

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

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-II

S.A. No. 1663 of 1996-97

(Arising out of order of the learned Asst. Commissioner of
Sales Tax, Appellate Unit, Bhubaneswar,
in Sales Tax Appeal No. AA 259/BH-II/94-95,
disposed of on dated 16.05.1996)

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

-Versus-

M/s. Kirloskar Oil Engines Ltd.,
Forest Park, Bhubaneswar. ... Respondent

For the Appellant : Mr. D. Behura, S.C.
For the Respondent : Mr. B. Mohanty, Sr. Adv.
Mr. A.K. Samal, Advocate

Date of hearing: 02.08.2023 *** Date of order: 01.09.2023

ORDER

State has preferred this appeal challenging the order dated 16.05.1996 passed by the learned Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter referred to as, ACST/first appellate authority) in Sales Tax Appeal No. AA 259/BH-II/94-95, thereby reducing the demand against the order of Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as, STO/assessing authority) for the year 1992-93 raising demand of

₹14,98,456.00 u/s. 12(4) of the Orissa Sales Tax Act, 1947, in short OST Act.

2. The backdrop of this case is that, challenging the order of the learned Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar State preferred second appeal before this forum. After final adjudication of the second appeal, this forum vacated the order of the learned ACST in restoring the assessment raised by the STO. Thereafter, the dealer preferred revision before the Hon'ble High Court of Orissa which is nomenclatures as Sales Tax Revision Case No.181 of 2004. In that revision, Hon'ble Court vide order dtd.24.07.2019 framed the following substantial questions of law:-

- “(a) Whether under the facts and circumstances of the case and in view of the relevant rules under the Orissa Sales Tax Rules, 1947, it was proper for the Tribunal to decide the Appeals without service of a notice for filing of Cross Objections on the Respondent.
- (b) Whether under the facts and circumstances of the case and considering the common trade parlance and practice, the conclusion of the Tribunal that the combined sale of individual components of a Pumpset being an Engine, a Pump, a Coupling, a Foot Valve and a Base Plate would be taxable as per the individual rates concerning the aforesaid goods is correct.
- (c) Whether under the facts and circumstances of the case, the Tribunal had the powers to the

question of post sale obligations of the petitioner when the charging section under the Orissa Sales Tax Act, 1947 prescribes a levy at the point of sale.”

Thereafter, the Hon'ble Court decided the only first question of law and afforded opportunity to the dealer to file cross objection before this Tribunal on or before 04.08.2019. Pursuant to the order of the Hon'ble Court, the dealer being the respondent in the appeal preferred by the State before this Tribunal filed cross objection and appeared. Thereafter, the matter was adjudicated upon by this Tribunal and hence this order.

3. The brief fact of the case is that, the dealer is a manufacturer of oil engine and also engaged in trading of pump-sets and its accessories. The branch office of the dealer-respondent receives oil engines from its factory situated at Pune on stock transfer basis and it purchases pumps from different manufacturers of the country and effects sale of oil engines, pump and pumpsets and pays sales tax @ 16% for oil engines, 8% for pumps and also 8% for pumpsets. Since the dealer-respondent sold oil engines, pump, base plate, foot valves, nuts bolts combindly in the name of pump sets paying 8% tax for all those items for which the learned STO considered the sales as unfair trade practice to evade taxes. He accordingly brought the sale turnover of oil engines to 16% taxable group and its accessories to 12% taxable group resulting the demand of ₹14,98,456.00.

4. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who reduced the demand.

5. Being dissatisfied with the order of the learned first appellate authority, State preferred this second appeal before this Tribunal as per the grounds stated in the grounds of appeal.

6. Cross objection in this case is filed by the dealer-respondent.

7. During course of argument, learned Standing Counsel for the Revenue vehemently contended stating that the learned ACST is not justified to reduce the assessment as the learned assessing authority has rightly levied tax @ 16%. So, the order of the learned ACST be quashed and that of the learned assessing authority be restored.

Per contra, learned counsel for the dealer-respondent argued stating that the grounds of second appeal have no foundation as the learned first appellate authority has rightly appreciated the evidence produced before it in a proper prospective. This apart, the contention on behalf of the dealer-respondent is that the assessing authority failed to take into consideration the fact that the petitioner manufactured the goods at factory premises and the assembly of said goods as “pumpset” is done at the customer’s site. The individual items of specified capacity of engines such as a prime mover, a pump of given range, coupling, foot valve, base plate, assembly hardware supplied as coupled pumpset in knocked down condition are mentioned in the invoice so as to supply the pumpset at the customer’s site in complete assembled form.

Before resorting to residuary entry (i.e. Entry 105 of taxable list) for the purpose of applying rate of tax the assessing authority should have examined as to whether the goods supplied in knocked down condition for easier transportation of the pumpset (when assembled) would fall within the ken of any of the entries in the schedule of goods subject to tax. When the individual goods shown in the invoice are assembled at the customer's site and as such the complete form of goods is sold as pumpset, the rate of tax individually could not have been adjudicated to have fallen under Entry 105 of taxable list. The first appellate authority is correct in holding that what the assessee-respondent sold is pumpset as is correctly reflected in the invoice. Hence, the assessee has correctly charged and collected tax in terms of Entry 38 of the taxable list. The last submission raised on behalf of the dealer-respondent is that when the first appellate authority has correctly determined the rate of tax as per Entry 38 of taxable list, the same needs no interference in this appeal.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-a-vis grounds of appeal and the cross objection including the orders of the fora below. In the instant case the dealer-company has sold pumpsets after assembly of goods supplied in a pack. It has never supplied individual goods but sold the pumpsets only to the customers. This apart, the taxable event is the pumpset which is enlisted in Entry 38 of the list of the taxable goods subject to sales tax. So, the first appellate authority correctly determined the rate of tax as per Entry 38 of taxable list. Moreover, the transactions effected by

the dealer-respondent clearly shows sale of pumpsets which consisted of many other component parts like diesel engine, pump, base plate, coupling qua diesel engine etc. So, in toto, the transaction of sale is of “pumpsets” as a whole but not individual parts thereof. The State Government has prescribed the rate of tax in respect of pumpsets @ 8% as per Sl. No.38 of the rate chart. So, the learned first appellate authority has rightly levied tax on sale of pumpsets @ 8%. So, in view of such, to our view, the learned first appellate authority has rightly adjudicated upon the matter in consonance with the provisions of law and as such the same needs no interference in this appeal.

9. In the result, the appeal preferred by the State is dismissed and the order of learned first appellate authority passed in Sales Tax Appeal No. AA 259/BH-II/94-95 is hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II