

**BEFORE THE FULL BENCH, ODISHA SALES TAX
TRIBUNAL: CUTTACK**

S.A. No. 2028 of 2005-06

(Arising out of order of the learned Asst. Commissioner of
Sales Tax, Cuttack I Range, Cuttack,
in First Appeal Case No. AA-224/CUIC/2005-2006,
disposed of on dated 30.11.2005)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Burroughs Wellcome (India) Ltd.,
Bajrakabati Road, Cuttack. ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing:23.08.2022 *** Date of order: 24.08.2022

ORDER

This is an appeal u/s.23 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) preferred at the instance of the dealer-assessee against the order dtd.30.11.2005 passed by the Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter referred to as, the first appellate authority),

thereby confirming the order of assessment dtd.30.03.2005 passed by the Sales Tax Officer, Cuttack I Central Circle, Cuttack, Ward-B (hereinafter referred to as, the assessing authority) raising an extra demand of Rs.6,03,674.00 for the assessment year 2001-02 in the assessment framed u/s.12(4) of the OST Act.

2. Briefly stated, the facts of the case are that the dealer-assessee which is a limited company carries on business in drugs and medicines on wholesale basis. It received stocks from the head office as well as from other branches located outside the State. Pursuant to the notice issued u/s.12(4) of the OST Act, the dealer appeared through its Advocate, Sri P.K. Ray and produced the books of account such as goods receipt register, sales register with corresponding invoice trading account and relevant statements. In the assessment year in question, the dealer returned the GTO and TTO at Rs.28,63,555.82 and Rs.26,51,440.57 respectively. In course of assessment, the dealer furnished transfer of stocks worth Rs.70,49,405.11 to M/s. Glaxo India Ltd., College Square, Cuttack but it failed to furnish documentary evidence to substantiate such claim. So the learned assessing authority disallowed such claim and added the said amount to the GTO returned by the dealer and re-determined the GTO at Rs.99,12,960.93. After allowing deduction of Rs.2,12,115.25 towards sales tax collection, the TTO was determined at Rs.97,00,845.68. The learned

assessing authority levied tax @ 8% on the TTO and surcharge @ 10% on the tax due which was calculated at Rs.8,53,674.41. As the appellant had paid Rs.2,50,000.00, the balance amount of Rs.6,03,674.00 was raised as extra demand.

3. The dealer challenging the aforesaid demand of the assessing authority filed appeal u/s.23 of the OST Act before the first appellate authority who by its order dtd.30.11.2005 confirmed the order of assessment and dismissed the appeal. Aggrieved by such order of the first appellate authority, the dealer again came up before this forum in the aforesaid second appeal.

Pursuant to the notice issued by this forum, the Revenue filed cross objection supporting the impugned orders of the forums below.

4. When the appeal was called on for hearing, none appeared in spite of repeated call and despite due service of notice. The present second appeal is of 16 years old and relates to the assessment year 2001-02. The appeal is pending before this forum for such a long period for hearing and disposal on merit. So this forum found no other way except proceeding with the hearing of the appeal ex-parte in the absence of the dealer-assessee and in presence of Mr. D. Behura, learned Standing Counsel for the Revenue.

5. We have heard Mr. D. Behura, learned Standing Counsel (CT) for the Revenue, gone through the grounds

of appeal raised in the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The memorandum of appeal filed by the dealer-assessee reveals that the dealer mainly being aggrieved with the orders of the forums below adding stock transfer of Rs.70,49,405.11 to M/s. Glaxo India Limited to the GTO for the purpose of computation of tax liability of the dealer, the present appeal has been filed. Therefore, now it is to be seen whether the forums below were correct in their approach in disallowing the claim of branch transfer of Rs.70,49,405.11 to M/s. Glaxo India Limited, College Square, Cuttack or not. On going through the impugned orders of the forums below, we find that they have rejected such claim of the dealer-assessee on the ground that it (dealer) failed to file any document to substantiate the claim and added the stock transfer of Rs.70,49,405.11 to the GTO for computation of tax. When the dealer claimed certain transaction as stock transfer to its own branches, the burden was on it to substantiate such contention by adducing relevant documents.

6. On thorough scrutiny of the record, we did not find any such documents justifying the claim of the dealer-assessee towards stock transfer of Rs.70,49,405.11. Both the forums below having negated such claim of the dealer for non-production of the relevant documents, their order to this effect cannot be questioned. The forums below did not commit any illegality in

disallowing such claim of the dealer for non-production of the documents. In the second appeal also the dealer-assessee did not appear when the appeal was called on for hearing and did not pursue the same. This conduct of the dealer shows that he is not interested to substantiate its claim of branch transfer. Had the dealer been in possession of any documents relating to branch transfer of Rs.70,49,405.11, it would have produced the same before this forum. In course of hearing of the appeal, the learned Standing Counsel for the Revenue drew our attention to the letter No.2881 dtd.25.11.2005 issued by the Sales Tax Officer, Cuttack I East Circle, Cuttack wherein it has been reported that M/s. Glaxo Smilth Kline Pharmaceuticals Ltd. has not disclosed the receipt of goods worth Rs.70,58,654.00 from M/s. Burroughs Wellcome India Ltd., B.K. Road, Cuttack. In view of such clarification of Sales Tax Officer, Cuttack I East Circle, Cuttack to the Asst. Commissioner of Commercial Taxes, Cuttack I Range, Cuttack, it cannot be said that there was stock transfer of goods worth Rs.70,49,405.11. The fora below on proper scrutiny of the materials on record and on correct interpretation of the law have rightly disallowed the claim of the dealer-assessee towards branch transfer. We did not find any illegality and impropriety in such order of the learned assessing authority warranting interference of this Tribunal.

7. For the foregoing discussions analysis, the appeal filed by the dealer-assessee being devoid of any merit stands dismissed and the impugned order of the forums below stands confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

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

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I