as discussed above. It is to be noted that facts admitted need not be proved. Moreover, the authorized person of the firm was present at the time of visit of the STO Vigilance, Koraput. The physical stock position was noted down by the vigilance staff in presence of the authorized representative of the firm who had duly authenticated the same. Hence the learned JCST rightly confirmed the sale suppression which was determined at Rs.5,60,570.00. However, after making necessary calculation the learned JCST rightly calculated the balance tax and penalty payable by the appellant-dealer to be Rs.48,081.00. Hence there is no merit in the second appeal preferred by the appellant-dealer which is not sustainable in the eye of law. The learned JCST has rightly allowed the appeal in part which has partly gone in favour of the appellant-dealer. The order of the learned JCST is self-explanatory and needs no interference. Hence I do not find any infirmity in the order of the learned JCST.

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6. In the result, the appeal is dismissed and the impugned order is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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