

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

S.A. No. 449 of 2008-09

(Arising out of order of the learned ACST, Puri Range,
Bhubaneswar in Appeal No. AA 203/BH-I/06-07,
disposed of on 17.03.2008)

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

M/s. Usha Builders (P) Ltd.,
A-125, Mancheswar Industrial Estate,
Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri D. Mohanty, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri N.K. Rout, Addl.SC (CT)

Date of hearing : 28.08.2023 *** Date of order : 16.09.2023

ORDER

Dealer assails the order dated 17.03.2008 of the Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA 203/BH-I/06-07 confirming the assessment order of the Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar (in short, 'Assessing Authority').

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

M/s. Usha Builders (P) Ltd. is engaged in manufacturing and sale of wooden doors, windows, door panels etc. The assessment relates to the

year 2002-03. The Assessing Authority raised tax of ₹14,15,813.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') in *ex parte* assessment.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection to the additional grounds of appeal supporting the orders of the First Appellate Authority and Assessing Authority as just and proper. The Dealer is precluded to raise the preliminary issue as he had not raised the same before the Assessing Authority and First Appellate Authority.

3. The learned Counsel for the Dealer submits that the preliminary issue should be decided at the outset before going to adjudicate other issues. He further submits that the assessment order was passed on 31.03.2006, whereas the same was despatched on 22.07.2006 after a lapse of about 118 days. So, he claims that the order of assessment is ante-dated and barred by limitation and the same is liable to be set aside. Besides, he also argues on merit of the appeal.

He relies on the decisions of the Hon'ble Supreme Court of India in case of *State of Andhra Pradesh v. M. Ramakishtaiah & Co.*, [1994] 93 STC 406 (SC); Hon'ble High Court of Andhra Pradesh in case of *Sanka Agencies v. Commissioner of Commercial Taxes*, [2005] 142 STC 496 (AP); and several other decisions of different Hon'ble Courts.

4. On the contrary, the learned Standing Counsel (CT) for the State vehemently objects the contentions raised by the learned Counsel for the Dealer. He submits that the Dealer had not raised the issue of limitation before the First Appellate Authority, so, he precluded to raise the same for

the first time in second appeal. He further submits that the First Appellate Authority rightly passed the order and the same warrants no interference in appeal. He relies on the decision in case of *State of Orissa v. Lakhoo Varjang*, [1961] 12 STC 162 (SC), and Hon'ble High Court in case of *CIT v. Begum Noor Banu Alladin*, (1993) 204 ITR 166 (AP).

5. Heard the rival submissions of the parties and gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record.

The Dealer assails the order of the First Appellate Authority on the following grounds :-

- (i) The IST report is required to be dropped in the interest of justice as the same are not based on facts and the same was not confronted to the Dealer;
- (ii) The enhancement on the alleged purchase and sale suppression is in higher side and illegal;
- (iii) The STO has disposed of the assessment on the basis of conjecture and surmise.

The Dealer has also taken additional grounds of appeal, i.e. –

- (iv) The order of the Assessing Authority is barred by limitation.

6. The Dealer challenged the assessment order to be time barred in the additional grounds of appeal, so the same is taken up at the outset for adjudication. It is not in dispute that the assessment relates to the year 2002-03 and the assessment order was passed on 31.03.2006. The Dealer claims that the same was issued on 22.07.2006 and thus, the same is barred by limitation. The endorsement in the assessment order reveals that the same despatched vide No. 12268 dated 22.07.2006, i.e. after about 118 days of the date of order passed.

In the case of *M/s. Chandrika Sao v. Sales Tax Officer, Balasore Range, Balasore & another*, reported in [2015] 81 VST 86 (Orissa), the Hon'ble Court have been pleased to observe as follows :-

“9. The High Court of Andhra Pradesh in the case of *Sanka Agencies –v- Commissioner of Commercial Taxes, Hyderabad*, (2005) 142 STC 496 held as under.

“We have seen the record. Record also shows that while the impugned order bears the date May 17, 1996, the order was sent to the appellants by despatching it only on November 1, 1996. There is no explanation in the record nor any explanation has been given by the respondent, as no counter is filed. Therefore, there is strong apprehension that in order to give an impression that the impugned order was passed within the period of limitation, the order bears the dated May 17, 1996, whereas it has been passed much after that. In this connection, the learned Counsel for the appellants has placed reliance on a judgment of the honourable Supreme Court in *State of Andhra Pradesh V. M. Ramakishthaiah & Co.* [1994] 93 STC 406, wherein under similar circumstances, the Supreme Court held that in the absence of any explanation, whatsoever, for the delayed service on the petitioner, of the order, the court should presume that the order was not made on the date it was purported to have been made.”

10. In the instant case, there is no explanation for the delay of more than four months caused in issuing the assessment order to the petitioner except stating that due to clerical mistake there has been a delay of four months. Nothing has been stated in detail as to when the order of assessment has been handed over to the dispatch section and who is responsible for such delay. Therefore, we have no hesitation to hold that the order of assessment under Annexure-1 was not made on the date it was purported to have been made. In order to given an impression that the impugned order of assessment was passed within the period of limitation, the order bears the date 18.6.2008 whereas it has been passed much later that.”

7. In the instant case, the State has not furnished any plausible explanation regarding delay in issuing the order of assessment passed on 31.03.2006. So, we have no alternative than to hold that the assessment was ante-dated and as such, the order was not passed within the period of limitation. Accordingly, the assessment order passed by the Assessing Authority is hereby quashed.

8. As the appeal has been disposed of on preliminary ground, i.e. on the point of limitation, so, the other issues raised by the Dealer are redundant for adjudication in appeal. Hence, it is ordered.

9. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is set aside. Consequently, the assessment order is hereby quashed. 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-I**