



Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the tax period 1998-99.

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Reckitt Colman of India Ltd., Mahatab Road, Cuttack deals in Robin Blue, Dettol soap, Barley, Cherry polish, Harpick brand toilet cleaner, Mansion brand floor polish, Mortin Mosquito Coil and Mat, Disprin (medicine), Dettol Liquid Soap and Dettol plaster. On receipt of a notice u/S. 12(4) of the OST Act the authorized representative of the dealer appeared before the assessing officer and produced the books of account of the dealer before him pertaining to the year 1998-99. The assessing officer examined those books of account in detail and found that during the year under assessment the dealer had received stocks worth ₹5,79,27,450.88 from its branches all over the country. The dealer had disclosed the opening stock and closing stock at ₹76,17,800.24 and ₹87,44,432.20 respectively for the year 1998-99. It had maintained accounts of stock receipt, sale and stock account of goods supported by transfer invoices and sale bills. The dealer had originally submitted its return showing its gross turnover (GTO) at ₹6,27,35,031.20 and taxable turnover (TTO) at ₹4,99,43,165.58 for the relevant tax period and then filed its revised return at the time of assessment showing its GTO at ₹6,27,35,152.15

and TTO at ₹4,99,43,237.52. The assessing officer accepted the GTO of the dealer as disclosed by it in its revised return after due verification of its (dealer's) books of account. The dealer had claimed exemption from payment of sales tax on a turnover of sales amounting to ₹83,68,648.84 u/S. 5(2)(A)(a)(ii) of the OST Act towards sales to registered dealers during the relevant year i.e. 1998-99. However, it could not file declaration in Form-XXXIV in support of sale of goods worth ₹1,05,454.79 despite reasonable opportunities given to it. The dealer also filed certain photo copies of counter foils of declarations in Form-XXXIV which the assessing officer did not accept in absence of confirmation from the Sales Tax Officer, Balangir-I Circle, Balangir in that regard. Then on thorough scrutiny of sale bills of the dealer the assessing officer could find that it had sold the goods as described above to M/s. Reckitt Piramal Ltd., Mahatab Road, Cuttack exclusively during the relevant period. It was then ascertained by the assessing officer from the record of M/s. Reckitt Piramal Ltd. that it (M/s. Reckitt Piramal Ltd.) had sold the aforesaid goods at a much higher price than the price at which it purchased from the present dealer-assessee. Under such circumstances the assessing officer came to a conclusion that the dealer-assessee had sold the above mentioned goods to M/s. Reckitt Piramal Ltd. exclusively at a very low price in comparison to the prevailing market price of those goods and as such M/s. Reckitt Piramal

Ltd. had to be taken as a favoured buyer in the instant case being chosen by the instant dealer for some ulterior purpose. The dealer was asked to explain as to under what circumstances it had sold goods at an unreasonable low price to its favoured buyer and also to explain as to why the sale price of the above mentioned goods would not be estimated on the basis of prevailing market price of those goods during the year 1998-99 u/S. 12(9) of the OST Act. It is also revealed from the order of assessment that this dealer M/s. Reckitt Colman of India Ltd. and the buyer dealer M/s. Reckitt Piramal Ltd. are two different companies having different Directors and different registration numbers under the OST Act and CST Act having been registered separately. Further this dealer had sold the abovesaid goods to M/s. Reckitt Piramal Ltd. inside the State as per the valid and lawful agreement with a pre-determined sale price between them since the buyer-Company i.e. M/s. Reckitt Piramal Ltd. was responsible for all the expenses to be incurred for marketing, advertisement, delivery, replacement of goods, staff maintenance, inward freight, ware housing and publicity etc. Learned Counsel appearing on behalf of the dealer-assessee also explained before the assessing officer that the present dealer had sold goods to M/s. Reckitt Piramal Ltd. at a uniform price applicable to all the marketing agencies in India and further it was pleaded before the assessing officer on behalf of the dealer that in absence of any positive

evidence regarding collection of more price than the price as reflected in the invoices there was no scope for the authority concerned to estimate the sales in question at a higher price. The assessing officer then made a comparison by examining the price of certain goods at which M/s. Reckitt Piramal Ltd. had purchased those goods from the instant dealer- assessee alongwith the price at which it (M/s. Reckitt Piramal Ltd.) had subsequently sold each of those items. He also prepared a table accordingly showing the percentage of increase in the price at which the favoured buyer of the dealer had subsequently sold those articles. Under such circumstances the assessing officer came to a conclusion that the instant dealer- assessee had sold certain goods at a very lower price compared to the prevailing wholesale market price of those goods to its favoured buyer. Then the assessing officer due to such under invoicing of the goods by the dealer- assessee estimated the sale price of those goods mainly Dettol Soap and Gelora Dental Cream and determined the GTO and TTO respectively of the dealer- assessee for that year after allowing certain deductions as reflected in his order and making necessary break up of the TTO of the dealer calculated that the dealer was to pay a sum of ₹10,85,168.00 towards its tax dues for the relevant tax period.

