***BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.***

**P r e s e n t:** **Shri A.K. Dalbehera, O.S.J.S.**
**M.A., LL.M.**
**1st Judicial Member**

***S.A. No. 302(V) of 2017-18***

(Arising out of the order of the learned JCST (Appeal), Sambalpur Range, Sambalpur, in First Appeal Case No. AA 04/SAII/VAT/2017-18, disposed of on dtd.21.08.2017)

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

**- V e r s u s -**

M/s. Shiv Shakti Rice Mill Pvt. Ltd., At/P.O.- Malti Gunderpur, Dist.- Sambalpur. ... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. S. Nayak, Advocate

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Date of hearing: 25.02.2020 ******** Date of order: 21.03.2020

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***O R D E R***

This appeal is directed against the order dtd.21.08.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA 04/SAII/VAT/2017-18, wherein he reduced the demand from Rs.2,37,075.00 to Rs.22,104.00 raised by the learned Sales Tax Officer, Sambalpur II Circle, Sambalpur (hereinafter referred to as, the learned STO) for the assessment period 01.04.2014 to 30.09.2015 u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, the respondent-dealer was engaged in the custom milling activities with the OSCSC Ltd. and MARKFD. The appellant-dealer procured paddy from the purchasing centre of different procurement agencies and after milling supplied rice to the FCI and effected sale of broken rice and rice bran. On the basis of the Audit Visit Report (in short, the AVR) submitted by the Audit Team, Sambalpur Range, Sambalpur, the respondent-dealer appeared with the books of account for confrontation. On verification, the learned STO allowed ITC of Rs.11,759.00 for the aforesaid period. On the basis of the AVR, the learned STO found excess physical stock of Q. 236.97 of paddy, less stock of Q. 469.131 of rice, Q. 9.3276 of rice bran and Q. 29.1024 of broken rice. The learned STO determined purchase discrepancy as well as sales discrepancy towards excess physical stock of rice bran and broken rice. So, the learned STO estimated total sales suppression of Rs.14,33,127.00 and determined the GTO and TTO at Rs.1,14,83,439.00 and Rs.1,09,36,608.00 respectively. Tax @ 5% on the TTO was calculated at Rs.5,46,831.00. Total creditable ITC was calculated at Rs.2,19,004.00. After deduction of creditable ITC of Rs.2,19,004.00 and tax paid of Rs.2,48,802.00 the balance tax payable was calculated at Rs.79,025.00. Tax along with two times penalty of Rs.1,58,050.00 came to Rs.2,37,075.00.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST who reduced the total demand to Rs.22,104.00. Being aggrieved by the order of the learned JCST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer 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. I have also carefully gone through the orders of

both the learned fora below. It is seen that the learned JCST observed rice milling as an ongoing process and it is difficult to ascertain the actual stock of the day. This fact was also appreciated by this Tribunal in the case of M/s. Durga Rice Mill in S.A. No.948 of 1987-88 wherein the Tribunal have observed that eye estimation method of verification of stock may be useful for certain purpose but it cannot be utilized as the basis for imposition of tax. The book figure cannot be discarded in taking the physical stock found at a particular time that too arrived at by eye estimation. The learned JCST rightly clarified that the audit officials had calculated stock discrepancies of paddy, rice, rice bran and broken rice for the period from 01.01.2014 to 30.09.2015 taking into account of the physical stock as on 27.09.2016. Law is well settled that if materials discovered relate to any particular assessment year, those cannot be utilized for making assessment for other years. But in this case the learned STO had simply accepted the findings of the Audit Officials and calculated tax on such discrepancies. There was no material at all in the assessment record to support the fact that there has been any clandestine purchase of paddy or sale of rice. Therefore, it appears that the allegation was based on mere presumption of facts without any proof. At the first appeal stage on verification of the available materials, the learned JCST found out that the physical stock taken by the visiting officials was totally on eye estimation basis and to counter the allegation of the discrepancy with regard to the physical stock and the stock mentioned in the book balance, the respondent-dealer had clarified the same, but the visiting officials had not considered the same. In this regard, another clarification of the respondent-dealer was that, different commodities were being certified by the Civil Supplies Authorities and hence the figures mentioned in the books of account were correct and hence there was no question of any suppression on its part. Considering the clarification put forth by the

respondent-dealer to be proper and convincing, the learned JCST did not agree to the finding and order of the learned STO in this regard and determined the tax liability of the respondent-dealer accordingly. It is well settled that sales suppression cannot be established on presumption of facts. So, the learned JCST rightly calculated the TTO of the respondent-dealer at Rs.95,03,481.00 and taxed @ 5% on the same which was calculated at Rs.4,75,174.00. After deduction of Rs.2,19,004.00 towards creditable ITC as determined by the learned STO and Rs.2,48,802.00 already paid by the respondent-dealer the balance tax payable was calculated at Rs.7,368.00. Two times penalty of Rs.14,736.00 was imposed to the respondent-dealer u/s.42(5) of the OVAT Act which together with the tax payable came to Rs.22,104.00. On further consideration of the materials on record, this forum is also in full agreement with the finding and order of the learned JCST as the same suffers from no infirmity and is purely based upon the materials on record. In view of the above observation I find no infirmity in the order of the learned JCST and I am not inclined to interfere with the impugned order.

6. In the result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

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

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