

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK

S.A.No.61(ET)/2010-11

(Arising out of the order of the learned Deputy Commissioner of Sales Tax, Cuttack-I Range, Cuttack, in First Appeal Case No. AA-(ET) 224/CUIC/2006-07, disposed of on 22.03.2010)

Present: Smt. Suchismita Misra
Chairman

Shri S. Mohanty
2nd Judicial Member

Shri P.C. Pathy
Accounts Member-I

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

... Appellant.

-Versus-

M/s. Super Cassette Industries Ltd.,
Mahatab Road, Cuttack.

... Respondent.

For the Appellant:

:Mr. S.K. Pradhan, Id. Addl. S.C. (C.T.).

For the Respondent:

:Mr. S.S. Rout, Id. Advocate.

Date of Hearing: 03.04.2019

***** Date of Order: 04.04.2019

ORDER

The State has preferred this appeal against the impugned order dtd.22.03.2010 of the learned Deputy Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, the Id. DCST) in first appeal case No. AA-(ET) 224/CUIC/2006-07, allowing the appeal in full and deleting the demand raised to the tune of Rs.14,658.00 by the learned Taxing Authority/Sales Tax Officer, Cuttack-I Central Circle, Cuttack, (in short, 'Id. TA/STO') in his order of assessment passed on 26.12.2006 under the Orissa Entry Tax Act (in short, 'OET Act') for the period of assessment pertaining to the year 2003-04.

2. The brief fact of this case is that the dealer-respondent is a limited Company dealing in Audio & Video Cassettes, Video Cassette Players, Colour and Black and White Television Sets on whole-sale basis obtaining the same from outside the State branches against declaration in Form-F. The Id. STO while assessing the dealer determined the gross turnover and taxable turnover at Rs.2,96,64,699.00 and

Rs.85,40,971.00 respectively allowing deduction of purchase for non-scheduled goods worth Rs.2,11,23,728.00 but adding the purchase value of free gifts worth Rs.1,22,144.00 to the taxable turnover determined which resulted in extra demand of Rs.14,658.00. This led the dealer-assessee to prefer first appeal against the order of ld. TA.

Ld. DCST carefully considering the grounds of appeal and the contentions advocated by the ld. Counsel at the time of hearing concluded that the appellant has purchased TV sets and Video Cassette Players worth Rs.84,18,827.00 and the value of free gifts are inclusive of basic price of the goods purchased on which entry tax has already been paid. Hence he deleted the levy of entry tax on the value of free gifts worth Rs.1,22,144.00 thereby allowed the appeal in full.

3. Being aggrieved the State has filed second appeal before this forum on the following grounds:-

(i) The order of the ld. DCST deleting demand of Rs.14,658.00 is arbitrary, irregular and bad in law.

(ii) Value of free gift purchased worth Rs.1,22,144.00 cannot be included with the purchase of goods like T.V. Sets & Video Cassette player.

(iii) The ld. DCST has also not examined the accounts of the dealer to find out whether the value of free gift purchase has already been included in the purchase price of schedule goods.

(iv) In absence of proper finding of deletion of purchase has already been included in the purchase price of schedule goods.

(v) The order of the ld. DCST is liable to be quashed & the order of the LAO be restored.

4. No cross objection has been filed by the dealer-respondent.

5. Mr. S.K. Pradhan, the ld. Addl. S.C. (C.T.) appearing on behalf of the Revenue reiterated the grounds of appeal and vehemently contended that the deletion of demand by the ld. DCST is bad in law for he has not examined the accounts of the dealer to find out whether the value of free gifts obtained other than by way of sale has already been

included in purchase price of scheduled goods or not? On the other hand, the very ld. STO in the assessment order passed u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the very period while discussing a fraud case report No.28 dtd.06.12.03 submitted by the Inspector of Sales Tax (IST) of the Circle to which the dealer-assessee belongs discussed the point as follows:-

“In course of hearing, I came across a fraud case report No.28 dt.06.12.2013 submitted by the I.S.T. of this Circle. It is alleged that, in course of inspection, the I.S.T. found stock transfer Note No.000329 dt.26.09.03 and stock transfer note No.000578 dt.31.10.03 in which the dealer-company has received Video Cassette Player along with free gifts of 17 nos. of Video Cassette Player worth Rs.66,982 and 14 nos. of Video Cassette Player worth Rs.55,162.00. Thus in toto, the dealer company has received 31 nos. of video player worth Rs.1,22,144.00 as a free gift. But the dealer company has not paid tax on free gift of Video Cassette Player. Further the I.S.T. reported that, the dealer-company has received Audio Video Cassette worth Rs. 10,616.00 as a free gift against stock transfer Note No.1217 dt.30.10.03 and No.1749 dt.20.11.03. But the dealer-company has not paid tax. The fraud case report is confronted to Sri Bimalesh Mohapatra, the P.A. Holder appeared on behalf of the company. Sri Mohapatra stated that, the amount reflected in stock transfer note has been entered in the stock register. The branch at Cuttack received free gift on package basis i.e. (10+1) which is sold as package basis for promoting the sales. The free gifts so received are not sold separately and no tax has been collected on it. I gone through the fraud case report submitted by the I.S.T. and contention of Sri Mohapatra, P.A. Holder appeared on behalf of the company. Actually the dealer-company has received free gift for their sales promotion. They have not sold the free gifts. Further the dealer-company has not received any consideration value on free gifts. This aspect is to be taxed under the Orissa Entry Tax Act'99.”

