

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

S.A. No. 960 of 2005-06

(Arising out of order of the learned ACST, Cuttack II Range,
Cuttack in First Appeal No. AA – 540/DL/2004-05,
disposed of on 17.05.2005)

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

M/s. Metalloyds,
Main Road, Angul ... Appellant

-Versus-

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

For the Appellant : Sri Mukesh Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 22.12.2022 *** Date of order : 19.01.2023

ORDER

Dealer is in appeal against the order dated 17.05.2005 of the Asst. Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA – 540/DL/2004-05 setting aside the assessment order of the Sales Tax Officer, Dhenkanal Circle, Angul (in short, 'Assessing Authority') for reassessment.

2. Briefly stated, the case of the Dealer is that –

M/s. Metalloyds carries on business in electrodes, copper coated MS wire, steel wire, aluminium wire, machineries and spare parts. The assessment period relates to 2002-03. The Assessing Authority in

assessment raised tax demand of ₹7,75,619.00 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 set aside the assessment order for reassessment. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. Learned Counsel for the Dealer submits that the order of the First Appellate Authority is erroneous and contrary to the provisions of law and fact involved. He further submits that the First Appellate Authority should have deleted the sale suppression of machinery and electrodes. He further submits that the First Appellate Authority went wrong in confirming the sale of machinery worth of ₹7,30,450.80 though found the same are not last point tax payable goods. He further submits that the First Appellate Authority did not consider the dispute raised on levy of interest in the impugned order. So, he submits that the order of the First Appellate Authority requires interference in appeal. He files a statement under Annexure-I showing details of sale of machinery against Form-XXXIV to registered dealers for consideration.

4. On the contrary, learned Standing Counsel (CT) for the State supports the finding of the First Appellate Authority in the impugned order and submits that the First Appellate Authority has passed a reasoned order and same requires no interference in appeal.

5. On hearing the rival submissions and on careful scrutiny of the record, it transpires that the Assessing Authority rejected the incomplete books of account and the balance sheet as not true. The Assessing Authority completed the assessment on best judgment principle. The Assessing Authority disallowed the SRD sale of machinery worth of ₹7,30,450.80 and added to 8% taxable sale. He disallowed sale of electrode for ₹50,00,613.96

as steel wire sale in 4% sale and added to 12% taxable sale. The Assessing Authority further found sale suppression of machinery of ₹2,72,179.90 and electrodes of ₹17,24,138.48 and added to 8% and 12% taxable sales respectively. The Assessing Authority determined the GTO at ₹2,11,48,420.07 and TTO at ₹1,98,04,871.22 against TTO returned at ₹1,70,78,102.04 @ 4% on ₹55,43,645.27, @ 8% on ₹15,72,065.42 and @12% on ₹1,26,89,160.53. Accordingly, the Assessing Authority calculated tax, surcharge and interest as at ₹20,75,895.96. He allowed ₹13,00,277.00 towards tax paid and raised the balance due of ₹7,75,619.00 for the period under assessment.

The First Appellate Authority observed that the steel wire is an item of declared goods and exigible to tax @ 4% instead of 12%. With regard to the suppression, the First Appellate Authority observed that though the Assessing Authority considered the Profit & Loss account of the Dealer, but he has not verified the physical stock position available in the business premises with reference to books of account. The First Appellate Authority remitted the detection of suppression of ₹2,72,179.90 towards sale of machinery and spare parts for fresh verification as he did not find any sale suppression on the record. The First Appellate Authority confirmed the finding of the Assessing Authority disallowing of SRD sale of machinery worth of ₹7,30,450.80 on the ground that those are not goods of last point of sale. Accordingly, the First Appellate Authority remanded the matter to the Assessing Authority for fresh assessment.

6. The Dealer claims that he had sold machinery worth of ₹7,30,450.80 on the strength of statutory declaration in Form-XXXIV by the purchasing works contractor. In this regard, the Dealer has produced a statement showing selling of machinery of ₹7,30,450.80 to the registered dealers against declaration forms in details under Annexure-I.

Entry No. 175 of List-D deals with machinery, machinery parts, spare parts etc. The Footnote of List-D provides that the goods specified in

this Notification (whether as goods or in some other form) involved in sales through execution of works contract shall, in the series of sales by successive dealers, be taxed at the point at which the last of such is effected. The proviso appended to Section 5(2)(A)(a)(ii) provides that for the purpose of deduction under this item, the dealer selling the goods shall furnish to the prescribed authority in the prescribed manner, a declaration in the prescribed form obtained from the prescribed authority within the prescribed time, the authority may after sufficient cause permit.

Rule 27(2)(i) of the OST Rules provides the procedure of claiming deduction. Though the Dealer has specifically claimed the aforesaid deduction before the First Appellate Authority, but the First Appellate Authority did not consider the same. So, without expressing any opinion on merit of the claim, we are inclined to direct the Assessing Authority to examine the claim in accordance with law.

7. As regards the enhanced turnover on sale suppressions of ₹19,96,318.38 (₹2,72,179.90 for sale of machinery + ₹17,24,138.48 for sale of electrodes), the First Appellate Authority has already remitted the matter to the Assessing Authority for verification afresh. The First Appellate Authority has given a specific observation in the impugned order that the Assessing Authority has utilized the Profit & Loss account of the appellant, but he has not verified the physical stock available in the place of business with books of account. So, he did not delete the turnover of ₹17,24,138.48 for sale of electrodes. Therefore, the contention of the Dealer cannot be accepted.

But with regard to sale suppression of machinery of ₹2,72,179.90, the First Appellate Authority categorically observed that there is no evidence of sale suppression available on record, whereas he remanded the matter without deleting the turnover in question. The State has not filed any cross-objection in appeal. So, the contention of the Dealer merits consideration and the turnover of ₹2,72,179.90 is hereby deleted.

8. As regards challenge on interest, statute provides levy of interest u/s. 12(4-a) of the OST Act, if the dealer has knowingly produced incorrect accounts, documents, or registers or has without sufficient cause furnished incorrect return or information affecting or intended to affect the quantum of tax payable by him or his liability to pay the tax. The First Appellate Authority has already remanded the matter for reassessment with observations. But, the First Appellate Authority has not expressed any opinion on levy of interest. So, the Assessing Authority shall examine levy of interest in accordance with law at the time of reassessment.

9. For the foregoing reasons, we are of the unanimous view that the First Appellate Authority should have deleted the sale suppression of machinery of ₹2,72,179.90 as he did not find any sale suppression on that score. So, the same needs interference in the appeal, but on other aspects, we do not find any illegality or impropriety in the impugned order while remanding the matter for reassessment. Hence, it is ordered.

10. Resultantly, the appeal is allowed in part and the order of the First Appellate Authority is modified to the extent indicated above. The Assessing Authority is instructed to complete the reassessment in accordance with law keeping in view the observations made supra within a period of three months from the date of receipt of this order.

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**