

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

S.A.No.337 of 2008-09

(Arising out of the order of the learned ACST(Appeal),Puri Range,
Bhubaneswar, in First Appeal Case No.AA.405/BHI/06-07,
disposed of on 29.02.2008)

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

M/s. Colgate Palmolive(I) Ltd.
Rudrapur, Bhubaneswar. ... Appellant.

-Versus -

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

For the Appellant: : Mr. B.P. Mohanty, ld.Advocate.
For the Respondent : Mr. D. Behura, S.C. (CT).

Date of Hearing: **20.01.2023** *** Date of Order: **14.02.2023**

ORDER

This appeal has been filed by M/s Colagate Palmolive(I) Ltd., Rudrapur, Bhubaneswar against the first appeal order dated 29.02.2008 passed by the Assistant Commissioner of Sales Tax(Appeal), Puri Range, Bhubaneswar (in short, 'learned FAA') in First Appeal Case No. AA.405/BHI/06-07 confirming the order of assessment passed u/s 12(4) of the OST Act by the Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar (in short, 'Ld. STO') relating to the assessment year, 20023-04.

2. The facts in brief are as follows:-

The Dealer-Company in the instant case trades in Tooth Brush, Tooth Paste and Cosmetics on wholesale basis. It was assessed u/s 12(4) of the OST Act for the assessment year 2003-04 resulting demand of Rs.10,95,885.00 due to disallowance return of credit notes worth Rs.83,02,312.00.

3. The dealer-appellant on being aggrieved against the order of assessment passed u/s 12(4) of the OST Act preferred appeal before the Id. FAA. The claim of allowance of credit notes in respect of the goods returned due to damage or otherwise made by the dealer-appellant was not considered by the Ld. FAA and the order of assessment passed by the Ld. STO was confirmed.

4. The dealer-Company being not satisfied with the order of the Ld.FAA preferred this second appeal. Mr. B. B. Mohanty, learned Counsel representing the dealer-appellant submitted the grounds of appeal urging that levy of tax by disallowing credit notes which were claimed due to return of old & damaged goods, sales return, transportation shortage/damage or rate adjustment is illegal, arbitrary and without any authority of law. It is submitted that the dealer-appellant having been a firm trading wholesale business in Tooth Brush/Paste and Cosmetics etc and a huge turnover of Rs.22,07,18,987.91 in the year 2003-04, return of some goods by the retail dealers on account of damage in transit, return of old stock and such ancillary occurrences leading to return of stock cannot be ruled out. Unilateral assumption of credit notes to be as sales and levy of tax thereon is not justified.

There is no cross objection filed by the State.

5. Heard the averments of the learned counsel appearing for the dealer appellant. Also, heard the submission of the learned Counsel representing the State. The order of assessment, first appeal order and the materials on record are gone through carefully. It is not denying a fact that the dealer-appellant carries on business on tooth brush/paste and cosmetics on wholesale basis. It transports goods to its Distribution Centres across the State and to other retail dealers. Certain damages of goods during transit are inevitable. The damaged

goods/ old stocks returned from the Distribution Centres/ Retail dealers are booked in credit notes. Disclosure of Rs.83,02,312.00 as credit notes against the turnover of Rs.22,07,18,987.91 seems to be bonafide. Disallowance of the same on the pretext of non production of sufficient evidence without affording adequate opportunity to the dealer-appellant in the forums below is not justified in the eye of the law.

6. In view of the above observations, it is ordered as under:-

The order of assessment is remitted back to the learned STO to assess the dealer-appellant afresh as per the observations discussed supra. The order of the Ld. FAA is set aside. The appeal filed by the dealer-appellant is allowed.

Dictated & Corrected by me

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

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