

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

Present: **Smt. Suchismita Misra**, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member,
&
Shri R.K. Pattnaik, Accounts Member-III.

S.A.No.1790 of 2005-06

(Arising out of the order of the learned ACST, Cuttack I Range,
Cuttack, in First Appeal Case No. AA-238/CUIW/2004-2005,
disposed of on dtd.12.09.2005)

M/s. Shree Ganesh Laxmi Bhandar,
Bakharabad, Cuttack.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant : N o n e
For the Revenue : Mr. M.L. Agarwal, S.C.

Date of hearing: 27.01.2020 ***** Date of order: 10.02.2020

ORDER

This appeal is directed against the order dtd.12.09.2005 passed by the learned Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA-238/CUIW/2004-2005, wherein he confirmed the order of the learned Sales Tax Officer, Cuttack I West Circle, Cuttack, Ward-C (hereinafter referred to as, the learned STO) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) in respect of the appellant-dealer for the assessment year 2002-03.

2. The brief facts of the case are that, the appellant-dealer deals in mustard oil, refined oil, mustard seeds, sugar, vanaspati, coconut oil etc. having registered place of business at Bakharabad

and Malgoldown, Cuttack. In response to notice, the appellant-dealer appeared and produced the books of account which revealed the total purchase of Rs.12,26,41,447.99 during the aforesaid year. The dealer was found to have utilized 331 sets of Govt. way bills for an amount of Rs.9,87,11,093.39 for outside purchase. The learned STO concluded that as the appellant-dealer failed to furnish the wanting declarations in form-XXXIV, he completed the assessment. The learned STO determined the GTO at Rs.12,54,72,489.21 and TTO at Rs.9,21,81,182.11. Surcharge @ 10% on the tax due was calculated at Rs.6,03,025.17. Tax and surcharge together came to Rs.66,33,276.87. The dealer having already paid Rs.35,52,137.00 was required to pay the balance amount of Rs.30,81,140.00.

3. Being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST who just confirmed the order of the learned STO. Being aggrieved by the order of the learned ACST, the appellant-dealer preferred this second appeal by way of grounds of appeal.

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

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard *exparte* and is disposed of on merit. The learned Standing Counsel appearing for the respondent-Revenue submitted that, the learned ACST has considered the matter properly passed the order and as such the order passed by the learned ACST suffers from no infirmity. The second appeal preferred by the appellant-dealer has no merit and as such the same is liable to be dismissed.

6. Perused the orders of both the learned fora below and the other materials on record. Also perused the grounds of appeal. In the grounds of appeal the appellant-dealer has mainly contended that the learned ACST should have allowed sufficient opportunity to the

appellant for production of wanting declaration in Form-XXXIV amounting to Rs.3,12,24,464.79 which could not be collected by the appellant-dealer. He further contended that the learned ACST was not justified to dismiss the appeal exparte. On perusal of the order of the learned ACST it is seen that the appellant-dealer was provided sufficient opportunity to produce declarations in Form-XXXIV but the appellant-dealer adopted dilatory mechanism and did not submit such forms. On perusal of the assessment it is seen that the learned STO had provided sufficient opportunity to furnish declarations in Form-XXXIV but the appellant-dealer failed to produce such forms. The appellant-dealer during the second appeal stage also did not come forward to submit any such form. Hence in absence of such declaration forms the claim of the appellant-dealer has been rightly disallowed. In view of such discussion, we are convinced that the appellant-dealer for the sake of filing appeal has filed the second appeal without any basis. Hence, we are not inclined to interfere with the impugned order.

7. In the net 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

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

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III