

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

S.A. No. 794 of 2001-02

(Arising out of the order of the learned Asst.CST, Koraput
Range, Jeypore in first appeal case No.AA(KOI) 231/98-99
disposed of on 20.09.2000)

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

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

..... Appellant.

-Vrs. -

M/s. Thermax Limited,
Envire Division, Chinchwad, Pune.

..... Respondent.

For the Appellant : : Mr. N.K. Rout, Id. A.S.C.(C.T.)
For the Respondent : : None.

Date of Hearing : 18.09.2023 * Date of Order: 17.10.2023**

O R D E R

The State is in appeal against the order dated 28.02.2004 of the Assistant Commissioner of Sales Tax, Koraput Range, Jeypore (in short, 'Id. FAA') in first appeal case No. AA(KOI) 231/98-99 in causing annulment of the demand raised by the Sales Tax Officer, Boriguma Checkgate, Boriguma (in short, Id.STO) under Section 12-B of the OST Act.

2. The facts in nutshell are that a trailer bearing No.HR 38-5570 carrying goods like machineries and accessories consigned by M/s Thermax Limited Enviro Division, Pune, Maharashtra in favour of

M/s NALCO, Damanjodi, Koraput was intercepted at Boriguma Check-gate on 17.10.1998. The total value of the goods loaded in the trailer was at ₹4,91,920.00 as reflected in the transport document i.e. Lorry receipt No.06580 dated 30.09.1998 of Roochi Roadlines, Pune. In order to ascertain the nature of transaction, the learned STO issued a notice in Form VI-A to M/s Thermax Limited which was served on Sri Kalvinder Singh, the driver of the goods vehicle. As there was none appeared on behalf of M/s Thermax Limited on the appointed date before the learned STO, ex-parte provisional assessment under Section 12-B of the OST Act was completed treating M/s Thermax Limited, Pune as a casual dealer raising demand of ₹78707.00 on the purchase value of ₹4,91,920.00 levying OST @16%. In the first appeal, the demand raised by the learned STO was annulled considering the transaction in question was of the interstate sale falling under Section 3 of the CST Act.

3. The State preferred second appeal before this forum citing the order of the ld. FAA as unjust, illegal, arbitrary and bad in law. It is submitted that the learned STO after examining the documents like lorry receipt and deliver challan-cum-proforma invoices as produced by the driver of the vehicle has rightly held that the goods were consigned by M/s Thermax Limited from Pune for delivery at M/s NALCO, Damanjodi without having any prior contract between M/s Thermax Limited and M/s NALCO, Damanjodi for supply of such goods and thus, treated the instant supplier as a casual dealer.

There is no cross objection filed by the assessee-respondent.

4. The respondent-dealer did not turn up for hearing despite issuance of several notices/intimations. This is an old case pending for disposal long since due to non-appearance of the respondent-dealer. There is no way but to dispose of the case ex-parte basing on the materials available on record. The order of assessment as well as the order of the Id.FAA is gone through. The learned STO is learnt to have treated the consignment made by M/s Thermax Limited, Pune to M/s NALCO, Damanjodi, Koraput as of without being based on any contract of supply. The learned STO assessed the dealer ex-parte under Section 12 B of the OST Act treating it as a casual dealer. The Id. FAA did verify the purchase order No.98/6247080/RBP dated 25.07.1998 which was made by Alfa Laval (I) Ltd. on the account of M/s. NALCO, Damanjodi from M/s. Thermax Limited, Pune as per the stipulation made in the purchase order No.NBC-012-3833-4011-5005 dated.30.07.1998 quoting as 'customer's order'. It signifies that the consignment made by M/s. Thermax Limited was destined to be delivered at M/s. NALCO, Damanjodi forming a transaction in course of inter-state trade or commerce. As rightly quoted by the Id. FAA, the decision of the Hon'ble Madras High Court delivered in case of ***M/s. Vinaya Cotton Waste Company Vs. the State of Tamil Nadu (1986) 63 STC Page 391*** is relevant which observes that an interstate sale can take place even between two dealers in the same state if the buyer can call upon the seller to deliver the goods outside the state.

5. Under the above facts and in the circumstances of this case, it is obviously made clear that the consignment of goods in dispute was in fact consigned by M/s. NALCO, Damanjodi from M/s. Thermax Limited, Pune in pursuance of the purchase order mentioned supra. There is no ambiguity in it. The ld. STO has rather erred in contemplating M/s. Thermax Limited, Pune as casual dealer under Section 12-B of the OST Act. The order of the ld. FAA appears to be in conformity with the provisions of OST Act and Rules made thereunder in holding that the impugned transaction would be falling under interstate trade or commerce governing provision of Section 3 of the CST Act.

6. It is therefore ordered that the appeal filed by the State is dismissed. The order of the ld. FAA is confirmed.

Dictated and corrected by me.

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

I agree,

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

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