

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 497 of 2006-07**

(Arising out of order of the learned ACST (Appeal), Puri Range,  
Bhubaneswar in Appeal No. AA 402/BH-I/04-05,  
disposed of on 09.02.2006)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri J. Khan, Accounts Member-III**

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

... Appellant

-Versus-

M/s. Samsonite India Ltd.,  
Rudrapur, Pahal, Bhubaneswar

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)  
For the Respondent : Sri R.C. Das, Advocate

-----  
Date of hearing : 27.09.2023      \*\*\*      Date of order : 06.11.2023  
-----

**ORDER**

State is in appeal against the order dated 09.02.2006 of the Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA 402/BH-I/04-05 reducing the demand raised in assessment order of the Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

The Dealer, M/s. Samsonite India Ltd. carries on business in production and sale of luggage carriers, bags and suitcases in the brand name of Company. The assessment relates to the year 2001-02. The

Assessing Authority raised tax demand of ₹6,49,237.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against such order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the demand to ₹1,37,216.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection supporting the order of the First Appellate Authority to be just and proper.

3. The learned Standing Counsel (CT) for the State submits that the Assessing Authority had rightly recorded a finding that the Dealer transferred all the goods received on 'F' form basis to the sister concern at an unreasonable low price than the prevailing market price with an intention to evade or defraud the sales tax. He further submits that the Full Bench can differ with the finding of the Division Bench if the Full Bench found anything contrary to the settled provision of law. He further submits that provision of Section 12(9) of the OST Act nowhere stipulates that the State is duty bound to adduce materials to the effect that M/s. Samsonite India Pvt. Ltd. and M/s. Samtain Sales Pvt. Ltd. are one corporate personality covered under the Companies Act, 1956. He further argues that if the Commission finds that the Dealer shows any favour to the favoured buyer by selling the goods at an unreasonable low price than the prevailing market price, then the Commissioner can assess or reassess the Dealer at any time within five years. So, he submits that the order of the First Appellate Authority is otherwise bad in law and requires interference in appeal and the order of the Assessing Authority requires to be restored.

4. Per contra, learned Counsel for the Dealer submits that when the Division Bench of this Tribunal has already recorded a finding, the Full Bench ordinarily should not alter or differ on such finding. He further submits that the First Appellate Authority has passed a reasoned order and

the same does not require interference in appeal. He further contends that the Division Bench of this Tribunal has already confirmed such finding of the First Appellate Authority in a case of self-same dealer of the subsequent assessment year. So, he submits that the order of the First Appellate Authority warrants no interference in appeal as it suffers from no infirmity.

5. Heard the rival submissions of the parties and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The assessment order reveals that one Pramod Mallik, S/o. R..K. Mallik, the Depot-in-charge- cum- Authorized Agent of M/s. Samsonite India Ltd. (the Dealer) appeared and produced books of account of the Dealer's Company and another Company, i.e. M/s. Samtain Sales Pvt. Ltd.. The Assessing Authority found that both the Companies are working under one group and selling the products to the sister concern in order to defraud the tax. The Assessing Authority took the sample of five items for assessment and computed the tax liability by adopting 86% profit margin considering the selling price of the goods. The First Appellate Authority levied the profit margin @ 21% over the purchase price, which resulted in reduction in tax demand.

The State challenges the finding of the First Appellate Authority as the Dealer sold the goods to his most favoured buyer at a lower price collecting tax at first point.

6. During assessment proceeding u/s. 12(4) of the OST Act, the Assessing Authority adhered to the provision of Section 12(9) of the said Act as he found that the Dealer transferred the goods received on 'F' form condition to its sister concern, i.e. M/s. Samtain Sales Pvt. Ltd.

Section 12(9) of the OST Act provides that if any dealer has, with a view to evading or avoiding payment of tax, effected sales of any goods or class of goods to favoured buyer or shown in his accounts sales or purchases at prices, which are unreasonably low compared to the prevailing market price of such goods, he may at the time of assessment or, where the

assessment has been completed at any time within a period of five years from the expiry of the year to which the sales or, as the case may be, the accounts relate, estimate the price of such goods on the basis of market price thereof prevailing at the time when such sales were effected or, as the case may be, such accounts were shown, and assess or, as the case may be, reassess the dealer to the best of his judgment, after making such enquiry as he may consider necessary and after giving the dealer a reasonable opportunity of being heard.

7. Bare reading of Section 12(9) of the OST Act reveals that the Commissioner can assess or reassess the Dealer if he finds that a dealer is effecting the sales to a favoured buyer at unreasonable low price than the prevailing market price.

In the instant case, (i) the Dealer transferred all the goods to M/s. Samtain Sales Pvt. Ltd. received on 'F' conditions; and (ii) the purchaser-M/s. Samtain Sales Pvt. Ltd. sold the goods to different distributors at an higher price, i.e. more than 86%, of the purchase price, which reveals that there was demand of the goods and number of distributors are available in the market; (iii) the Dealer had sold the goods at a low price, i.e. ₹1,246.00, ₹1,443.00, ₹1,502.00 which he sold to the distributor at ₹2,390.00, ₹2,774.00, ₹2,883.00 etc. respectively; (iv) the person who represents the Dealer before the Assessing Authority also represents the buyer; and (v) the Assessing Authority took five samples.

Record further reveals that one Sri Chatrubhuj Prasad and others were the Directors of M/s. Samtain Sales Pvt. Ltd. whereas Mr. Marcelle Bottoli and others are the Directors of the Dealer firm. The Directors of M/s. Samtain Sales Pvt. Ltd. and Directors of the Dealer firm are different persons. If one person represents before the Assessing Authority for the two firms, it cannot *ipso facto* to construe that the Dealer firm and M/s. Samtain Sales Pvt. Ltd. are one and same corporate entity. Moreover, record reveals

that the Dealer has engaged M/s. Samtain Sales Pvt. Ltd. as its super stockist by virtue of inter-se agreement.

The Dealer has filed a copy of the order dated. 20.05.2011 of the Division Bench of this Tribunal passed in **S.A. No. 1289 of 2006-07** of the instant Dealer for the year 2002-03. The said order reveals that this Tribunal has affirmed the order of the First Appellate Authority on the ground that the State fails to produce any material that the two Companies, i.e. M/s. Samsonite India Pvt. Ltd. and M/s. Samtain Sales Pvt. Ltd. are one corporate personality covered under the Companies Act.

8. The First Appellate Authority has also ascertained the profit margin of the Dealer and M/s. Samtain Sales Pvt. Ltd. after allowing discount to the other dealers as per the trade practice. So, the same appears to be a correct finding. Thus, we are of the considered view that the impugned order of the First Appellate Authority does not suffer from any infirmity to call for our interference in appeal. Hence, it is ordered.

9. Resultantly, the appeal stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

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

**I agree,**

**Sd/-  
(J. Khan)  
Accounts Member-III**