

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

**S.A.No. 36(C)/2014-15**

(From the order of the Id.Addl. Commissioner of Sales Tax (Appeal),  
Central Zone, Orissa, Cuttack, in Appeal No. AA.264/DCST/CU-  
II/2011-12, dtd.30.04.2014, modifying the  
order of the Assessing Officer)

**S.A.No. 39(C)/2016-17**

(From the order of the Id.Addl. Commissioner of Sales Tax (Appeal),  
Central Zone, Orissa, Cuttack, in Appeal No. AA.264/DCST/CU-  
II/2011-12, dtd.01.10.2015 rectification order)

**Present: Sri S. Mohanty & Sri R.K. Pattnaik**  
**2<sup>nd</sup> Judicial Member Accounts Member-III**

M/s. Shree Laxmi Enterprisers,  
Jagatpur, Dist.Cuttack. .... Appellant

**-Versus-**

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

For the Appellant : Mr. A.K. Mohanty, Advocate  
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.).

(Assessment period : 01.04.2005 to 31.01.2010)

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Date of Hearing: 29.11.2018 \*\*\* Date of Order: 29.11.2018

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**ORDER**

Both these aforementioned second appeals are taken up  
together and decided vide this common order for the reason stated  
hereunder below.

2. The dealer-appellant was originally assessed u/r.12(3)  
of the Central Sales Tax (Odisha) Rule, 1957 (in short, CST(O) Rule

for the assessment period 01.04.2005 to 31.01.2010. The Deputy Commissioner of Sales Tax/Assessing Authority, Cuttack-II Circle, Cuttack (in short, DCST/AA) vide Order dtd.06.10.2010 disposed of the proceeding determining the tax liability and penalty to be paid by the dealer. As against such assessment, the dealer knocked the door of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Orissa, Cuttack (in short, FAA/Addl.CST) vide Appeal Case No. AA.264/DCST/CU-II/2011-12. The aforesaid second appeal was disposed of vide Order dtd.30.04.2014 by the FAA, the DCST, Cuttack-II Circle, Cuttack. After final disposal of the first appeal, a petition for rectification was filed and the same was disposed of by the FAA vide Order dtd.24.06.2015 dismissing thereby the rectification application. Thereafter, on the basis of order passed by the Hon'ble Court in W.P.(C) No.13036/2005 Order dtd.18.08.2015, the FAA was directed to hear the aforesaid application for rectification again which was taken up by the FAA on 14.09.2015 and the rectification application was decided finally on 01.10.2015. It is the dealer had preferred Second Appeal No.36(C)/2014-15 as against the final order dtd.30.04.2014 mentioned above and then the dealer filed another appeal vide Second Appeal No.39(C)/2016-17 against the order of the FAA dtd.01.10.2015 on rectification

application mentioned above. Thus, from the first order of the FAA, one appeal was preferred and from the order on the basis of rectification application another appeal was preferred. It is particular to take note of the fact that, once the order finally disposed of the appeal and thereafter if any review petition or rectification petition filed and disposed of, it should have disposed of in the self-same first appeal and any order passed on that rectification application, need to be agitated in the original second appeal. There is no need to prefer another second appeal bearing different number. However, here the fact remains, two second appeals are preferred from two different orders of the FAA and the origin of the order is one order of the AA passed u/r.12(3) of the CST(O) Rules as mentioned above.

3. It is on the basis of AVR, assessment u/r.12(3) of the CST(O) Rules of the dealer's unit covering tax period from 01.04.2005 to 31.01.2010 was initiated. The AA, learned Deputy Commissioner of Sales Tax, Cuttack-II Circle, Cuttack during assessment found, the dealer has disclosed his sale turnover at Rs.90740849.08 including tax of Rs.25,78,363.71. The claim of the dealer was inter-state sale against 'C' Form of Rs.47143251.40 and Rs.34631407.33 whereas there was consignment sale against Form 'F' of Rs.4774025/-. The dealer could produce declaration

Form 'C' for Rs.47143251/- but failed to produce declaration Form 'C' for Rs.4010908/-. Similarly the dealer could submit 'F' Form for Rs.4774025/-. The dealer's unit was an SSI unit, as such it collected tax @4% against Form 'C' for tax period from 01.04.2005 to 31.12.2006 and then @4% from 01.01.2007 to 31.12.2010 whereas for non-submission of declaration Form 'C' against the claim of inter-state sale of Rs.4010908/-, no concession was given and it was taxed appropriately. As a result, the AA determined the GTO of the dealer at Rs.90740849.08 then allowed deduction of Rs.257836.71, Rs.4774025/-and Rs.1613801.64 towards collection of CST consignment sale against 'F' Form and freight charges respectively. Accordingly, the NTO was determined at Rs.81774653.35. The tax @4% on Rs.51154159.40 and @2% on Rs.30620499.33 were calculated to Rs.2658576.35. In addition to that, penalty u/s.12(3)(g) of the CST Act of Rs.3,20,872.64 was also imposed. The dealer having paid Rs.2168577/- at the time of filing of return and further Rs.329623.06 being adjusted from excess VAT-ITC thereafter. Resultantly, the rest amount to be paid by the dealer raised to Rs.481308.90. Such assessment was challenged before the FAA, who in turn, vide his initial Order dtd.30.04.2014 allowed the appeal in part and reduced the demand to Rs.56,924/.

