

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

S.A. No. 34 (C) of 2015-16

(Arising out of order of the learned Addl. CST, North Zone,
in Appeal No. AA- 180/11-12, disposed of on 17.03.2012)

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

M/s. Sarvesh Refractories Ltd.,
Kuarmunda, Dist. Sundargarh ... Appellant

-Versus-

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

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

Date of hearing : 26.07.2023 *** Date of order : 01.08.2023

ORDER

Dealer assails the order dated 17.03.2012 of the Addl. Commissioner of Sales Tax, North Zone, (hereinafter called as 'First Appellate Authority') in F A No. AA- 180/11-12 summarily rejecting the appeal due to non-payment of 20% pre-deposit of demanded tax and interest.

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

M/s. Sarvesh Refractories Ltd. carries on business in manufacturing and selling of refractory bricks and monolithic. The assessment period relates to 01.04.2006 to 31.03.2007. The Joint

Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'Assessing Authority') raised tax, interest and penalty of ₹3,74,27,242.00 u/s. 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') on the basis of Audit Visit Report (AVR).

The order of assessment was challenged before the Hon'ble Court in WP (C) No. 15812/2010, wherein the Hon'ble Court was pleased to direct the Dealer to seek remedy under the Act.

Accordingly, Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority summarily rejected the appeal on the ground of non-payment of 20% pre-deposit of demanded tax and interest. Again the Dealer approached the Hon'ble Court in WP (C) No. 9537 of 2012, wherein the Hon'ble Court was pleased to direct this Tribunal to condone the delay in the event of filing an appeal and to dispose of the same as early as possible on its own merit. Hence, this appeal.

The State files cross-objection supporting the order of the First Appellate Authority as just and proper.

3. The learned Counsel for the Dealer submits that the Dealer has filed this second appeal in compliance to the direction of the Hon'ble Court passed in WP (C) No. 9537 of 2012 and furnished copies of e-receipt showing statutory deposit against the demand. He further submits that the statutory forms are required to be accepted in the ends of justice.

4. Per contra, the learned Standing Counsel (CT) for the State objects the maintainability of the second appeal before this forum against the order of summary dismissal of first appeal. He further submits that the Dealer has no *locus standi* to file the second appeal. So, he submits that the appeal is liable to be rejected *in limine*.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the record that the appeal of the Dealer was summarily rejected for non-payment of statutory deposit. The Dealer preferred writ petition before the Hon'ble Court in WP (C) No. 9537 of 2012, wherein the Hon'ble Court were pleased to direct this Tribunal to condone the delay keeping in view pendency of the writ petition in the event such an appeal is filed and to dispose of the appeal as early as possible on its own merit. Accordingly, the Dealer filed the second appeal before this forum and furnished e-receipt of ₹40,25,185.00 towards statutory deposit against the demand.

6. State objects the second appeal on the ground of maintainability before this forum against the summary rejection order for non-payment of statutory deposit. Second appeal can only be preferred u/s. 78 of the OVAT Act if the aggrieved party is not satisfied with an order passed u/s. 77(7) of the said Act. It is not in dispute that summarily rejection is not an order u/s. 77(7) of the OVAT Act.

Hon'ble Court have been pleased to direct this forum to condone the delay and to dispose of the appeal on its own merit in WP (C) No. 9537 of 2012 and the Dealer has already filed statutory forms along with e-receipt of ₹40,25,185.00 on different dates. As a matter of fact, in the present case the First Appellate Authority has summarily rejected the appeal due to non-payment of statutory deposit, so the same requires to be reverted back to the state of first appeal. In such premises, this forum feels it proper to remit the matter to the First Appellate Authority with a direction to restore the appeal and to dispose of the same on merits in accordance with law.

7. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the First Appellate Authority with a direction to restore the appeal and to verify

statutory deposit made by the Dealer during pendency of the second appeal and to dispose of the appeal on merits as per law within a period of three months from the date of receipt of this order. The Dealer is directed to appear with all relevant documents before the First Appellate Authority within one month from the date of receipt of this order. 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)
2nd Judicial Member**

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-II**