

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

S.A. No. 1691 of 2003-04

(Arising out of order of the learned ACST, Cuttack II Range,
Cuttack in Sales Tax Appeal No. AA 789 (CU-II) 96-97,
disposed of on 07.04.2003)

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

M/s. Ceat Ltd.,
Gopalpur, Cuttack. ... Appellant

-Versus-

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

For the Appellant : Sri S.P. Dalei, Advocate
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

Date of hearing : 28.12.2022 *** Date of order : 24.01.2023

ORDER

The Dealer assails the order dated 07.04.2003 of the Asst. Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter called as 'First Appellate Authority') in Sales Tax Appeal No. AA 789 (CU-II) 96-97 confirming the assessment order of the Sales Tax Officer, Cuttack II Circle, Cuttack (in short, 'Assessing Authority').

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

The Dealer deals in tyre, tubes and flaps. The assessment period relates to the year 1995-96. The Assessing Authority discarded the books of account and enhanced the turnover of the Dealer by ₹50,00,000.00. The Assessing Authority computed tax and surcharge of ₹28,76,834.53 u/s.

12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act'). The Dealer had already paid ₹22,15,730.00. Hence, the Assessing Authority directed the Dealer to pay balance of ₹6,61,104.53 rounded to ₹6,61,105.00. The Dealer preferred first appeal against the said finding of the Assessing Authority.

The First Appellate Authority confirmed the finding of the Assessing Authority and dismissed the appeal. Being aggrieved with the said finding, the Dealer prefers this appeal. Hence, this appeal.

3. No cross objection has been filed by the State.

4. Learned Counsel for the appellant submits that the finding of the First Appellate Authority and the Assessing Authority are otherwise bad in law and fact involved. He further submits that the fora below went wrong in discarding the books of account. He further submits the Assessing Authority arbitrarily enhanced the turnover by ₹50,00,000.00 without any basis. He further submits that the Dealer had produced the details of account receipts, sales, discounts etc. at the time of hearing before the First Appellate Authority. He further submits that the First Appellate Authority should have verified the documents and the materials furnished before him at the time of passing of the order. So, he submits the finding of the First Appellate Authority and the Assessing Authority needs interference in this appeal. He relies on the decisions of the Hon'ble Court in case of *Babulal Chhapolia v. The State of Orissa*, reported in [1963] 14 STC 880 (Orissa); *The State of Orissa v. Babu Lal Chappolia*, reported in [1966] 18 STC 17 (SC); *Hardayal Govind Prasad v. State of Orissa*, reported in [1985] 58 STC 77 (Orissa); *State of Orissa v. Firestone Tyres & Rubber Company of India Ltd.*, reported in [1993] 88 STC 408 (Orissa); *M/s. Janardan Store v. State of Orissa* (S.J.C. No. 52 of 1978, decided on 04.10.1982); and *M/s. Prusty & Prusty, Puri v. State of Orissa* (STREV No. 60 of 2013 decided on 06.12.2022).

5. On the other hand, the learned Standing Counsel (CT) for the State supports the finding of the Assessing Authority and First Appellate

Authority and submits that the same requires no interference in this appeal as they have passed a reasoned order.

6. On hearing the rival submissions and careful scrutiny of the material available on record, it transpires that the Assessing Authority found that the inter-office delivery chalangans of the Dealer did not tally with its receipts statement. The Assessing Authority also found that delivery chalan No. 492 dated 03.02.1996 for ₹3,43,335.00 has not been included in the total receipt value. So, there was difference in receipt value of ₹4,02,585.00 and also difference of ₹9,722.00 in the disclosed sale value. The Dealer could not explain the said differential amount at the time of assessment. So, the Assessing Authority rejected the books of account and enhanced ₹50.00 lakh on best judgment assessment, which resulted in extra demand of ₹6,61,105.00 for the period under assessment. The First Appellate Authority confirmed the assessment and dismissed the appeal.

7. The Dealer claimed that the differential amount was due to error in computer. The Dealer further claims that the corrected copy was produced before the First Appellate Authority under Annexure-I thereof on dated 22.04.1999. He further claimed that the Dealer had filed revised return for the Q/e. 3/1996 and 1996-97 on 17.05.1999 before the First Appellate Authority during course of hearing. The Dealer further claims that the finding of the First Appellate Authority is an error on record.

8. The order of the First Appellate Authority shows that he has given specific finding in the order that if the defect has come out due to defect in computer, the Dealer should have informed the concerned authority and he must file revised return accordingly. The order of the First Appellate Authority whispers no single word regarding filing of documents on 17.05.1999 and 22.04.1999. The documents are available in the first appeal record. The First Appellate Authority ought to have given finding on those documents. So, the finding of the First Appellate Authority is an error on record, which needs further consideration.

9. As regards the finding of the First Appellate Authority relating to discount due to loss, the learned Counsel for the Dealer has not taken any ground in the appeal memo nor pressed the same at the time of hearing. So, the same requires no further adjudication. Detail discussion on the citations are not required by this forum at this stage, as the matter is to be remanded on the ground that the First Appellate Authority has not disposed of the appeal basing on the documents produced before him by the Dealer.

10. On the foregoing discussions, we are of the unanimous view that the First Appellate Authority ought to have passed a reasoned order taking into consideration the documents filed before him, which he did not discharge the said duty, but dismissed the appeal on the ground that the Dealer did not file any revised return. Hence, it is ordered.

11. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to him with a direction to decide the appeal fresh taking into consideration the materials filed by the Dealer in accordance with law after allowing due opportunity of hearing to the Dealer. The Dealer is directed to appear positively on 1st March, 2023 and to produce all the relevant materials, if any, to substantiate its claim.

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**