

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

**S.A. No. 71 of 2004-05**

(Arising out of order of the learned ACST, Balasore Range,  
Balasore in First Appeal No. AA – 108/BA – 2000-01,  
disposed of on 28.11.2001)

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

M/s. KAY VEE AAR LTD.,  
At- Biruan, PO- Sergarh,  
Dist. Balasore ... Appellant

-Versus-

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

For the Appellant : None  
For the Respondent : Sri D. Behura, S.C. (CT)

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Date of hearing : 20.12.2022 \*\*\* Date of order : 19.01.2023  
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**ORDER**

Dealer assails the order dated 28.11.2001 of the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'First Appellate Authority') in F A No. AA – 108/BA – 2000-01 confirming the assessment order of the Taxing Authority, Balasore Circle, Balasore (in short, 'Assessing Authority').

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

M/s. KAY VEE ARR LTD., an Industrial Unit, carries on business of manufacturing and selling of Tappard Steel Tubes and Steel Joist. The assessment period relates to 1996-97. The Assessing Authority in an exparte assessment raised tax demand of ₹4,83,186.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

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

The State files cross-objection supporting the orders of the fora below to be just and proper in the facts and circumstances of the case.

3. There is no appearance from the side of the Dealer despite notice. Learned Standing Counsel (CT) for the State is present. Hence, the matter is heard and disposed of *ex parte* on merits.

4. Learned Standing Counsel (CT) for the State supports the finding of the Assessing Authority and the First Appellate Authority and adds nothing more during hearing of the appeal.

5. Record transpires that the Assessing Authority did not accept the return figures in absence of the books of account and completed the assessment *ex parte* on the principle of best judgment by enhancing the GTO returned by ₹10,00,000.000. He determined the GTO at ₹1,33,62,439.56 and TTO at ₹1,32,57,595.90 after allowing deduction towards STC. The Assessing Authority assessed the tax to a sum of ₹5,30,303.83 @ 4%. The Dealer had paid tax of ₹47,118.00, so the balance due was for a sum of ₹4,83,186.00.

The assessment order transpires that the Dealer had filed nil return for the Q/e. 30.06.1996 with the GTO for the quarter at ₹24,122.90 and paid the tax in full after deduction of realized tax.

As regards the return for the Q/e. 32.12.1996, the Dealer disclosed GTO at ₹1,08,37,449.66 and TTO at ₹11,54,758.27 after claiming exempted sales worth of ₹96,36,401.08.

As regards the return for the Q/e. 31.03.1997, the Dealer disclosed the GTO at ₹15,00,867.00 and TTO at ₹14,43,141.60 after deduction of sales tax collected, but without making any payment towards tax admitted.

The Assessing Authority observed specifically that the Dealer claimed exemption till 30.11.1996 as per IPR, 1989 incentive, but on the other hand, the Dealer was collecting sales tax and was depositing at his sweet will. So, the Assessing Authority did not accept the return in absence of books of account and assessed the tax liability in best judgment principle by enhancing the GTO by ₹10,00,000.00. Accordingly, he raised the impugned demand in exparte.

6. The record further transpires that the Dealer neither produced the books of account before the Assessing Authority nor before the First Appellate Authority. The Dealer also fails to substantiate his claim at this stage. So, we do not find any illegality or impropriety in the order enhancing the GTO by the Assessing Authority.

7. On the foregoing discussions, we do not find any illegality in the finding of the Assessing Authority and the First Appellate Authority so as to call for our interference in the appeal, rather the Assessing Authority has passed a reasoned order justifying the enhancement in absence of books of account. Hence, it is ordered.

8. Resultantly, the appeal stands dismissed being devoid of any merit and the impugned order of the First Appellate Authority is hereby confirmed. 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)  
2<sup>nd</sup> Judicial Member**

**I agree,**

**Sd/-  
(M. Harichandan)  
Accounts Member-I**