



3. The facts of the cases, in brief, are that –

M/s. NALCO (CPP), a Public Sector Undertaking, is generating thermal power for consumption by its Smelter Division and NALCO Township. The assessment periods of both the appeals relate to 1995-96 and 1996-97 respectively. The Assessing Authority raised tax demand of ₹17,32,208.00 for the year 1995-96 and ₹14,71,924.00 for the year 1996-97 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeals in part and remanded the assessment orders for recomputation of tax liability. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

4. The State files cross-objections on the ground that the orders of the Assessing Authority and First Appellate Authority are contrary to law and fact available on record. The State has taken a ground in cross-objection that the finding of the First Appellate Authority regarding purchase of steel from outside the State against declaration form 'C', proceeding under the CST Act should be taken up separately is an erroneous finding.

5. The learned Counsel for the Dealer submits that HSD was purchased against Form-IV as raw materials for power generation in Thermal Plant and the tax should be assessed in concessional rate. He further submits that cement was purchased for construction of plant on concessional rate against Form-IV, but the Assessing Authority and the First Appellate Authority arbitrarily made the finding for levying differential tax. He also raised a specific submission for assessment year 1996-97 that concessional rate of tax is admissible on purchase of electric goods and track materials against Form-IV, but both the authorities have disallowed the said concessional rate of tax, which is an erroneous finding. He further submits

that this Tribunal has already decided the self-same issue in favour of the Dealer for other assessment years. He further submits that this Tribunal cannot take a contrary view than the view taken in the co-ordinate Bench. So, he submits that the orders of the Assessing Authority and First Appellate Authority in both the appeals need interference in these appeals. He relies on the decisions in case of *M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and another*, [1965] 16 STC 563 (SC); *Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar and others*, [1965] 16 STC 259 (SC); *Chowgule & Co. Pvt. Ltd. and another v. Union of India and others*, [1981] 47 STC 124X (SC); *Goswami Press, Cuttack v. State of Orissa*, [1973] 32 STC 479 (Ori); *National Aluminium Co. Ltd. v. State of Orissa and others*, [1994] 93 STC 529 (Ori); *Reliance Industries Ltd. v. Asst. Commissioner of Sales tax and others*, [2008] 15 VST 228 (Ori); *AMI Pigments Pvt. Ltd. v. State of Gujarat*, 2010-VIL-79-GUJ; *State of Gujarat and another v. AMI Pigments Pvt. Ltd. and others*, [2009] 22 VST 615 (SC); *National Aluminium Co. Ltd. v. Deputy Commissioner of Commercial Taxes, Bhubaneswar III Circle, Khurda*, [2012] 56 VST 68W (Ori); and the orders of this Tribunal in *S.A. Nos. 2231 & 2232 of 2002-03 dated 22.09.2020*; *S.A. No. 165 of 2005-06 dated 06.10.2010*; *S.A. Nos. 2956 of 2003-04 & S.A. No. 253(A) of 2004-05 dated 06.10.2010*; and *S.A. No. 2940 of 2003-04 & S.A. No. 253 of 2004-05 dated 06.10.2010* relating to the instant Dealer.

6. The learned Standing Counsel (CT) for the State submits that the orders of the Assessing Authority and the First Appellate Authority suffer from no infirmity, rather they have passed reasoned orders and the same require no interference except the finding of the First Appellate Authority that the proceeding under the CST Act should be taken separately to that of the assessment under the OST Act.

7. On hearing the rival submissions and on careful scrutiny of the materials available on record, it is found that the Assessing Authority levied differential amount of tax on utilisation of HSD and lubricants used for running their locomotives, cement, electrical goods and track materials purchased against Form-IV for use in plant. The Assessing Authority disallowed the concessional rate on purchase of HSD for running locomotive; cement, electrical goods and track materials against Form-IV for use in plant. First Appellate Authority confirmed the said finding. The Dealer has relied on orders of this Tribunal in S.A. Nos. 2231 & 2232 of 2002-03, S.A. No. 165 of 2005-06, S.A. No. 2956 of 2003-04 and S.A. No. 253(A) of 2004-05, S.A. Nos. 2940 of 2003-04 & 253 of 2004-05 cited supra.