Being aggrieved by this order of the assessing officer the dealer- assessee approached the first appellate authority challenging

the same on the grounds that the assessing officer formed a wrong opinion in respect of the dealer by attributing it of having a favoured buyer to whom it (the dealer) had sold the goods from its Unit at an unreasonably lower price compared to the prevailing market price of those goods. The first appellate authority after perusing the order of assessment and the decision cited before him by the dealer came to a conclusion that there was under invoicing of goods which the dealer could not dispel and then considering the nature, volume of business and taking into the dominant factors for determination of sales price as per the JVC (Joint Venture Agreement) into account he (the first appellate authority) also felt that the sale price of both the products i.e. Dettol Soap and Gelora Dental Cream by enhancing the same to the extent of 22% of the sale price disclosed by the dealer-appellant at ₹29,16,788.56 would be just and further the appellant was held liable to pay tax on ₹2,30,966.41 in respect of its claim of sales to registered dealers against declarations in Form-XXXIV as the dealer failed to produce statutory declarations before him. He (the first appellate authority) thus redetermined the GTO and TTO of the dealer at ₹6,67,49,147.56 and ₹5,41,88,248.34 respectively after allowing deductions of ₹44,23,216.79 towards sales tax collected and ₹81,37,682.43 towards sales to registered dealers against declarations in Form-XXXIV. He then calculated the tax payable by the dealer for the

year under assessment at ₹49,08,770.43 and by adding surcharge @ 15% on the tax payable, the total dues i.e. tax and surcharge came to ₹56,45,085.99. Since the dealer-assessee had already paid ₹50,86,700.00 during the said period, he (the first appellate authority) directed it to pay the balance amount of ₹5,58,386.00 and thereby reduced the original assessment done against the dealer-assessee.

3. The dealer-assessee then brought this second appeal before the Tribunal challenging the abovesaid order of the first appellate authority on the following grounds :

(i) M/s. Reckitt Piramal Ltd. cannot be called a favoured buyer of M/s. Reckitt Colman of India Ltd. as there is no definition of the expression 'favoured buyer' either under the OST Act or the Rules made thereunder.

(ii) There is neither any guideline nor any circular with regard to expression 'favoured buyer' for which the assessing officer was left with unguided or un-channelized power to exercise his own whim which resulted in an assessment on the premises of caprice.

(iii) The provisions of Section 12(9) of the OST Act would reveal that mere sale of goods by a dealer to a favoured buyer per se does not lead to invocation of provisions of Section 12(9) of the said Act to estimate the sale price unless the same is intended either to avoid or evade tax due under the Act.

(iv) The taxing authorities i.e. the ACST (LTU) and Addl. CST, CZ have not brought into record any materials to establish evasion or avoidance of tax due under the Act by the dealer for invocation of Section 12(9) in the case for which the assessment made in the instant case cannot be sustained legally.

(v) Section 12(9) of the OST Act contains two limbs which are independent of each other and mutually exclusive. The first limb deals with the sale of goods by a dealer under the Act to a favoured buyer and the second limb deals with the sale of goods by a dealer who has disclosed the sale price in the books of account which found to be unreasonably low compared to the prevailing market price. Both the aforesaid contingencies provided under the Act are again intricately linked to the motive of the said dealer i.e. when the same is purportedly intended either to avoid or evade payment of tax due under the Act. In the present case the first appellate authority has acceded to the second limb by holding that there is no material on record to support under invoicing of sale price but at the same time adhering to the first limb of Section 12(9) which envisages sale of goods to a favoured buyer, the first appellate authority recorded an adverse finding to the effect that the concession given to M/s. Reckitt Piramal Ltd. in the sale of goods by M/s. Reckitt Colman of India Ltd. to M/s. Reckitt Piramal Ltd. indicates a sale to favoured buyer. Thereafter resorting to the estimation of sale

price to the extent of 22% over the stated price he determined the sale price for calculation of GTO and TTO of the dealer which is not sustainable in the eye of law.

