

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

**S.A. No. 79 (ET) of 2015-16**

(Arising out of order of the learned JCST, Cuttack I Range,  
Cuttack in Appeal No. AA (ET) 33/CUIC/2013-14,  
disposed of on 19.02.2015)

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

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

... Appellant

-Versus-

M/s. Khaitan Electricals Ltd.,  
Jobra Road, Cuttack

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)  
For the Respondent : N o n e

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Date of hearing : 26.09.2023 \*\*\* Date of order : 01.11.2023  
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**O R D E R**

State assails the order dated 19.02.2015 of the Joint Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter called as ‘First Appellate Authority’) in F A No. AA (ET) 33/CUIC/2013-14 reducing the demand raised in assessment order of the Sales Tax Officer, Cuttack I Central Circle, Cuttack (in short, ‘Assessing Authority’) to return figure.

2. Briefly stated, the facts of the case are that –

The Dealer, M/s. Khaitan Electricals Ltd. deals in electrical goods like fan, home appliances and pump sets on wholesale basis. The assessment relates to the periods from 2008-09 to 2011-12. The Assessing Authority

raised tax demand of ₹13,52,541.00 u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of Tax Evasion Report (TER).

Dealer preferred first appeal against such order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the demand to return figure. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files no cross-objection.

3. None enters appearance for the Dealer despite service of notice. Learned Standing Counsel (CT) for the State is present. Hence, the matter is heard and disposed of *ex parte* on merits.

4. The learned Standing Counsel (CT) for the State submits that the First Appellate Authority went wrong in reducing the assessment to return figure by accepting the STN as value of goods. He further submits the Assessing Authority has rightly determined the purchase value of the scheduled goods by adding the profit margin of 18%. So, he submits that the order of the First Appellate Authority is otherwise bad in law and needs interference in appeal.

5. Heard the rival submissions of the parties and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The Assessing Authority determined the GTO at ₹33,72,89,356.59 after allowing deduction of ₹2,70,47,362.21 towards the stock transfer from the total stock received at ₹31,28,85,800.00 by adding 18% of profit margin on the balance turnover of ₹28,58,38,437.79. He computed the ET at appropriate rates and raised the tax liability after allowing adjustment towards tax paid. In appeal, the First Appellate Authority reduced the assessment to returned figure.

The State assails the impugned order on the ground that the purchase value should not be determined from the stock transfer note as the same is only self-declaratory and having no evidentiary purchase value of the goods.

6. On careful scrutiny of the materials available on record, the Dealer does not dispute anything except the purchase price of the goods for levy of ET. As per Section 2(j) of the OET Act, 'Purchase value' is the value of invoice price which includes insurance charges and other incidental charges. The proviso appended to it provides that when the value of scheduled goods is not ascertainable, then the purchase value shall be the value or the price which the scheduled goods of like kind or quality is sold or is capable of being sold in open market.

The Assessing Authority took the profit margin of the years 2008-09, 2009-10, 2010-11 and 2011-12 and took the sale value by adding 18% profit margin over the stock receipt value. In appeal, the First Appellate Authority reduced the assessment to returned figure observing therein that the purchase value of the scheduled goods is ascertainable as the stock goods have been received from the Head Office and the incidental charges, like freight charges are borne by the Head Office.

It is not in dispute that the stock of goods have been received by the Dealer from the Head Office. The State does not dispute that the freight charges are not borne by the Head Office. It is also not in dispute that the proviso to Section 2(j) of the OET Act can only be applied if the purchase value of goods is not ascertainable. The State fails to produce any material evidence that the purchase value as per the STN shall not be considered. The Dealer has received the goods on stock transfer basis with specific value and the same can be ascertainable. Therefore, the proviso to Section 2(j) of the OET Act is not applicable to the present facts and circumstances of the case. So, the finding of the Assessing Authority is not justified, rather the finding

of the First Appellate Authority is just and proper. Thus, we do not find any illegality and impropriety in the order of the First Appellate Authority to call for any interference in appeal. Hence, it is ordered.

7. Resultantly, the appeal stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed.

**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/-  
(J. Khan)  
Accounts Member-III**