

short, 'OST Act') in respect of the dealer-assessee for the tax period 2003-04.

2. As revealed from the case record the dealer-assessee M/s. AAR-AM, Samantarapur, Bhubaneswar carries on business of manufacture and sale of voltage stabilizer. Pursuant to the direction of the assessing officer the authorized representative of the dealer-firm produced the books of account relating to the period 2003-04 before him. The assessing officer examined the accounts of the dealer in respect of purchase and sales but as the dealer failed to produce accounts for manufacturing as well as stock accounts for the period under assessment, he observed that the dealer had effected total purchase of goods worth ₹81,41,813.48 out of which goods worth ₹52,85,772.09 and ₹28,56,040.58 related to inside State purchase and outside State purchase respectively. The dealer had purchased first point tax paid materials worth ₹37,982.31 and obtained goods worth ₹24,38,694.00 from outside the State of Odisha by using 63 nos. of Government Way Bills. The assessing officer verified those way bills. The dealer also utilized 28 nos. of Government Way Bills towards sale of goods in course of inter-State trade and commerce. During the year under assessment the dealer had effected sales of goods worth ₹63,64,323.75 under the OST Act and further it had claimed to have sold stabilizer worth ₹60,86,137.00 as exempted sales but failed to

produce exemption certificate in support of its claim. On verification of its previous records the assessing officer found that the period of exemption in its favour had already been over from 01.12.2002. Therefore, he held that the dealer was required to pay tax @ 12% on sale of stabilizer. He thus rejected the books of account of the dealer-assessee and completed his assessment following the best judgment principles. He determined the GTO of the dealer at ₹63,64,323.75 and then allowed deductions of ₹9,605.19 and ₹37,982.31 towards sales tax collected and sale of first point tax paid materials respectively. He determined the TTO of the dealer at ₹63,16,736.25 and calculated tax @ 4% on ₹2,25,834.00 and tax @ 12% on ₹60,90,902.25 which ultimately came to ₹7,39,941.63 as the tax amount to be levied from the dealer. He added surcharge @ 10% on the above tax due which made the total tax due of the dealer for that relevant period at ₹8,13,935.79. Since the dealer had already paid ₹10,641.00 u/R. 36 of the OST Rules by that time the assessing officer required it to pay the balance amount of ₹8,03,295.00 as per the terms and conditions of the demand notice sent to it.

Being aggrieved by this order of assessment the dealer-assessee preferred an appeal before the first appellate authority on the ground that the demand of tax from it was not just and proper on the facts and circumstances of the case. The dealer had claimed

exemption for ₹60,86,137.00 but it had failed to produce exemption certificate for which the first appellate authority decided the appeal on merit of the case. Before the first appellate authority it was argued on behalf of the dealer that sale of stabilizer should not be taxed @ 12% but should be taxed under the entry 'electronics goods' vide Sl. No. 59 of List-C of the Rate Chart under the OST Act. Accordingly the first appellate authority examined the entry in Sl. No. 59 of List-C of the Rate Chart under the OST Act and held that the voltage stabilizer cannot be considered as electronics goods. Therefore, he confirmed the order of the assessing officer for levy of tax @ 12% on sale of voltage stabilizer by the dealer though the assessing officer had omitted to mention specifically as to under which entry he had levied the tax in his order.

3. The dealer-assessee then carried this second appeal before the Tribunal on the grounds that the order passed by the first appellate authority confirming the order of assessment is not just and proper on the facts and circumstances of the case. The dealer should have been given reasonable opportunity to produce the wanting certificates in support of exemption claimed by it for a sum of ₹60,86,137.00 pertaining to the relevant tax period. The dealer-appellant being a manufacturing Unit was entitled to this exemption for sales of goods during the relevant period. The dealer also sought the

opportunity of producing those certificates before this forum at the time of hearing.

No cross-objection has been filed on behalf of the State in the instant case.

4. The dealer in the instant case did not file any certificate justifying the exemption claimed by it either before its appeal was taken up for hearing or even at the time of hearing of the appeal as submitted by it in the memorandum of its appeal. Learned Counsel appearing on behalf of the dealer rather confined his argument on the sole point i.e. to consider the article 'voltage stabilizer' as an electronics goods which is exigible to tax @8% only and not as electrical goods as held by the forums below which made this article subjected to tax @ 12% in the instant case. He submitted that as per List-C of the Rate Chart under the OST Act the electronics goods, mentioned under Sl. No. 59, is taxable @ 8% only whereas domestic electrical appliances, as mentioned under Sl. No. 52, are subjected to tax @ 12%. Therefore, the State has got no authority to levy tax @ 12% from this dealer when the article 'voltage stabilizer' has been determined as an electronics goods by decision of the Hon'ble Allahabad High Court rendered in the case of Commissioner, Trade Tax, U.P. Vs. Parikh Gramodyog Sansthan, reported in [2005] 140 STC 262 and also by the decision of the Hon'ble Apex Court rendered in the case of Commissioner of Trade Tax, U.P. Vs.