8. Entry Nos. 48 & 81 of List-C of the OST Rate Chart provides the rate against the goods purchased in Form-IV. The same are reproduced herein below for better appreciation :-

Entry 81 -

<p>“Goods of the class or classes other than petrol, cement, stationery goods, ginger tincture, cosmetics, perfumes, air conditioner, furniture, carpet, telephones, India Made Foreign Liquor (IMFL) or any liquor specified in the certificate of registration of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power subject to the production of true declaration by the purchasing registered dealer or his authorized agent in Form-IV. Explanation : This entry is also applicable for purchases through leasing or works contract or hire purchases (1.4.01)</p>	<p>ST 4%”</p>
---	---------------

## Entry 48 –

“Goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing or packing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power subject to the production of true declaration by the purchasing RD or his authorized agent in Form-IV. (1.7.90 to 31.3.01)	ST 4%”
---	--------

9. Entry No. 48 relates to purchase of goods on Form-IV for the period 01.07.1990 to 31.03.2001, whereas Entry No. 81 came into force thereafter, i.e. from 01.04.2001. The goods purchased in Form-IV under Entry Nos. 48 and 81 are leviable to tax @4%. Entry No. 48 provides that the goods of class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for use by him in the manufacturer or processing or packing of goods for sale or in mining or in generation or distribution of electricity or any other form of power subject to the production of true declaration by the purchasing RD or his authorized agent in Form-IV, whereas Entry No. 81 shows that specific goods like petrol, cement, stationery goods, ginger tincture, cosmetics, perfumes etc. were excluded. The conjoined reading of Entry Nos. 48 and 81 show that the goods like petrol, cement were excluded from Entry No. 81 only from 01.03.2002. Bare reading of Entry No. 48 shows that the goods of the class or classes specified in the Registration Certificate of the registered dealer purchasing the goods for use by him in the manufacture or processing or packing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power subject to the production of true declaration by the RD or his authorized agent in Form-IV are eligible to concessional rate of tax @4%.

10. Identical issues were raised in between the parties before this Tribunal in *S.A. No. 2231 & 2232 of 2002-03*, wherein this Tribunal have recorded finding that the goods which have been procured by the appellant (Dealer), since used and utilized in some way or the other but not remotely in the manufacturing process, all have to fall under Entry 48 and as such, the appellant is eligible to avail the benefit and is liable only to pay the concessional rate of tax. In the case of *Indian Copper Corporation Ltd.* cited supra, Hon'ble Apex Court have been pleased to observe that locomotive motor vehicles, tyres, tubes, spare parts used during the mining operation as well as carrying raw materials and finished products and laboratory equipments used for sampling and analyzing ore shall fall within the ambit of manufacturing/ processing of goods for sale etc. and thus, are eligible for purchase or procurement on payment of concessional rate of tax. Bare reading of Entry 81 shows that petrol and cement were only excluded from 01.03.2002, which shows the same were included in Entry No. 81 prior to that and Entry No. 81 was came into force w.e.f. 01.04.2001 in place of Entry No. 48. Likewise, electrical goods and track materials were used by the Dealer in the process of generation and distribution of electricity. So, the Assessing Authority and the First Appellate Authority went wrong in disallowing the benefit of concessional rate to the Dealer on that score. As this Tribunal has already recorded finding that cement and petrol will fall in the Entry No. 48 in view of decision of the Hon'ble Apex Court in the case of *Copper Corporation Ltd. ibid*, details further discussion of other citations are not required at this stage.

11. The State raised a contention that the First Appellate Authority should deal the issue of purchase of steel against Form-C in the proceeding under the OST Act, instead of observing that the said issue should be taken up separately under the CST Act. The terms and conditions of relating to purchase of goods against Form-C provides that the goods can be purchased

against Form-C for resale/use in manufacture, processing of goods for sale, which shows that the Dealer can use purchased goods for processing of finished goods for purpose of sale. In the instant case, the Dealer has utilized the goods in the process of generation and distribution of power. So, there is no contravention of Form-C for which a separate proceeding lies under the CST Act. Therefore, initiation of separate proceeding for the alleged contravention of Form-C by the Dealer requires no further adjudication.

12. On the foregoing discussions, we are of the unanimous view that HSD, cement, electrical goods and track materials were used in the process in the generation and distribution of electricity. So, purchase of same against Form-IV by the Dealer is eligible to avail the benefit of concessional rate of tax and the finding of the Assessing Authority and the First Appellate Authority are not sustainable in the eyes of law and the same require interference in these appeals. Hence, it is ordered.

13. Resultantly, both the appeals are allowed and the impugned orders of the First Appellate Authority are hereby set aside. The matters are remanded to the Assessing Authority for recomputation of tax liability of the Dealer as per law keeping in view the observations made above within a period of three months from the date of receipt of this order. Cross-objections are 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/-  
(M. Harichandan)  
Accounts Member-I**