4. Being aggrieved with that, the dealer preferred Appeal No.36(C)/2014-15 whereas at the same time the dealer has also filed a rectification petition before the self-same authority i.e. FAA. Later rectification petition was finally disposed of by the FAA vide Order dtd.01.10.2015 but in consequence thereof no relief was given to the dealer in the quantum of tax liability except the typographical corrections are allowed.

5. The main contention of the dealer in this appeal are: the AVR basing which the assessment was initiated was not transmitted to the AA within stipulated period of time. The assessment order was an ante-dated one and as it was issued to the dealer after lapse of 8 months from the date shown in the date of assessment order, it is further contended that, the FAA has committed wrong in calculating the tax due for the period back to 06.07.2006 i.e. 01.04.2005 to 05.07.2006 since the CST (O) Rules, 1957 came into force w.e.f. 06.07.2006 and it was also contended that, the FAA mechanically rejected the 'C' Form, even though there is no discrepancy in the TIN number of the dealer and the number mentioned in the declaration Form 'C' and the penalty imposed for non-submission of declaration Form 'C' is not tenable.

6. The appeal is heard without cross objection from the side of the Revenue.

The question raised for decision in this appeal are : If the FAA has rightly rejected the declaration Form 'C' wherein some wrong or omission crept in the name of the dealer. Even though there is no discrepancy in the TIN number reflected in the Form and the TIN number. Whether the FAA should have dropped the assessment proceeding on the ground that, the assessment was barred by limitation as the AVR was not submitted within 7 days and the assessment order was nothing but an antedated one as evident from the issuance of order 8 months later to the date of order and Whether the assessment covering the period from 01.04.2005 to 05.07.2006 is illegal as the Rule only came into effect from 06.07.2006.

Gone through the impugned order under challenge. It is found that, the dealer has raised all above questions which are framed for decision in this second appeal were raised before the FAA. In fact the FAA has formulated four questions for decision in the impugned order. But unfortunately, the FAA has decided only one question that relates to declaration Form 'C'. The impugned order is silent whether the assessment was complete within stipulated period or whether the assessment is barred by limitation, whether the assessment covering the period from 01.4.2005 to 05.07.2006 is tenable in the eye of law. So far as the question relating to the

declaration Form 'C' which is decided by the FAA, it is found that the FAA has rejected the declaration form for wrong mentioning of the name of the instant dealer on the declaration form by the issuing dealer. However, it is remained undisputed that, the TIN number reflected in the declaration form is correct. If that be, the FAA could have accepted the declaration form or either ask for more clarification. The rejection of the declaration form on such minor mistake that relates to the name of the dealer is found to be erroneous. It is unsafe to hold that, because one declaration form contain correct name of the dealer and the other declaration form which is issued by the same purchasing dealer wrong name that ipso facto does not mean that, the second declaration form is a fake one. If it has created a doubt in the mind of FAA, he could have inquired into or ask more cogent evidence or had given an opportunity to the dealer to rectify it from the issuing authority, particularly when there is no prescribed format for declaration Form 'C'. Thus, it is held that, rejection of the declaration Form 'C' by the FAA is mechanical. So far as the other questions like, Whether the appeal is barred by limitation and whether the assessment for a particular period i.e. back to the period when the CST(O) Rules were not there, it is found that, the impugned order is completely silent on these two questions. If that be, it is held

that, the matter need to be remitted back to the FAA for decision on this questions which are even framed by him in the impugned order but not answered. Keeping view of the discussion above, here it is held that, this is a fit case where the matter should be remitted back to the FAA with a direction that the FAA is to give his findings on the question like whether the assessment is barred by limitation and if not, whether the assessment for the period 01.04.2005 to 05.07.2006 is not tenable and if the disputed declaration form should be accepted. Accordingly, it is ordered.

Both the appeals are allowed on contest. The impugned orders are set-aside. The matter is remitted back to the AA, who is to pass a single order on the questions as per the observation above and determine the liability, if any, payable by the dealer.

Dictated and Corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(R.K. Pattnaik)  
Accounts Member-III

