

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

**S.A. No. 486 of 2004-05**

(Arising out of order of the learned ACST, Appellate Unit,  
Bhubaneswar in First Appeal No. AA – 220/BH.I/03-04,  
disposed of on 28.04.2004)

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

M/s. Sooshree Plastic Industries (Pvt.) Ltd.,  
177, Sector-A, Zone-B, Mancheswar  
Industrial Estate, Bhubaneswar ... Appellant

-Versus-

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

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

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Date of hearing : 02.12.2022      \*\*\*      Date of order : 30.12.2022  
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**ORDER**

The Dealer assails the order dated 28.04.2004 of the Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 220/BH.I/03-04 enhancing the assessment order of the Taxing Authority, Bhubaneswar-I Circle, Bhubaneswar (in short, ‘Assessing Authority’).

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

M/s. Sooshree Plastic Industries (Pvt.) Ltd. is a manufacturer and seller of HDPE sacks/fabrics. The assessment period relates to 1997-98. The

Dealer started its commercial production on 04.03.1987 and is entitled to exemption for seven years, i.e. till 03.03.1994 for an installed capacity of 300 MT per annum. The Dealer made the expansion of its Unit for further capacity of 330 MT per annum. The Dealer had sold 723.525 MT of HDPE and had availed exemption of tax on 401.022 MT both under OST Act and CST Act.

On earlier occasion, the First Appellate Authority had set aside the assessment order u/s. 12(4) of the OST Act and remitted the case to the Assessing Authority for disposal afresh with certain observations. The Assessing Authority took up both 12(4) and 12(8) proceedings together in exparte.

The Assessing Authority in exparte assessment recorded finding that the Dealer has availed excess exemption of ₹85,53,018.00 and as such, enhanced the GTO by ₹85,53,018.00. Consequently, he raised tax demand of ₹8,01,094.00 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') on the basis of objection raised by the A.G. (Audit).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority deleted the enhanced turnover of ₹85,53,018.00 being found no basis. Learned First Appellate Authority recomputed the exemption limit and enhanced the assessment to ₹8,14,500.00 in exparte. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

3. During hearing of the appeal, the Dealer filed additional grounds of appeal on the point of limitation, i.e. reassessment order should be passed within five years from the period of assessment, i.e. 1997-98, as per OST Act.

4. The State files no cross-objection.

5. The learned Counsel for the Dealer submits that on earlier occasion, the First Appellate Authority had remitted the assessment proceeding u/s. 12(4) of the OST Act for reassessment with certain observations, but the Assessing Authority did not consider the same and took up the 12(8) proceeding arbitrarily in exparte and raised the tax demand, which is not sustainable. He also advances an argument in support of his additional ground that the proceeding u/s. 12(8) of the OST Act is time barred as per the statute. He also raised a ground that the First Appellate Authority had not given sufficient time to the Dealer to present its case at the stage of first appeal. So, he further submits that the orders of the Assessing Authority and First Appellate Authority are otherwise bad in law and the same need interference in this appeal.

6. On the other hand, learned Standing Counsel (CT) for the State submits that the Dealer has not come in clean hands and he has suppressed the material facts regarding dismissal of an earlier second appeal. He further submits that the Dealer had preferred first appeal against the order of assessment u/s. 12(4) of the OST Act in S.A. No. 1559 of 2002, which was dismissed on 08.08.2008 by this Tribunal. He further submits that the Dealer did not appear in any forum at the time of reassessment proceedings u/s. 12(4) and 12(8). So, the fora below disposed of all the proceedings in exparte on merits basing on the materials available on record. He further submits that the Dealer is not entitled to any relief of remand on the ground that no opportunity was given to him. He further submits that the Assessing Authority and the First Appellate Authority have passed reasoned orders in absence of the Dealer basing on the materials available on record. He further submits that the 12(8) proceeding has been initiated in time, i.e. within five years of the assessment. He further submits that there is no restriction in the statute regarding completion of the proceeding u/s. 12(8) of the OST Act.

So, he submits that the fora below have committed no wrong and the same requires no interference in this appeal. He submits that the person, who has not come with clean hands, is not entitled to any relief.

7. On hearing rival submissions and on careful scrutiny of the materials available on record, it is apparent from the record that it is not in dispute that the First Appellate Authority remitted the assessment proceeding u/s.12(4) of the OST Act to the Assessing Authority for disposal afresh with certain observations. It is also not in dispute that both the proceedings u/s. 12(4) and 12(8) of the OST Act were disposed of *ex parte* as the Dealer did not turn up despite the notice.

