

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX
TRIBUNAL, CUTTACK.**

S.A. No. 563 of 2004-05

(Arising out of the order of the learned ACST,
Cuttack-I Range, Cuttack in first appeal case
No.AA-156-CUIW-2003-04 dtd.28.02.2004)

Present: **Shri S.K. Rout, 2nd Judicial Member**
&
Shri B. Bhoi, Accounts Member-II

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

-Vrs. -

M/s. Utkal Galvanizers Ltd.
Oranda, Kapursingh, Cuttack. Respondent.

For the Appellant : : Mr. M.L. Agarwal, ld. S.C.(C.T.)
For the Respondent : : Mr. S.C. Sahoo, ld. Advocate

Date of Hearing : 02.02.2023 * Date of Order: 24.02.2023**

O R D E R

The State is in appeal against the order dated 28.02.2004 of the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (hereinafter called as 'ld. FAA') in first appeal case No. AA-156-CUIW-2003-04 allowing the appeal in part and reducing the demand raised at assessment to Rs.58,324.00.

2. The facts in nutshell are that M/s. Galvanizers Ltd., Oranda, Kapursingh, Cuttack is a small scale industry manufacturing items like telephone poles, tower and sub-station structure and accessories, foundation Bolts, buckets and other Gavanised items, cross Arms and all sorts of fabrication works. The

unit started fixed capital investment after 1.12.89 and has gone into commercial production, expansion/modernization on 27.09.1993. After expansion, it was allowed to produce fabrication and Galvanization of overhead lines Tower, butts, J. Hooks and G.I. Tanks, Galvanized Mild steel, Flats. The unit was declared as new SSI unit as defined in Para 2(7) of IPR 1989. Therefore, the unit was eligible for exemption of sales tax on sale of its finished products for a period of 7 years from the date of commercial production. The unit has availed a tax exemption certificate from the DIC, Cuttack which was valid for the period from 01.04.99 to 31.07.99.

The dealer-respondent was assessed U/s.12(4) of the OST Act by the STO, Cuttack-I West Circle, Cuttack exparte for the year 1999-2000 raising demand of Rs.77,15,708.00 which includes surcharge of Rs.11,89,776.00.

3. On being aggrieved against the order of assessment, the dealer-respondent preferred first appeal. The demand raised by the ld. STO U/s.12(4) of the OST Act was reduced to Rs.58,324.00 by the ld. FAA.

4. The State preferred second appeal before this Forum citing the order of the ld. FAA as unjust, illegal, arbitrary and bad in law. It is submitted that the ld. FAA has not stated the reasons as to non-filing of returns for the month of March, 2000 by the dealer-respondent. The ld. FAA has allowed exemption on account of IPR benefits without making detailed examination of the sales. Further, it is submitted that the ld. FAA has allowed sales against declaration in Form-IV without detailed examination of the terms

and conditions and purchase orders etc. The ld. FAA has also not ascertained the reasons under what circumstances the assessee has collected tax amount of Rs.17,92,712.00 and had paid Rs.8,14,206.00. It otherwise implies that the books of accounts submitted at the appellate forum suffers from irregularities and not to be accepted as true and correct. The reduction of assessment is not maintainable for which orders passed by the ld. FAA is subject to modification and re-assessment.

There is no cross objection filed by the assessee respondent.

5. The orders of assessment, first appeal order, grounds of appeal and the materials on record are gone through at length. It is observed that there has been two assessment orders passed for the material period in respect of the same dealer by the STO, Cuttack-II Circle, Cuttack and the STO, Cuttack-I West Circle, Cuttack. The STO, Cuttack-I West Circle, Cuttack passed an exparte order raising demand of Rs.77,15,708.00. Whereas, the STO, Cuttack-II Circle, Cuttack raised demand of Rs.7,60,688.00 on causing assessment of the dealer for the period in question. The facts being that, the dealer-assessee was registered under STO, Cuttack-I West Circle, Cuttack having RC No.CUIW 2531. After its place of business got shifted to the jurisdiction of the STO, Cuttack-II Circle, Cuttack, the RC was cancelled U/s 9 (6) (C) of the OST Act w.e.f. 1.4.2000. The said firm has availed a RC bearing No.5845 effective from 11.5.1999 from the STO, Cuttack-II Circle, Cuttack. The Ld.FAA without going into the aspects of maintainability of both

the orders of assessment, took up examination of the books of accounts, statement of purchases, statement of sales, revised returns of the entire assessment period, purchase orders, orders of execution of works contracts and contract for labour as produced by the dealer-assessee. As it transpires, the Ld.FAA has conducted detailed verification of the books of accounts.

The Ld. FAA is learnt to have verified the Certificate of eligibility of sales tax exemption on finished products and purchase of raw materials, packing materials and machinery spare parts for expansion/modernization/diversification under IPR,1989 issued in favour of the dealer-respondent which was valid for the period from 1.4.1999 to 31.7.1999. It is revealed that the Ld. FAA has accepted the sales tax exemption on sales of the finished products worth Rs.1,67,69,793.78 covered under the exemption certificate up to 31.7.1999.

As regards sales against declaration Form IV, the Ld. FAA held the sales to GRIDCO for use in distribution of electricity on the strength of Form IV as justified and as such, the Forms IV submitted for Rs.4,36,31,332.42 have been accepted.

6. The Ld. FAA determined the GTO at Rs.7,98,80,205.02. After allowing deduction of Rs.17,92,712.00 towards sales tax collection, Rs.1,67,69,793.78 towards sales under IPR,89, Rs.5,61,560.73 towards transportation charges, and Rs.1,46,00,848.51 towards erection cost (labour charges), the TTO stood determined at Rs.4,61,55,290.00. Tax @4% on Rs.4,36,31,332.42 (against Form IV), @4% on Rs.31,394.00

(Scraps) and 12% on Rs.17,39,117.58 worked out to Rs.19,85,343.00 which surcharge being charged @15% came to Rs.22,78,436.00. The dealer-respondent having paid Rs.8,14,206.00 u/R 36 of the OST Act and Rs.14,05,906.00 u/R 13(4) (a) of the OST Act, it is required to pay Rs.58,324.00.

7. From the above account of discussion, we are of the views that the ld. FAA is an extended forum of assessment. In the present case, the ld. FAA has caused extensive verification of the books of account together with admissibility of the benefits under IPR'89 and declaration Form IV. Therefore, we find no justification to interfere in the order of the Ld. FAA. It is, therefore, ordered as under:-

8. The appeal filed by the State urging modification and re-assessment of the impugned case is dismissed. The order passed by the first appellate authority is confirmed. Excess tax paid, if any, by the dealer-respondent be refunded as per the provisions of law.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**