

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 75/2013-14

(From the order of the Id.DCST (Appeal), Balasore Range, Balasore, in Appeal No. AA-700/MB-1993-94 (OST), dtd.06.07.2013, modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Surajmal Hanuman Prasad,
Rairangpur, Mayurbhanj.

.... Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : None

(Assessment Year : 1992-93)

Date of Hearing: 07.03.2019 *** Date of Order: 07.03.2019

ORDER

This second appeal is directed against the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/DCST) in First Appeal Case No. AA-700/MB-1993-94 (OST), dtd.06.07.2013 passed by the Assessing Authority/Sales Tax Officer, Mayurbhanj Circle, Baripada (in short, AA/STO) for the assessment year 1992-93 u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act), whereby the tax due as against the suppression established is reduced from the determination of the same.

2. The respondent-dealer, M/s. Surajmal Hanuman Prasad, a registered dealer engaged in business of grocery goods, was subjected to assessment u/s.12(4) of the OST Act for the assessment

period 1992-93 with the allegation of suppression of turnover brought by the Inspector of Sales Tax, Assessment Unit, Rairangpur, dtd.30.06.1992. The AA took cognizance of the report regarding suppression on four in course of trading with M/s. Hanuman Sarada. The AA, thereafter, found the dealer's plea of denial of suppression is baseless, treated the same as sale suppression and, thereafter, he assessed the dealer applying the best judgment principle. The GTO was determined at Rs.16,76,123.74 out of which tax free goods and first point tax paid goods were deducted and then TTO was determined at Rs.4,39,934.70. Tax at different rates on it was calculated at Rs.27,043.24. Surcharge @10% was added, adjusting the tax already paid by the dealer, the balance tax due with surcharge was calculated at Rs.19,894/-.

3. Felt aggrieved, the dealer preferred appeal before the learned FAA/DCST, Balasore Range, Balasore, who in the impugned order upheld the findings relating to the suppression but re-determined the GTO at Rs.18,96,123.34 and TTO at 3,09,934.70. Tax due and surcharge was computed in total at Rs.21,203/-. Adjusting the tax already paid by the dealer, the dealer was asked to pay balance of Rs.11,350/-.

4. When the tax due is reduced from Rs.19,894/- to Rs.11,350/-, State being aggrieved preferred this appeal with the contentions like, the reduction of the enhancement of suppressed turnover in the impugned order is without basis. So, the assessment of the STO/AA should be restored.

5. The appeal is heard without cross objection and in absence of the dealer as well. Originally, the dealer was assessed on the basis of allegation of suppression. The detection of suppression on four occasions as mentioned above are as follows :

Sl.No.	Date	Slip No.	Name of the goods	Quantity	Value
1.	5.4.92	54	Dal.	1 bag. Kg.98,500 g.	896.40 0.90
2.	7.4.92	50	Chana-5 bags	...	3,850.00 3.80
			Chana Dal- (2 bags)	Kg.196.900g	1,791.80
3.	9.4.92	45	Besan-3 bags	2,109.00	
4.	11.4.92	43	Chana-5 bags. Kg.501.400 g		3,875.83 3.90

6. The AA found the allegation established in absence of reasonable explanation by the dealer and determined the GTO. As it revealed from the impugned order and the order of the AA, here both the fora below found the allegation of suppression is established, whereas the FAA has re-determined the GTO and the tax liability and in consequence thereof, the tax due is reduced from Rs.19,894/- to Rs.11,350/-. This is a pure question of fact determined by the FAA on scrutiny of the turnover of the dealer in one hand and the suppression detected over the period in the other. The FAA being an extended forum of assessment has the jurisdiction to make an assessment independent of the assessment of the AA. In the case in hand, he has confirmed the findings to the extent of suppression as established, but while determining the tax liability, he has reduced the same from Rs.19,894/- to Rs.11,350/-. Revenue has failed to raise any reasonable plea to be taken into consideration to interfere with the order of the FAA. Hence, it is ordered.

The appeal sans merit hence dismissed.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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