(v) The provisions of Section 12(9) of the OST Act cannot be read bereft of Section 2(g), 2(h) and Section 4 of the OST Act. Section 2(g) defines the expression 'Sale' whereas Section 2(h) of the OST Act defines the expression "Sale Price" and it is trite that no tax can be imposed without authority of law as envisaged under Article 265 of the Constitution of India and the power of levying Sales Tax on sale of goods is intricately linked with taxable event culminating in sale price payable or paid by the buyer to the seller. Further, no tax can be levied de hors sale price and it is, therefore, sale price which is paramount and which denotes consideration that passes from the vendee to the vendor in relation to a contract for sale of goods as held by the Hon'ble Supreme Court rendered in the case of Rajasthan Chemists Association Vs. State of Rajasthan, reported in 147 STC 452 (SC).

No cross-objection has been filed on behalf of the State in this second appeal.

4. In course of hearing learned Authorized Representative appearing on behalf of the dealer-assessee submitted that both the assessing officer and the first appellate authority determined the sale price of the goods which they held to have been

under invoiced by this dealer-assessee in a very arbitrary manner without making any enquiry to find out the prevailing market price of those goods at that relevant time. They did not consider the fact that the dealer-assessee had sold certain goods (as described above) to one M/s. Reckitt Piramal Ltd. under an agreement between them that the latter would take care of marketing, advertising, delivery, replacement of goods, staff maintenance, inward freight, warehousing and publicity. So obviously the buyer-Company was required to incur certain expenditures and to make good those expenditures that Company had to sell those goods at a higher price than the price at which those were purchased from the dealer-assessee. There was no irregularity or malafide in the part of both the dealers in making the relevant transactions wherefrom it could be inferred that there were some sorts of clandestine business transactions effected between them in order to evade payment of tax.

5. Learned Addl. Standing Counsel (CT) appearing for the State while opposing such argument raised on behalf of the dealer-assessee submitted that the order of assessment as well as the impugned order are quite clear as to how the under invoicing, at least in respect of two items i.e. Dettol Soap and Gelora Dental Cream, was done by this dealer-Company while selling its goods to the only dealer-M/s. Reckitt Piramal Ltd.. He further submitted that it is the correct

proposition that while estimating the sale price of an under invoicing article on the basis of its prevailing market price, the prevailing wholesale market price of that article can be taken into consideration and in the instant case the assessing officer had precisely done the same to find out the actual sale price of the goods sold by the dealer- assessee to its favoured buyer from the documents of the favoured buyer itself. He found that the Dettol Soap and Gelora Dental Cream were sold by M/s. Reckitt Piramal Ltd. at a price increasing its original purchase price by 44% and 73% respectively to the wholesalers. He, therefore, accepted that sale price to be the actual market price of the goods concerned during the relevant period. In support of his submission learned Addl. Standing Counsel (CT) relied on the orders of this Tribunal passed in the cases of M/s. M.J. Pharmaceuticals Ltd. Vs. State of Odisha (S.A. No. 518 of 2002-03 decided on 08.03.2004) and M/s. Otomotive Products (India) Ltd. Vs. State of Odisha (S.A. No. 1484 of 2001-02 decided on 16.03.2004 & S.A. No. 3166 of 2003-04 decided on 28.12.2016).

6. On perusal of the aforesaid orders passed by this Tribunal which were cited by the learned Addl. Standing Counsel (CT) in order to apprise this Bench the guiding principles to be followed in this matter for maintaining consistency in the orders of the Tribunal as well as on thorough scrutiny of the impugned order we could find that

the first appellate authority after verifying the records in connection with the case came to a logical conclusion with very sound reasons to find that there was indeed punitive under-invoicing of the goods by this dealer-assessee at least in respect of two articles i.e. Dettol Soap and Gelora Dental Cream. He categorically mentioned his reasons for coming to such a conclusion in the impugned order (at pages-4 & 5) and accordingly reduced the assessment after necessary estimation of sale price of both the above mentioned products. We do not find any sort of infirmity or irregularity in his order or justification in terms of law to interfere with the impugned order in any manner.

7. In the result, the appeal preferred by the dealer is dismissed being devoid of merit.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Prabhat Ch. Pathy)**  
**Accounts Member-I**