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

**S.A. No. 230 (ET) of 2005-06**

(Arising out of order of the learned ACST(Appeal), Puri Range, Bhubaneswar in First Appeal No. AA (ET) 277/BH.I/04-05, disposed of on 19.08.2005)

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

M/s. Gupta Cables Pvt. Ltd.,
Cuttack Road, Bhubaneswar ... Appellant

-Versus-

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

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

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Date of hearing : 30.12.2022 *** Date of order : 25.01.2023

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**O R D E R**

The Dealer assails the order dated 19.08.2005 of the Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA (ET) 277/ BH.I/04-05 confirming the assessment order of the Assessing Authority, Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The case of the Dealer, in short, is that –

The Dealer is a manufacturer of aluminium alloy conductors (AAAC) and aluminium conductors steel reinforcement (ACSR). The assessment period relates to the year 2002-03. The Assessing Authority

raised the demand of ₹42,76,147.00 u/s.7(3) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act'). The Dealer preferred first appeal against the said assessment order of the Assessing Authority. The First Appellate Authority confirmed the assessment order and dismissed the appeal. Being aggrieved with the order of the First Appellate authority, the Dealer prefers this appeal. Hence, this appeal.

3. State files cross-objection supporting the impugned order of the First Appellate Authority confirming the order of assessment to be just and proper.

4. Learned Counsel for the appellant submits that the Dealer has paid ₹5,00,000.00 in obedience to the order of the Hon'ble Court during pendency of first appeal. He further submits that the Dealer had paid admitted tax of ₹9,91,555.00 through cheque. He further submits that in spite of such payments, the First Appellate Authority did not allow the credit to that effect and the claim of set off of ET mechanically with a flimsy ground confirming the order of the Assessing Authority, which needs interference in appeal.

5. Per contra, the learned Standing Counsel (CT) for the State supports the findings of the Assessing Authority and First Appellate Authority and submits that they have passed reasoned orders, which require no interference in this appeal.

6. On hearing the rival submissions and careful scrutiny of the material available on record, it transpires that the total GTO was for a sum of ₹123,65,49,970.45 including purchase from inside the State for ₹84,86,30,250.95, purchase from outside the State for ₹21,06,97,795.47 and sales effected to buyers of inside State of ₹17,72,21,924.03.

The Assessing Authority levied tax @ 0.5% on ₹1976,50,794.86 and @ 1% on ₹18,46,932.61 on the purchase value. The Assessing

Authority also levied tax @ 0.5% on ₹177,38,711.62, @1% on ₹27,40,344.84 and @ 2% on ₹15,67,42,867.57 on sale value and assessed the total tax at ₹42,76,147.00 (on purchase value ₹10,25,192.62 and on sale value ₹32,50,954.30). The Dealer was allowed deduction towards ET paid of ₹49,43,575.65. The Assessing Authority also calculated the set off amount taking into consideration the total sale, i.e. both from inside the State and outside the State for ₹117,89,27,786.63 (₹17,72,21,924.23 OST + ₹100,17,05,862.40 CST) as finished product of goods during the year under assessment and end tax due on raw materials purchased for ₹59,31,829.62 and ET payable on sales, the set off of ET is calculated at ₹8,91,700.29. Since the Dealer has not paid ET on the scheduled goods purchased from outside the State of Odisha and has also not paid ET on the sales effected at the time of filing monthly statement in Form E-3, though he has collected ET on the bills, the Dealer is not allowed to avail the set off of entry tax. The Assessing Authority did not accept the annual return filed by the Dealer since the Dealer has not adduced any evidence in support of its payment, deduction and set off claimed. Accordingly, the Assessing Authority raised the tax demand of ₹42,76,147.00.

The First Appellate Authority confirmed the finding of the Assessing Authority and dismissed the appeal.

7. At the time of hearing of the appeal, the Dealer filed a copy of letter addressing to the Assessing Authority containing the xerox copy of cheque in its leaf showing payment of ₹9,91,555.00 under Annexure-5. Annexure-5 shows that the Dealer had deposited the cheque pursuant to the assessment order of the Assessing Authority.

The record shows that the Dealer has deposited an amount of ₹5,00,000.00 during pendency of first appeal as per the order of the Hon'ble Court passed on dated 10.01.2005 in WP (C) No. 252 of 2006 against the

demand of ₹42,76,147.00. The order of the First Appellate Authority does not reflect any payment of ₹5,00,000.00 in shape of chalan. The First Appellate Authority ought to have given credit of the aforesaid payment by the Dealer through chalan and by way of cheque for ₹9,91,555.00.

8. The record reveals that the Dealer claims to have deposited ₹9,91,555.00 and he had deposited ₹5,00,000.00 pursuant to the order of the Hon'ble Court during pendency of first appeal. Though the Dealer had not paid ET during assessment, but he had paid the amount during pendency of the appeal in the extended forum of assessment. The payment so made should have been allowed credit from the tax due.

The record reveals that the Dealer has paid ₹14,91,555.00 after assessment and during pendency of appeal, which requires to be allowed credit by the First Appellate Authority. The same is apparent error on record. So, we are of the unanimous view that the First Appellate Authority ought to have given credit of the deposits made by the Dealer. As it appears, the Assessing Authority refused to allow the set off on the ground that the Dealer has not paid the ET. So far as the question of set off is concerned, the First Appellate Authority shall examine set off claim of the Dealer afresh in accordance with law.

Therefore, we feel it proper to remit the matter to the First Appellate Authority with a direction to allow credit of the amount of ₹14,91,555.00 (₹9,91,555.00 through cheque (if any) + ₹5,00,000.00 through chalan) and to examine the fact of set off of ET afresh as per law. Thus, we do not express our opinion on merit at this stage.

9. For the aforesaid reasons, we are of the unanimous view that the First Appellate Authority ought to have allowed credit of ₹9,91,555.00, if any paid, and ₹5,00,000.00 paid by the Dealer through chalan on the strength of the order of the Hon'ble Court, which he has not considered, but

passed the order confirming the assessment order disallowing set off for non-payment of ET, which is not sustainable in the eyes of law and needs interference in appeal. Hence, it is ordered.

10. 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 keeping in view the observations made above and to pass a reasoned order as per law within a period of three months from the date of receipt of this order after allowing opportunity of hearing to the Dealer. The Dealer is directed to appear before him with all relevant materials in support of its claim. 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/-**
**(M. Harichandan)**
**Accounts Member-I**