S/S. Parikh Gramodyog Sansthan and the Commissioner of Trade Tax, U.P. Vs. S/S. Pushkar Control Pvt. Ltd. in Civil Appeal Nos.651 to 656 of 2005 decided on 11.08.2010.

5. In reply to the aforesaid argument advanced on behalf of the dealer, learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that this article 'voltage stabilizer' has neither been included within the description of electronics goods or the description of domestic electrical appliances in the Rate Chart of the OST Act but has been mentioned quite separately vide Sl. No. 181 of List-C of the Rate Chart being subjected to levy of tax @ 12%. Therefore, the decisions cited by the learned Counsel for the dealer cannot be applied here as those related to certain entries pertaining to U.P. Trade Tax Act and notification. Under the OST Act there is specific inclusion of the goods 'voltage stabilizer' under Sl. No. 181 of List-C in the Rate Chart. Pursuant to this entry in List-C of the Rate Chart voltage stabilizer has been made exigible to tax @ 12%. In such circumstances the dealer cannot exercise its option any further to bring that particular goods under the category of 'electronics goods' but to pay tax @ 12% only on its sale value. In the impugned order the first appellate authority though indicated that this voltage stabilizer is nothing but electrical goods yet the same can be considered as redundant or even a mistake on his part in view of the inclusion of the commodity 'voltage

stabilizer' separately as such in the Rate Chart with effect from 01.04.2001. As this specific item has not been brought in the category of either 'electronics goods' or 'electrical goods' further interpretation regarding its category or nature is no more required.

6. In the above decisions as cited on behalf of the dealer-assessee, it has been held that the article 'voltage stabilizer' is only an electronic goods and not electrical goods as interpreted by the taxation authority concerned. In the case of Commissioner of Trade Tax, U.P. Vs. S/S. Parikh Gramodyog Sansthan and the Commissioner of Trade Tax, U.P. Vs. S/S. Pushkar Control Pvt. Ltd. in Civil Appeal Nos.651 to 656 of 2005 decided on 11.08.2010 it has been held by the Hon'ble Apex court that an electrical device can be an electronic device, but an electronic device cannot be an electrical device. While dealing with the purpose, components and functions of the voltage stabilizer, the Hon'ble Apex Court have been pleased to observe that –

Quote : "A voltage stabilizer is a device which is able to deliver relatively constant output voltage while input voltage and load current changes over time. The voltage stabilizer is the shunt regulator such as a Zener diode or avalanche diode. Each of these devices begins conducting at a specified voltage and will conduct as much current as required to hold its terminal voltage to that specified voltage. Hence, the shunt regulator can be viewed as the limited power parallel stabilizer. The shunt regulator output is used as a voltage reference. A Zener diode is a type of diode that

permits current not only in the forward direction like a normal diode, but also in the reverse direction if the voltage is larger than the breakdown voltage known as "Zener knee voltage" or "Zener voltage". The device was named after Clarence Zener, who discovered this electrical property. An avalanche diode is a diode (usually made from silicon, but can be made from another semiconductor) that is designed to go through avalanche breakdown at a specified reverse bias voltage and conduct as a type of voltage reference. (see Wikipedia).

16. The voltage stabilizer is an instrument which can be used by application of electrical energy and not an instrument for generation, distribution or transmission of electrical energy, but are used for regulating the inflow of electrical energy for variety of appliances. Voltage stabilizers serve the purpose of producing a constant output voltage from a variable input voltage. As a rule, voltage stabilizers operate with an in-phase regulated transistor, which has a control input driven by a stabilized control voltage. It is possible, given a constant control voltage to largely stabilize the output. Voltage in a defined operating range, by way of the characteristic response of the transistor acting as the actuator. The stabilized output voltage serves, as a rule, to supply voltage to electronic circuits which are connected down stream and often have a dedicated voltage regulator for voltage supply.

