

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

S.A. No.29 of 2015-16

(Arising out of the order of the learned
JCST(Appeal), Cuttack-II Range, Cuttack in
Appeal Case No. AA-195/CUII 2006-07 disposed
of on 17.04.2015)

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

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

..... Appellant.

-Versus -

M/s. Maa Harachandi Saw Mill,
At/Po- Tarat Sasan, Cuttack.

..... Respondent.

For the Appellant : : Mr. S.K. Pradhan, Addl. S.C.(C.T.)
For the Respondent : : None

Date of Hearing : 21.11.2023 * Date of Order: 20.12.2023**

O R D E R

The State is in appeal against the order dated 17.04.2015
of the Joint Commissioner of Sales Tax(Appeal), Cuttack-II Range,
Cuttack (in short, 'ld. FAA') passed in Appeal Case No. AA-
195/CUII 2006-07 setting aside the assessment passed under
Section 12(4) of the Orissa Sales Act, 1947 (in short, 'OST Act') by
the Sales Tax Officer, Cuttack-II Circle, Cuttack (in brevity,

referred to as ld. STO) for further examination of the genuineness of sales made against Form IV availing concessional rate of tax @4%.

2. The gist of the case is that M/s. Maa Harachandi Saw Mill, At/Po-Tarat Sasan, Dist-Cuttack deals in sawing and selling of sized wood, firewood on retail-cum-wholesale basis. The dealer-assessee was assessed under Section 12(4) of the OST Act for the year 2002-03 raising demand of ₹1,89,925.00 .The ld. FAA set aside the case for further re-examination of the genuineness of sales made against Form IV. The State being not satisfied with the order of the ld. FAA preferred second appeal at this forum.

3. The State has filed grounds of appeal contending that the ld.FAA has erred in law by remanding the case for re-examination citing the notification of Finance Department issued vide Notification No.1686-CTA-37/2001/F dated 09.01.2002 and thus, pleads for restoration of the order of assessment.

There is no cross objection filed by the dealer-assessee.

4. For hearing of this second appeal, the dealer-appellant was noticed to appear. Neither the dealer-appellant nor the learned counsel representing him appeared despite several

intimations. There is no alternative but to adjudicate the case ex-parte on the basis of the materials available on record.

5. The orders of the forums below along with the materials on records are gone through. The stand taken in the grounds of appeal is also looked into. On perusal of the order of assessment, it is observed that the dealer-assessee during the year under appeal has disclosed GTO for ₹40,17,181.00. The dealer-assessee is found to have claimed deductions towards sale of tax free goods at ₹4,85,860.00, sale of first point tax paid goods at ₹2,51,279.00 and collection of sales tax at ₹2,05,828.00 culminating to ₹9,42,967.00. Upon allowance of such deductions from the GTO returned, the TTO stood at ₹30,74,214.00. The Id.STO has disallowed sale of goods worth ₹21,02,759.00 made against Form-IV pursuant to FD Notification No.1694 CTA 37/2001(pt)-F dated 09.01.2002 which provides that the activity of "Saw mill and sawing of timber" has been excluded from the ambit of the term "manufacture or manufacturing process" effective from 01.03.2002. The entire TTO returned at ₹30,74,214.00 has been taxed @12% and thus, the amount of tax assessed arrived at ₹3,68,905.68. With surcharge @10% thereon, the amount of tax due arrived at ₹4,05,796.25. The dealer-

assessee having paid ₹2,15,811.00 under Rule 36 of the OST Rules, he was made liable to pay ₹1,89,925.00. The Id.FAA citing a FD Notification No.1686-CTA-37/2001/F dated 09.01.2002 effective from 01.03.2002 has remanded the case back to the Id.STO for re-examination, since the dealer-assessee in the instant case has sold the goods against Form-IV instead of making purchases of the same.

6. It is now felt pertinent to go through the FD Notifications cited by both the forums below. The Id.STO basing on the Notification No.1694-CTA-37/2001(pt)-F dated 09.01.2002 (SRO No.22/2002) issued by the Finance Department has disallowed the sales effected against Form-IV. This Notification is about exclusion of **Saw mill, sawing of timber** from the ambit of the term “**manufacture or manufacturing process**” giving effect to from 01.03.2002. This Notification bears no application to the present case. Further, FD Notification No.1986-CTA-37/2001/F dated 09.01.2002 effective from 01.03.2002 cited by both the Id.FFA and the State is not the relevant FD Notification. The relevant amendment notified by the Finance Department vide Notification No.14687-CTA-37/2001/F dated 31.03.2001 (SRO No.149/2001) at Entry No.81 giving effect to from 01.04.2001

provides in Entry No.81 to the effect that “goods of the class or classes other than paper, petrol, diesel, air conditioner, furniture, carpet, telephone, India made foreign liquor (IMFL) or any liquor specified in the certificate of registration of the regd. dealer purchases the goods as being intended for use by him in the manufacture or processing of goods for resale or in mining or in generation of electricity of any other form of power subject to the production of true declaration by the purchasing registered dealer or authorized agent in Form IV” shall be @4%. In the instant case, the State contends that the dealer-assessee has sold furniture against Form-IV which is inadmissible in terms of the aforesaid FD Notification. As is apparent from the record, the dealer-assessee appears have has sold sized wood worth ₹21,02,759.00 against Form-IV and the dealer assessee has produced the true declarations in Form-IV received from the purchasing dealers at assessment. In terms of the afforested FD Notification, there is no illegality committed by the dealer-assessee in claiming concessional rate of tax @4%. The ld.STO is found to have misinterpreted the provisions of law as enshrined in the FD Notification quoted in the order of assessment. Hence, the ld.FAA is justified in remanding the case for re-assessment. The stand

taken by the State deserves no interference under the facts and circumstances of the case.

7. Under the above eventuality, the second appeal filed by the State is dismissed and the order of the Id.FAA is upheld.

Dictated & Corrected by me

Sd/-
Bibekananda Bhoi)
Accounts Member-I

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

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