

**BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH),  
CUTTACK  
S.A.No.2454-55/2004-05**

(From the order of the Id. ACST, Balasore Range,  
Balasore, in Appeal No. AA.24 & 25/BA-2004-05,  
dtd.28.06.2004 rejecting the assessment order of the  
Assessing Officer)

**P R E S E N T :**

<b>Sri A.K. Das</b> Chairman	<b>Smt.Sweta Mishra</b> 2 <sup>nd</sup> Judicial Member	<b>&amp; Sri M. Harichandan</b> Accounts Member-I
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M/s. Sri Gopal Agro Tech Ltd.,  
At/P.O. Remuna, Dist. Balasore. ... Appellant

-Versus -

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

**Appearance :**

For the Appellant	... None	
For the Respondent	... Mr. D. Behura, Standing Counsel, Mr. M.S. Raman, A.S.C. (C.T.)	

(Assessment Year : 2001-02 & 2002-03)

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Date of Hearing: 20.09.2021    \*\*\*    Date of Order: 29.09.2021  
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**ORDER**

These appeals are directed against the order dt.28.06.2004 of the learned First Appellate Authority/ Asst. Commissioner of Sales Tax, Balasore Range, Balasore (in short, FAA/ACST) in First Appeal Case No. AA.24 & 25/BA-2004-05 summarily rejecting the appeals filed by the dealer thereby confirming the assessment orders passed by the learned Sales Tax Officer/Assessing Authority, Balasore Circle, Balasore (in short, STO/AA) for the assessment year 2001-02 and 2002-03

respectively u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act).

2. The facts of these cases can be briefly stated thus :

The dealer-assessee in the instant case M/s. Srigopal Agro Tech Ltd., Remuna Bazar, Balasore having R.C. No.BA:5041 deals in rice and grocery goods on wholesale basis. Notice u/s.12(4) of the OST Act bearing No.952/28.1.03 has been duly served on the dealer fixing date to 12.2.03. The dealer did not appear on the said date. Thereafter, several intimations were served on the dealer for production of books of accounts for the period under assessment, but all were in vain. So the learned STO completed the assessments on ex-parte basis and determined the GTO at Rs.5,54,64,034.47. After deduction of Rs.90,800.75 towards collection of OST, TTO was determined at Rs.5,53,73,233.72 which was taxed @4% at the assessment stage. Tax @4% on the entire TTO was calculated at Rs.22,14,929.35 out of which dealer paid tax of Rs.30,799/- u/r.36 of the OST Rules and Rs.63,587/- was demanded u/s.13(4-a) of the OST Act. Thus, the dealer was found liable to pay the balance tax demand of Rs.21,20,543/- at the stage of assessment for the assessment year 2001-2002. Similarly, the dealer was also found liable to pay the tax balance of Rs.19,07,304/- for the assessment year 2002-2003.

3. Being aggrieved, the dealer-assessee preferred first appeals before the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Balasore Range, Balasore (in short, FAA/ACST), who in turn, summarily rejected the appeals preferred by the dealer and orders of assessments were confirmed.

4. Being further aggrieved with the orders of the learned FAA/ACST, the dealer-assessee knocked the door of this Tribunal with a prayer to quash the orders of first appellate authority as the same is bad in law and facts.

5. No cross objections have been filed by the State-respondent in both the cases.

6. Despite service of notice on the dealer by affixture, for reasons best known to him, he (dealer) neither engaged a counsel nor anybody on his behalf to remain present before this Tribunal to defend his case. This Tribunal, therefore, is left with no other alternative except to hear the argument of Mr. D. Behura, Standing Counsel (C.T.) appearing for the Revenue and to dispose of the matter on ex-parte basis on merit.

7. Perused the assessment order as well as first appeal order, all the materials available in the records, grounds of appeal submitted by the dealer. During the course of hearing, Mr. Behura, Standing Counsel for the State argued that, the order of the learned FAA is just and proper. So it should be confirmed by this Tribunal. Despite reasonable opportunities, the dealer has not appeared before this Tribunal. The appellant has filed the appeals before the appellate forum on dt.27.04.2004 which is barred by limitation by 28 days for both the periods. Further, it is noticed that, CF stamp worth Rs.1.25 has not been affixed in both the stay petitions and admitted taxes of Rs.63587/- and Rs.15,000/- have not been paid before filing of appeals. For the above lapses, two show cause notices were issued to the appellant on dt.26.05.2004 fixing the date to dt.29.05.2004, but the dealer-appellant did not respond on the scheduled date, though he received the said show cause notices as evident from the postal

AD kept in the record. Thereafter, another two show cause notices for the said years were issued to the appellant on dt.05.06.2004 fixing the date to dt.18.06.2004 which went unresponded too although the appellant received the said show cause notices. There is clear stipulation u/s.23 of the OST Act that the appeal should be filed within 30 days from the date of receipt of the assessment order, admitted tax so admitted should be paid before filing the appeal and fee of Rs.1.25 should be paid for other petitions. The first appellate authority found that, the appellant was no more interested to pursue of the appeal or comply the show cause notices. Under the above circumstances he did not find any reason to linger the case and accordingly the appeal petitions so filed by the dealer-appellant were summarily rejected u/r.49 of the OST Rules, 1947. 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 the learned First Appellate Authority, 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.

8. Heard the learned Standing Counsel, Mr. D. Behura on behalf of the State in absence of participation of the dealer in hearing of this appeal and gone through the grounds of appeal, vis-a-vis the materials on record. The dealer has not adduced any evidence on his behalf nor he has appeared before this Tribunal to substantiate the grounds of appeal filed by

him. 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, the contention raised by the learned Standing Counsel for the State is quite legal and sustainable in the eye of law. Therefore, we don't find any defect in the order passed by the learned FAA and it needs no interference by this Tribunal. Accordingly, it is ordered.

9. The appeals filed by the dealer are dismissed and the orders of the learned First Appellate Authority are hereby confirmed.

Dictated & corrected by me,

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

I agree,

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

I agree,

Sd/-  
(A.K.Das)  
Chairman

Sd/-  
(M. Harichandan)  
Accounts Member-I