17. Purpose of Voltage Stabilizers :

Voltage stabilizers provide a steady amount of electrical current to electronic devices when power fluctuates in the house or business where the devices are located. Power surges and sudden power drops can cause serious damage to computers and

other sensitive electronics. Voltage stabilizers store power and provide power from its reserve to attached devices, which by-passes power fluctuations. Some voltage stabilizers are also incorporated into a universal power supply (UPS), which is a backup battery system that allows devices such as computers to continue operating for a limited period of time in the event of a power failure.

Standard Voltage Stabilizer Operation :

The specifics of how a voltage stabilizer operates varies from one type to another, but the basics remain the same. A voltage stabilizer is plugged into an outlet, which charges a series of capacitors or battery units in the stabilizer. These capacitors maintain their charge even if the amount of power from the outlet fluctuates.

Any device plugged into the stabilizer will draw its power from the capacitors or battery instead of directly from the outlet. The voltage stabilizer is wired so that the outlet and the devices are on separate circuits. As a device drains power from the capacitors, the power coming in from the outlet will continue to recharge them. Due to resistance in the stabilizer's circuitry, its power to devices is lower than the ideal voltage from the outlet. This means devices may function slightly slower when connected to a voltage stabilizer. Capacitor :” Unquote.

Ultimately the Hon'ble Apex Court confirmed the order of the Tribunal which being the last fact finding authority after taking into consideration the components of voltage stabilizer, the purpose for which it is used

and the principles on which it works came to a conclusion that the voltage stabilizer is electronic goods for the purpose of taxation under the U.P. Trade Tax Act.

7. As decided by the Hon'ble Apex Court this commodity 'voltage stabilizer' certainly cannot be brought under the category of 'electrical goods' as held by the forums below and it will always be treated as electronic goods. However, in the instant case it is to be examined whether this categorization of voltage stabilizer as an electronics goods would of any assistance to the dealer-assessee in view of its inclusion separately from the electronics goods as well as electrical goods i.e. under the Sl. No. 181 exclusively in the List-C of the Rate Chart under the OST Act. As per the entry at Sl. No. 59 of List-C of the Rate Chart electronics goods which are subjected to levy of tax @ 8% have been mentioned by excluding certain articles therefrom. For better appreciation we would like to quote the said entry in its exact verbatim.

Quote : "59. Electronics goods excluding clocks, time pieces, watches, dictaphones, tape recorders, two-in-one and component parts thereof, electronic toys, gram-phone record players and component parts, radio receivers, tape recording decks, amplifiers, microphones, megaphones, P.A. System, Television sets, Cameras, Video Cameras, V.C.R. V.C.P. generators, calculators, microscopes, intercome

system, telephone instruments, fax machines, telex machines and washing machines (and any other goods specified elsewhere in this notification) (1.4.01) 8%” Unquote

Entry No. 52 describes the rate of tax to be levied in respect of domestic electrical appliances of all kinds. This entry is also quoted here for better appreciation in the matter.

Quote : “52. Domestic Electrical appliances of all kinds excluding Electric fans and bulb, but including electrical earth-ware, porcelain, electric heater, fluorescent tubes, lamps and their fittings, chokes and starters and components and accessories thereof. (1.4.01) 12%” Unquote

Then the goods ‘voltage stabilizer’ finds its place exclusively at Sl. No. 181 of List-C of the Rate Chart and the rate of tax to be levied on this particular article has been mentioned as 12% w.e.f. 01.04.2001.

8. Both the forums below have also levied tax on this article @ 12%. Had this entry 181 with the description of goods ‘voltage stabilizer’ therein not been there in the List-C of the Rate Chart then this Tribunal certainly would have come to a conclusion that the goods ‘voltage stabilizer’ was supposed to have been taxed @ 8% only like any other electronics goods but when the Rate Chart pertaining to OST Act specifies the rate of tax to be levied on this particular goods i.e. voltage stabilizer we feel we have very little option to deviate from the same.

9. In the circumstances as discussed in the foregoing paragraphs though we do not agree with the observation of the forums below that the goods 'voltage stabilizer' is an electrical goods and as such exigible to tax @ 12% yet we opine that this commodity 'voltage stabilizer' is exigible to tax @ 12% because of its inclusion separately in a specific entry in List-C of the Rate Chart vide Sl. No. 181 making it exigible to tax @ 12% under the OST Act. So far as other aspects in the order of the first appellate authority are concerned as learned Counsel appearing on behalf of the dealer-assessee did not raise any issue on the same and did not file any certificate enabling the dealer to get the exemption as claimed by it, before the forum below as well as this forum, we conclude that there is absolutely no necessity for this Tribunal to interfere with the impugned order.

10. In the result, the appeal is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

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