

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A. No.14 of 2019**

(Arising out of the order of the learned JCST  
(Appeal), Sambalpur Range, Sambalpur in Appeal  
Case No. AA 69 (SAIII) of 1999-2000 disposed of  
on 31.01.2019)

Present: **Shri S.K. Rout, 2nd Judicial Member**  
**&**  
**Shri B. Bhoi, Accounts Member-I**

M/s.ITW Signode India Limited.,  
Qr. No-219, Koelnagar,  
Rourkela-769014.

..... Appellant.

**-Versus -**

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

..... Respondent.

For the Appellant : : Mr. R.K. Mishra, Advocate  
For the Respondent : : Mr. D. Behura, S.C.(C.T.)

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**Date of Hearing : 29.11.2023 \*\*\* Date of Order: 20.12.2023**  
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**O R D E R**

The dealer-assessee is in appeal challenging the order dated 31.01.2019 of the Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, 'ld. FAA') passed in Appeal Case No. AA 69 (SAIII) of 1999-2000 reducing the refund to

₹4,65,907.00 while disposing the order of this forum passed in S.A. No.902 of 2001-02.

2. The factual matrix of this case is that M/s. ITW Signode India Limited., Qr. No-219, Koelnagar, Rourkela-769014, R.C. No-SAIII 1722 is engaged in execution of works contract under M/s. Tata Refractories ltd., Belpahar for packing of refractory bricks using packing materials. The dealer-assessee was assessed under Section 12(4) of the OST Act allowing refund of ₹2,96,120.00 for the year 1996-97. The first appeal preferred by the dealer-assessee resulted in refund of ₹8,35,226.00.

3. The State being not satisfied with the order of the ld. FAA preferred second appeal before this forum. This forum remitted the case back to the ld. STO for fresh adjudication in S.A. No. 902 of 2001-02 observing therein that the ld. FAA has reduced the cost of goods supplied to the contractee to ₹8,28,845.00 from ₹82,17,448.86 and deleted the interest. There is no basis spelt out in the order of the ld. FAA as to reduction of the value of supply of goods. In the wake of the ld. STO having rendered definite findings towards supply of goods at ₹82,17,448.00 on verification of books of accounts and bills, a bald observation of the ld.FAA reducing the cost of supply of goods to ₹8,28,845.00 is unwarranted and discouraging. Furthermore, this forum has observed in the aforesaid

second appeal order to the effect that interest is always chargeable on tax due. When there was excess payment and refund has thereby been allowed, it is *prima facie* oblivious that there has been no tax due. Notwithstanding the above, the order of assessment depicts that there was withholding of tax for an amount ₹6,15,835.00 for the period from April, 1996 to July, 1996. In this connection, this forum has observed in the said second appeal order that the ld. FAA is required to examine whether tax was due on the dealer-assessee before TDS deductions were made from his gross payment. If the ld. FAA finds that no TDS was deducted before tax due, then he is required to be charged interest on the tax due. With the above, this forum remitted the case back to the ld.FAA for adjudication afresh.

4. Under the above backdrop, the ld. FAA adjudicated the case concentrating exclusively on the directions meted out in the second appeal order referred in the foregoing paragraph. As observed by the ld.FAA, although the dealer-assessee is seen to have supplied packing materials to M/s Tata Refractories ltd., Belpahar pursuant to purchase order No.TR/D 360/87/01468 dated 20.09.1996, the dealer-assessee has failed to produce the said purchase order and the payment advice/particulars issued by M/s Tata Refractories ltd., Belpahar at the first appellate stage. In absence of such documentary evidence, the ld.FAA declined to entertain the cost of

supply claimed at ₹8,28,945.00 and affirmed the order of the assessment that determined the same at ₹82,17,448.00. As to the levy of interest, the ld.FAA observed that the dealer-assessee has disclosed the total collection of tax at ₹19,29,603.00 in the bills raised to the contratee, but has not paid the same in due time and thus, the ld.FAA held the levy of interest in assessment to the tune of ₹44,224.00 as justified.

With the above, the ld.FAA allowed deduction of ₹23,50,574 and ₹19,29,603.00 towards labour and service charges and collection of tax respectively from the GTO of ₹2,88,14,686.78 and thus, the TTO stood at ₹2,45,34,510.00. On levy of tax @8% on ₹1,63,17,061.00 and @12% on ₹82,17,448.86, the total tax calculated to ₹22,91,459.00. Surcharge @10% on ₹22,91,459.00 worked out to ₹2,29,146.00. Interest charged for ₹44,224.00 in assessment being affirmed by the ld.FAA was also to be payable by the dealer-assessee. Accordingly, the total tax, surcharge and interest put together arrived at ₹25,64,829.00 against which, the dealer-assessee having paid ₹30,30,736.00 by way of challans and TDS earlier, he was adjudged refundable to ₹4,65,907.00 by the ld.FAA.