6. Per contra, Mr. S.S. Rout, the Id. Advocate appearing on behalf of the dealer-respondent took the contention that the appeal order of the Id. DCST is just and proper and the value of free gifts are inclusive of the basic price of the goods purchased on which entry tax has already been paid. The Id. Advocate also filed a written submission stating the following points:-

The respondent carries on business in Audio cassettes and Video CDs, TV sets and CD Players on whole sale basis to the distributors appointed by the Company on brand name "T Series". As the Company first time launch the item TVS and CD players in Odisha market, the Company offers combo scheme i.e. (TV+CD player) and (10 CD player+1) to capture better sale proceed. The Company had received the free goods on package basis and sold on the same basis to the distributors as per scheme. There is no delivery the free goods in separate basis.

The company has paid the entry tax on the combo price. There is no separate price for this free goods as the price is inclusive of that sale and purchase price. The learned DCST verifying the documents rightly deleted the demand raised by the STO under ET Act which is just and proper.

7. Heard both the parties. Gone through the grounds of appeal, the impugned orders of assessment as well as appeal, written submissions filed by the Id. Advocate on behalf of the dealer-respondent and the relevant appeal record. The only question that raised in this appeal is whether the order of the Id. DCST on the facts and in the circumstances of the case, is sustainable? We have carefully considered the grounds raised on behalf of the Revenue and the arguments offered by the Id. Advocate on behalf of the dealer-respondent. It is contended by the Revenue that the Id.DCST has erred in deleting demand without examining the accounts of the dealer for the matter was properly discussed by the Id. TA while assessing the dealer-respondent for the very period under the OST Act. The Id. STO

has made the following observation in the order completed under OST Act for the very period:-

“Actually the dealer Company has received free gifts for their sales promotion. They have not sold the free gifts. Further the dealer-company has not received any consideration value on free gifts. This aspect is to be taxed under the Orissa Entry Tax Act’99.”

As per section-3(1) of the OET Act, 1999 there shall be levied and collected a tax on entry of the scheduled goods into a local area **for consumption, use or sale** therein at such rate not exceeding 12 percentum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed. It has been clearly indicated in the OST assessment order that the dealer-company has received in toto 31 nos. of Video Cassette Player worth Rs.1,22,144.00 as free gift but has not paid tax on the same. It is a fact that the dealer has not received any consideration while giving free gift along with the goods sold for the purpose of promotion of sale under the OST Act. But it makes no difference so far as Orissa Entry Tax Act is concerned inasmuch as the goods has valued which has been determined by the ld. STO at Rs.1,22,144.00. The dealer-respondent has not collected any valuable consideration for the free gifts given to the distributors/customers that does not mean that the free gifts has no value. It makes no difference whether the dealer has given the free gift separately or along with the other goods for which valuable consideration has been received through sale bills. Apart from sale of schedule goods, entry of schedule goods into a local area for the purpose of consumption or use also attracts levy of entry tax under the OET Act. There is no availability of evidence in the appeal record on the basis of which the ld. DCST came to the conclusion that the value of free gifts are inclusive of the basic price of the goods purchased on which entry tax has already been paid. The ld. Advocate appearing on behalf of the dealer-respondent failed to adduce any evidence

regarding inclusion of the value of free gifts in the basic price of the goods obtained by way of transfer of stocks from outside the State of Odisha for offering combo scheme to the distributors/customers as per the scheme of "T Series" to capture better sale proceeds. Comprehensive nature in respect of levy of tax under the OET Act is that the tax is leviable under the Act by any person who brings or causes to be brought into a local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry even though the person is neither a registered dealer nor an un-registered dealer in Odisha, with the condition that such goods have already not been subjected to entry tax under this Act has entitled to Taxing Authority. The Section-2(j) of the OET Act authorises the Taxing Authority to ascertain purchase value of scheduled goods in case the scheduled goods are acquired or obtained otherwise than by way of purchase. Hence in absence of production of cogent and valid documentary evidences in support of the findings of the ld. DCST that the value of free gifts are inclusive of the basic price of the goods purchased on which entry tax has already been paid we are inclined to interfere with the orders of the ld. DCST.

8. As a result, the appeal is allowed. The order of the ld. DCST is set-aside and the order of the ld. TA is restored.

Dictated and Corrected by me,

Sd/-
(P.C. Pathy)
Accounts Member-I

I agree,

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I

Sd/-
(Suchismita Misra)
Chairman

Sd/-
(Subrat Mohanty)
2nd Judicial Member