

**BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH),
CUTTACK
S.A.No.28(C)/2002-03**

(From the order of the Id. ACST, Balasore Range,
Balasore, in Appeal No. AA.56/BC-93-94, dtd.29.11.2001
confirming the assessment order of the Id.Assessing Officer)

P R E S E N T :

Sri A.K. Das **Smt.Sweta Mishra** & **Sri M. Harichandan**
Chairman **2nd Judicial Member** **Accounts Member-I**

M/s. Konarak Paper & Industries,
At/P.O. Jharia, Mayurbhanj. ... 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. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Year : 1991-92)

Date of Hearing: 20.09.2021 *** Date of Order: 30.09.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/ Asst. Commissioner of Sales Tax, Balasore Range, Balasore (in short, FAA/ACST) in First Appeal Case No. AA.56/BC-93-94 dtd. 29.11.2001 in confirming the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Mayurbhanj Circle, Baripada (in short, STO/AA) for the assessment year 1991-92 u/r. 12(8) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The facts of this case can be briefly stated thus :

 The assessee M/s. Konark Paper & Industries Ltd. manufactures paper for sale. The learned Assessing Officer had

confronted the adverse report submitted by the learned STO, Investigation Unit, Balasore wherein it was alleged that, the appellant had been despatching goods to the buyers in course of inter-state sales but those were reflected as stock transfer. The appellant explained that there was no direct movement of the goods and the goods were moved and cleared by the branch office. Besides, statutory declaration in Form 'F' had been submitted in support of branch transfer. The learned Assessing Officer did not accept the explanation because he found that the stock transfer consignment had been kept separately till sold to the earmarked buyers. He further observed that the consignments were delivered in same lots within a close proximity of 3 to 4 days. The learned Assessing Officer calculated the tax, penalty and surcharge together to Rs.41,65,587/- which the dealer was liable to pay at the time of assessment.

3. Being aggrieved, the dealer-assessee preferred first appeal before the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Balasore Range, Balasore (in short, FAA/ACST), who in turn, dismissed the appeal and confirmed the assessment order passed by the learned Assessing Officer.

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

5. Cross objection has been filed by the State-respondent in this case.

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 learned Assessing Officer and First Appellate Authority have rightly completed assessment/appeal basing on the statutory provisions under the Act and Rules. The paragraph-2 of page-3 of assessment order clearly depict that, Sri Ghosh, the authorised representative has categorically admitted that the despatch advices were received from Calcutta office, inter-state sales are effected on the basis of such advice and it has no relation with the stock transfer. The Hon'ble Apex Court has observed that, additional sales tax (surcharge) can be levied on inter-state sale. 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. The learned Standing Counsel prayed before the Tribunal to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

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 did he appear 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 appeal filed by the dealer is dismissed and the order of the learned First Appellate Authority is hereby confirmed. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated & corrected by me,

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

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

I agree,

Sd/-
(A.K.Das)
Chairman

I agree,

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