

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**STREV No. 16 of 2014**

***M/s. Auro Flour Mills Pvt. Ltd.*** .... ***Petitioner***

Mr. Sidhartha Ray, Advocate

***-versus-***

***State of Orissa, represented through*** .... ***Opposite Party***  
***Commissioner of Sales Tax***

Mr. S.K. Pradhan, Additional Standing Counsel

**CORAM:**

**THE CHIEF JUSTICE**

**JUSTICE M.S. RAMAN**

**ORDER**

**06.12.2022**

**Order No.**

06. 1. The challenge in the present revision petition by the Assessee/Dealer is to the order dated 1<sup>st</sup> August, 2013 of the Orissa Sales Tax Tribunal allowing S.A. No.44(VAT) of 2012-13 filed by the State against an order dated 21<sup>st</sup> April, 2012 passed by the Additional Commissioner of Sales Tax (ACST) (Appeals) in First Appeal Case No.AA.132(V)/ACST/BA/09-10.
2. The First Appellate Authority had allowed the appeal filed by the Dealer/Assessee and reduced the demand to Rs.60,498.00 for the tax period, i.e., 1<sup>st</sup> November, 2006 to 29<sup>th</sup> February, 2008 thereby modifying the assessment order passed by the Assistant Commissioner of Commercial Taxes (ACCT) raising a demand of Rs.2,20,713.00 and penalty of Rs.1,47,142.00 under Section 42(5) of the Orissa Value Added Tax Act, 2004 (OVAT Act).

3. While admitting the present revision petition on 8<sup>th</sup> September, 2014 the following question was framed for consideration by this Court:

“Whether in the facts and circumstances of the case, the Tribunal was justified in placing reliance on a circular of the Food Supplies and Consumer Welfare Department while simultaneously not rejecting the books of accounts which were accepted by the First Appellate Authority and consequential thereof?”

4. The background facts are that the Petitioner/Dealer is registered under the OVAT Act and is engaged in the manufacture and sale of Atta, Maida, Suji and wheat bran. For that purpose, the Petitioner purchases raw material, i.e., wheat both from outside and within the State for milling. That the Petitioner claims to be maintaining its books of accounts which includes the purchase register, purchase voucher, sales register etc.

5. Although the Petitioner produced its books of accounts before the Assessing Officer (AO), the latter came to the conclusion that the Petitioner had suppressed sales to the tune of Rs.3,26,816.00. The AO accordingly determined both the gross turn over as well as taxable turnover and raised a demand of Rs.2,20,713.00. In the course of the said determination, the AO placed reliance on a Circular No.EC.I.WA 7/94.43861 dated 6<sup>th</sup> December, 1994 issued by the Food Supplies and Consumer Welfare Department, Government of Odisha.

6. According to the Petitioner/Assessee, the said Circular was issued at a time when the Flour Mills were allowed to also be storage agents of wheat. The said Circular prescribed the ratio of production of Suzi, Maida, and Atta from one quintal of wheat. In

other words, it was determined therein that for milling one quintal of wheat, a Miller can get 30 kg of Atta, 35 kg of Maida, 15 kg of Suji and 19 kg of bran and the production loss would be 1 kg. Some part of it would be taxable and some not. On this basis, it was determined that the claim by the Dealer that its ratio of production was 76% taxable, 23% tax exempted and 1% loss was not so materially different so as to reject the figures found in the books of accounts of the Assessee.

7. This contention of the Dealer/Assessee that the said Circular would not have any application was accepted by the First Appellate Authority. The total output shown by the Assessee at 76% of the raw material was held to be only “slightly below the ratio discussed”. Further, the First Appellate Authority noted that “no discrepancy in the physical stock position could be gathered at the time of spot verification and neither any sale suppression nor any purchase suppression have been alleged” and that in those circumstances “the books of account cannot be rejected on the basis of mere suspicion”.

8. Having heard learned counsel for the parties, the Court is of the view that both the AO and the Tribunal appear to have placed considerable reliance on the aforementioned Circular of the Food Supplies and Consumer Welfare Department, Government of Odisha without appreciating the context in which it was issued way back in 1994. If, as pointed out by the Assessee, it was meant to apply to flour mills which were also storage agents of wheat, then certainly that it could not have been applied in the present context where the Petitioner/Dealer is not a storage agent for wheat but only a manufacturer of Atta, Suji, Maida etc.

9. Secondly, where the books of accounts maintained by the Assessee have not been found to be erroneous and, therefore, not rejected, the AO could not have straightway applied a Circular of 1994 to determine that there had been suppression of purchase and sales. Thirdly, as pointed out by the First Appellate Authority, even after applying the Circular, the figures disclosed by the Dealer/Assessee were found to be only slightly less than the ratio of production in terms of the above Circular.

10. Viewed from any angle, therefore, there was no warrant in the AO concluding that there had been suppression of sales by the Dealer/Assessee.

11. For the aforementioned reasons, the question framed is answered in the negative i.e., in favour of the Assessee and against the Department. The impugned order of the Tribunal is hereby set aside and the order of the First Appellate Authority is restored to file. The consequential order of penalty is also hereby set aside.

12. The revision petition is allowed in the above terms but in the circumstances with no order as to costs.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(M.S. Raman)***  
***Judge***

*S. Behera*