8. The assessment order shows that the Dealer did not appear before the Assessing Authority even after remand of the 12(4) proceeding. The Assessing Authority specifically mentioned in the assessment order that the Dealer did not appear in spite of repeated notices. The order further shows that the Assessing Authority took both the remanded 12(4) proceeding and 12(8) proceeding together on the materials available on record in absence of the Dealer.

9. The learned Counsel for the Dealer had also raised a point that the First Appellate Authority had not given sufficient opportunity to the Dealer to present its case. The record of the First Appellate Authority shows that notice was issued to the dealer on 21.04.2004 fixing the date on 28.04.2004 giving seven days time to the Dealer. The relevant order sheet dated 28.04.2004 shows that the First Appellate Authority took up the appeal on that day. The Dealer could not produce any material that he had not received the notice nor he had no time to engage any lawyer to present his case before the First Appellate Authority. He could not show any facts and materials that he was prejudicially affected on such short notice. In view of

such matter, the plea of the Dealer on this score does not merit for consideration.

10. Now, we shall proceed to examine the materials available on record on the basis of the rival submissions of the parties keeping an eye the proposition of law. The Dealer challenged the point of maintainability of the 12(8) proceeding in the additional grounds of appeal before this forum, which strikes the root. So, the same is taken up for adjudication at the outset.

11. Provision of Section 12(8) of the OST Act mandates initiation of 12(8) proceeding is permissible within five years of the assessment year. The relevant provision is reproduced herein below for better appreciation :-

*“(8). If for any reason the turnover of a dealer for any period to which this Act applies has escaped assessment or has been under assessed or where tax has been compounded when composition is not permissible under this Act and the Rules made thereunder **the Commissioner may at any time within five years from the expiry of the year to which that period relates** call for return under sub-section (1) of Section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in sub-section (5) of this Section and may also direct, in cases where such escapement or under assessment or composition is due to the dealer having concealed particulars of his turnover ....”*

The sentence “the Commissioner may at any time within five years from the expiry of the year to which that period relates call for return under sub-section (1) of Section 11 and may proceed” shows that the proceeding can be initiated within five years of the year to which period of assessment relates.

12. In the case of *Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela-I Circle and others*, reported in [1994] 94 STC 105 (Orissa), Hon’ble Court have been pleased to observe that there is no time limit for completion of reassessment proceeding, but there has to be a finality given to every proceeding, and reassessment proceeding should be completed within a reasonable time. The relevant portion of the order is reproduced herein-below for better appreciation :

“10. So far as early disposal of the proceedings is concerned, it cannot be gainsaid that though there is no time-limit prescribed for completing reassessment proceedings, but there has to be a finality given to every proceeding, and reassessment proceeding should be completed within a reasonable time...”

Now, the case at hand, the assessment relates to the period 1997-98. The limitation commences on 01.04.1998 and ends on 31.03.2003. The reassessment proceeding should be initiated on or before 31.03.2003. In view of decision of the Hon'ble Court cited supra, the reassessment proceeding should be completed within a reasonable time and no time limit is fixed for its completion. It is not applicable to the fact of the present case. This decision is only applicable to the fact regarding the time limit for completion of proceeding, but not to relax the time limits prescribed for initiation of the proceeding.

As a matter of fact, despite repeated directions of this Tribunal, the State did not produce the LCR or produce any material to show that the assessment proceeding had commenced within the time limit, i.e. on or before 31.03.2003. So, the present 12(8) proceeding is time barred. The First Appellate Authority has already deleted the enhancement of GTO by ₹85,53,018.00 made in reassessment u/s. 12(8) of the OST Act.

13. The assessment order shows that the assessing authority had taken up the remand assessment and 12(8) assessment together. So, even if the 12(8) proceeding fails, the remand assessment will not fail on the ground of limitation.

The record shows that earlier regular assessment order u/s. 12(4) of the OST Act was passed 31.03.2001 by the Assessing Authority. The Dealer assailed the said order in First Appeal vide Appeal No. AA.116/BH.I/2001-2002, which was disposed of on 28.11.2001.

The first appeal order shows that the First Appellate Authority mainly dealt with five points i.e. (i) discrepancy in form-IV, (ii) disallowance of outward freight charges, (iii) discrepancy in the stock, (iv) discrepancy of levy of tax on waste materials and (v) computation of 18.22 MT of finished products out of 300 MT.

Out of the same, the First Appellate Authority uphold the finding of Assessing Authority on point No.(i) discrepancy in form-IV, (iii) discrepancy in the stock and (iv) discrepancy of levy of tax on waste materials, but the First Appellate Authority remanded the assessment for further assessment on point No. (ii) outward freight and (v) computation of 18.22 MT of finished products out of 300 MT.