5. On being aggrieved with the above order of the Id.FAA, the dealer-assessee has again preferred second before this Tribunal endorsing the grounds of appeal. Mr. R.K. Mishra, Id. Advocate appearing on behalf of the dealer-appellant submits that the dealer-assessee during the year under assessment was awarded three separate types of contracts from M/s. Tata Refractories Ltd., Jharsuduga (in short, TRL) viz:- (i)WRC/96035/96/101 dated 19.05.1995 (Works contract involving goods) for ₹2,37,05,565.00 (ii) WRC/97/01470 dated 20.09.1996 (Job work involving labour only) for ₹23,55,368.00 (iii) WRC/95446/95/698 dated 16.05.1995 (Supply contract of supply of goods) for ₹8,28,945.00. For better appreciation, it is submitted that the works contract for packing of refractory bricks bearing project value of ₹23,705,565.00 involving transfer of property in goods is subject to OST @8%. As to the work order for ₹23,55,368.00 which is purely of labour charges involves no transfer of property in goods and thus, deduction of entire payment received on this account is admissible. The dealer-assessee was also assigned to supply packing materials involving ₹8,28,945.00 which was to be supplied against Form IV availing concessional rate of tax @4%. As the purchasing dealer i.e. Tata Refractories Ltd., Jharsuguda failed to furnish Form IV, the dealer-assessee is subjected to tax @12%. Since, the dealer-assessee has

collected tax @4% on supply of packing materials, the balance tax @8% is justified to be levied instead of 12%. It is also submitted that the dealer-assessee has submitted the statement on payments received from M/s. Tata Refractories Ltd., Jharsuguda dealing the period under assessment both at assessment and at the appellate stage indicating the invoice nos and date, taxable turnover, gross turnover gross and payment made against labour charges. The ld. assessing authority resorted to best judgment despite production of full set of books of accounts and whimsically determined the payment received from M/s. Tata Refractories Ltd., Jharsuguda against supply of packing materials at ₹82,17,448.86 without any basis. It is, further, submitted that as against the supply order of packing materials, the dealer-appellant submitted a statement before this forum showing the invoice number and payment received from M/s Tata Refractories Ltd., Jharsuguda on account of supply of packing materials. The invoices quoted are No. Z6N1 105 / 31.12.1996 for ₹4,74,930.00, No.Z7N1 009 /31.01.1997 for ₹1,37,445.00, No.Z7N1 019 /28.02.1997 for ₹97,220.00 and No.Z7N1 029/31.03.1997 for ₹1,19,350.00 totaling to ₹8,28,945.00. This said supply of packing material was against Form IV and collection of tax @ 4% thereon has been made. As to levy of interest for ₹44,224.00 under Section 12(4-a) of the OST Act, it is submitted

that there was no admitted tax withheld for the month of April, 1996 to July, 1996, as M/s. Tata Refractories Ltd., Jharsuguda had deducted tax at source while making payment to the dealer-assessee and deposited the same to the State exchequer in due time. Further, it is also argued that as the dealer-assessee is eligible for refund of tax, levy of interest is not warranted.

The State has submitted cross objection supporting the order of the ld.FAA passed in First Appeal Case No. AA 69 (SAIII) of 1999-2000(Set aside).

6. The observation made by this forum in S. A. No. 902 of 2001-02, order of the ld.FAA and the order of assessment are gone through. The grounds of appeal, cross objection and the materials available on record are perused. The present appeal arose out of the observation imparted in S. A. No. 902 of 2001-02 directing the ld.FAA to re-examine the order dated 25.07.2001 of the ld.FAA in First Appeal Case No.AA-69(SAIII) of 1999-2000 wherein the payment received by the dealer-assessee from TRL against supply of packing materials has been allowed at ₹8,28,845.00 instead of ₹82,17,448.86 as allowed in assessment. The ld.FAA vide order dated 31.01.2019 passed in First Appeal Case No. AA 69 (SAIII) of 1999-2000(Set aside) affirmed the order of assessment to the extent of accepting ₹82,17,448.86 as the cost of packing materials supplied

to TRL during the year under appeal. In this connection, the Id. Advocate who appeared representing the dealer-assessee filed the same statement as submitted during the course of first appeal hearing before this forum showing the detailed transactions effected during the material period. The contention of the Id. Advocate arguing the packing materials supplied to TRL vide bill No. Z6N1 105 / 31.12.1996 for ₹4,74,930.00, No.Z7N1 009 /31.01.1997 for ₹1,37,445.00, No.Z7N1 019 /28.02.1997 for ₹97,220.00 and No.Z7N1 029/31.03.1997 for ₹1,19,350.00 totaling to ₹8,28,945.00 is sought to be looked into. It is not denying a fact that the Id.FAA vide order dated 25.07.2001 passed in First Appeal Case No.AA-69(SAIII) of 1999-2000 on verification of the same is seen to have held ₹8,28,945.00 as the cost of packing materials supplied to TRL against Form IV. Refund of ₹8,35,226.00 has thus flown in the said first appeal. There appears to have documentary evidence in support of claim of ₹8,28,945.00 towards the cost of packing materials supplied to TRL. In absence of the relevant invoices and the books of accounts, this forum feels it pertinent to remit the case back to the Id.FAA to further re-examine this issue calling for the required invoices/books of accounts as mentioned above affording reasonable opportunity of being heard to the dealer-assessee.



The facts emerging from the assessment record reveal that the dealer-assessee had withheld payment of admitted tax amounting to ₹6,15,835.00 for the month ending April,1996 to july,1996. As it appears, there was no TDS deducted before tax due and hence, charging of interest amounting to ₹44,224.00 under Section 12(4-a) of the OST Act is justified. The contention of the dealer-assessee in this score is not acceptable.

7. Under the above facts and in the circumstances, it is inferred that the appeal filed by the dealer-assessee is allowed in part. The case is remanded to the ld.FAA for adjudication afresh in the light of the observation discussed above. Cross objection is disposed of accordingly.

Dictated & Corrected by me

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-I**

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-I**

**I agree,**

**Sd/-**  
**(S.K. Rout)**  
**2<sup>nd</sup> Judicial Member**