

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

S.A. No.16 of 2018

(Arising out of the order of the Id. Addl.CST, N.Z.
Odisha, Sambalpur in first appeal case No. AA-
RL-II-2/04-05 disposed of on dated 28.02.2018)

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

M/s. Geetanjali Cement Product,
Guthidhara, Kalunga, Rourkela. Appellant.

-Vrs. -

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

For the Appellant : : Mr. S.K. Mishra, Id. Advocate
For the Respondent : : Mr. D. Behura, Id. S.C.(C.T.)

Date of Hearing : 07.07.2023 * Date of Order: 20.07.2023**

O R D E R

The dealer has preferred this appeal challenging the order dated 28.02.2018 of the Additional Commissioner of Sales Tax, Northern Zone, Sambalpur (in short, 'Id. FAA') passed in first appeal case No. AA-RL-II-2/04-05 confirming the order of reassessment passed under Section 12(8) of the Odisha Sales Tax Act (in short, 'OST Act') by the learned Sales Tax Officer, Rourkela-II Circle, Panposh (in short, 'Id. STO')

2. The facts in nutshell are that M/s. Geetanjali Cement Product, Guthidhara, Kalunga, Rourkela carries on business in manufacturing and sale of RCC Hume pipes. The dealer-appellant is an SSI Unit covered under IPR'92 availing PMT No.15/14/03073 dated 23.11.98.

The dealer-assessee was eligible to tax exemption both on purchase of raw-materials and sale of finished products enjoying ceiling of tax exemption for an amount of ₹9,93,000.00 for a period of five years from 21.10.1998 to 20.10.2003. The dealer-assessee was assessed under Section 12(4) of the OST Act for the year 2000-2001 determining tax exemption at ₹3,12,491.00. The tax exemption availed up to 1999-2000 was at ₹3,24,085.00. Thus, the total tax exemption availed up to 2000-2001 stood at ₹6,36,576.00. The ceiling of tax exemption as approved by the Industries Department for the entire period of five years being at ₹9,93,000.00, the dealer-assessee was assessed to NIL. Subsequently, the self-same assessing authority reopened the case under Section 12(8) of the OST Act and determined the tax at ₹6,92,703.00 levying 12% on TTO and surcharge on tax as applicable. The impugned order passed under Section 12(8) of the said Act was affirmed in the first appeal. The dealer-assessee preferred second appeal before this Tribunal vide S.A. No. 381 of 2006-07 dated 22.02.2013. This said second appeal was disposed of setting aside the order of the ld. FAA and restoring the order of assessment passed under Section 12(4) of the OST Act due to non-maintainability of the 12(8) proceedings observing as follows:-

“The original assessment of the dealer was completed u/s.12(4) of the OST Act and as the dealer is enjoying the benefit under IPR-92, only 4% tax was levied on the taxable turnover to determine the liability of dealer but after completion of the said assessment, the LAO re-opened the assessment and levied 12% tax but for re-opening the assessment u/s.12(8) of the OST Act,

the LAO has to assign reason for such re-opening. The LAO cannot change his mind without any reason to re-open the assessment u/s. 12(8) of the OST Act. So, the opening of the assessment u/s. 12(8) of the OST Act in our view is not justified.....

In view of our above discussions, we are of the opinion that the appeal of the dealer has to be allowed in full by setting aside the impugned assessment order passed u/s. 12(8) of the OST Act by raising the demand. The original assessment order as passed u/s. 12(4) of the OST Act is hereby restored.”

3. The dealer-assessee has again approached this forum vide S.A. No.16 of 2018 endorsing grounds of appeal that the forum below has committed error in law in computing the tax @12% when the dealer is a small scale industry eligible for IPR benefits of 1992. It is also contended that deduction of the cost of the transportation is sought to be allowed from the GTO.

4. Cross objection has been filed by the respondent-State supporting the order of the ld. FAA.

5. Heard both the parties. Gone through the materials on record and the order passed by this Tribunal in S.A. No.381 of 2006-07 dated 22.02.2013. On perusal, it is observed that the order of this Tribunal as referred to above did arise out of the first appeal order against which, the dealer-assessee has again approached this forum in S.A. No.16 of 2018 encompassing the similar grounds of appeal as agitated in the earlier occasion. As this case has already been adjudicated in S.A. No.381 of 2006-07 setting aside the order of

reassessment passed u/s.12(8) of the OST Act and restoring the original assessment order dated 26.03.2002, we find it not justifiable to interfere under the facts and circumstances of the above case.

6. Hence, it is ordered.

The appeal filed by the dealer-assessee is dismissed being devoid of merit. The order of this Tribunal passed in S.A. No.381 of 2006-07 dated 22.02.2013 shall hold good. The cross objection is disposed of accordingly.

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**