The Dealer preferred second appeal against the finding of the First Appellate Authority before this Tribunal vide S.A. No.1559 of 2001-02. The said second appeal was dismissed exparte on 08.08.2008 confirming the order of the First Appellate Authority. Neither party had approached the higher forum against such order of the Tribunal. So, order of confirmation of first appeal order by the Tribunal reached to its finality. So, the remand for reassessment by the First Appellate Authority with certain observation was in force and the Assessing Authority was obliged to make such reassessment as per the direction given.

14. The assessment order shows that the Dealer did not cooperate with the Assessing Authority in the remand assessment in spite of several opportunities. So, the Assessing Authority disposed of the remand assessment u/s.12(4) of the Act in the best judgment assessment along with 12(8) proceeding basing on objection of A.G. (Audit). The Assessing Authority while completing the assessment enhanced the turnover of ₹85,53,018.00 on the ground of escaped turnover u/s.12(8) of the Act.

15. The Dealer again preferred first appeal against the reassessment passed on 14.08.2003. The First Appellate Authority deleted the enhanced turnover of ₹85,53,018.00, which was enhanced by the Assessing Authority u/s.12(8) proceeding. This Tribunal has already recorded finding as above that the proceeding u/s.12(8) is time barred.

16. As regards the other issues i.e. disallowance of outward freight which was remanded to the assessing authority for reassessment, the First Appellate Authority allowed the appeal on the said issue with a finding that the Dealer is liable to get deduction of ₹1,35,500.00 towards freight charges. The State has not filed any cross objection in this appeal. So, the same issue is not required for further adjudication.

17. Now, as regards the dispute on computation of 18.22 MT of finished product out of 300 MT of finished products pertaining to existing installed capacity, it is not in dispute that the DIC, Bhubaneswar had issued PMT certificate vide No.15/15/02258 dated 04.07.1991 with an installed capacity of 300 MT per annum and the date of commercial production was 04.03.1987.

It is also not in dispute that the said unit was expanded to the capacity of 630 MT per annum by the DIC, Bhubaneswar. The DIC, Bhubaneswar had allowed tax exemption on 330 MT vide letter **No.3755 dtd.05.08.1997**. As per provision of 30FFF (ii) of the OST Act and as per the certificates issued by DIC vide letter No.3755, the industrial unit is eligible for exemption from the payment of sales tax on sale of its finished products to the extent of increased commercial production *over and above* the installed capacity as it was existing prior to expansion for a period of seven years from the date of commercial production commenced on 26.05.1991 and was valid till 25.05.1998. It is also not in dispute that the Dealer had sold total 468.411 MT of goods under the OST Act and 255.114



MT under the CST Act, totalling to 723.525 MT. It is also not in dispute that the Dealer admits taxable sales of the quantity of 322.500 MT. Therefore, the First Appellate Authority ascertained the balance quantity out of the total sale i.e.  $71.025 \text{ MT} = [723.525 \text{ MT} - 322.500 \text{ MT (admitted sales)} = 401.025 \text{ MT} - 330 \text{ MT}]$  (exempted quantity as per the certificate of DIC, Bhubaneswar). Accordingly, the First Appellate Authority calculated the amount. The calculation was in conformity with the order of the First Appellate Authority, which was confirmed by this Tribunal on 08.08.2008 in S.A. No.1559 of 2001-02.

18. The record shows that the First Appellate Authority had given only seven days time to the Dealer to present his case before the First Appellate Authority, which is not the correct proposition of law. The First Appellate Authority should have given sufficient time to the Dealer to present his case. The record shows that the First Appellate Authority had issued the notice to take up 12(8) proceeding and he had already deleted the enhancement in the first appeal. This Tribunal has also specifically recorded a finding that the 12(8) proceeding is time barred and the same is not sustainable in the eye of law. So, no prejudice is caused to the Dealer. This Tribunal has already recorded a finding that the Dealer could not produce any material that he had not received the notice nor he could show any material to the effect that he had no time to present his case before the First Appellate Authority. On such premises, this Tribunal has recorded a finding that the Dealer could not show any material that he was prejudicially affected in the short notice.

19. On the foregoing discussions, we came to an irresistible conclusion that the First Appellate Authority has rightly computed the tax liability considering the eligible exemption to the Dealer's Unit which is in conformity with the earlier direction of the First Appellate Authority and

confirmed by this Tribunal. So, we do not find any illegality or impropriety in the order of the First Appellate Authority at the time of reassessment. Therefore, the same needs no interference in this appeal. Hence, it is ordered.

20. Resultantly, the appeal of the Dealer is dismissed being devoid of merit and the 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/-  
(M. Harichandan)  
Accounts Member-I**