BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 183(ET) of 2018

(Arising out of order of the learned Addl. Commissioner of Sales Tax (Appeal), Balasore, in Appeal Case No. AA-132/BA-2016-17 (OET), disposed of on dated 20.09.2018)

Present: **Shri Goutam Sharma, Chairman**

M/s. Jaiswal Plastic Tubes Ltd.,
At:- Ganeswarpur Industrial Estate,
Januganj, Baleshwar. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. P.K. Jena, Advocate &
Mr. S.P. Dalai, Advocate
For the Respondent : Mr. D. Behura, S.C.

Date of hearing: 11.08.2026 ******* Date of order: 08.09.2026

O R D E R

Challenging the legality and propriety of order dated 20.09.2018 passed by the Addl. Commissioner of Sales Tax (Appeal), Balasore (hereinafter referred to as 'First Appellate Authority') in Appeal Case No. AA-132/BA-2016-17 (OET), this appeal has been filed by M/s. Jaiswal Plastic Tubes Ltd. (hereinafter referred to as 'Dealer').

2. The Dealer is engaged in manufacturing of PVC pipes and fittings. Basing on the Audit Visit Report (in short, AVR), the Deputy Commissioner of Sales Tax, Balasore Circle, Balasore (hereinafter referred to as 'Assessing Authority') initiated assessment proceeding u/s.9C of the Orissa Entry Tax Act, 1999 (in short, 'OET Act') for the

tax period 01.04.2007 to 30.11.2012. On verification of books of account with reference to the allegation reported in the AVR, the Assessing Authority completed the assessment after allowing set off of Entry Tax and raised demand of ₹3,77,919.00 under the OET Act including penalty on the Dealer for the period under dispute. Being aggrieved with the order of assessment, the Dealer preferred appeal before the First Appellate Authority. The First Appellate Authority considering the claim of set off deleted the demand raised and allowed the Dealer to get refund of ₹32,716.00 for the impugned period, hence this appeal.

3. The State filed cross-objection.

4. The learned Counsel for the Dealer in course of argument raised the sole ground that the order of assessment is antedated since the order was purported to have been passed on 19.12.2013 but the same was issued to the Dealer on 14.07.2014 with a delay of more than six months without assigning any reason thereof. He argued that the Assessing Authority violated the provisions set forth in Sec.9C(6) of the OET Act for which the assessment order is unsustainable in law. Supporting the argument, learned Counsel relied on the decision of the Hon'ble High Court of Orissa in the case of ***M/s. Jindal Stainless Ltd. v. State of Odisha [2012] 54 VST 1 (Ori)***.

5. Per contra, learned Standing Counsel (CT) appearing for the State supported the orders of the fora below to be lawful on the ground that there is no violation of provisions of Section 9C(6) of the OET Act in completion of assessment basing on the AVR, accordingly, pleaded that the impugned order requires no interference in appeal.

6. It transpires from record that the assessment order relating to the period 01.04.2007 to 30.11.2012 was passed by the Assessing

Authority on 19.12.2013 and the same was issued to the Dealer on 14.07.2014 vide No.5692 which is after more than six months of the date of order passed and the said fact has not been disputed by the Revenue.

In this context, I am alive of the legal principle as enunciated by the Hon'ble Apex Court in the case of ***State of Andhra Pradesh v. M. Ramakishtaiah & Co.***, reported in **[1994] 93 STC 406 (SC**), wherein their Lordships' held that –

> " …the order of the Deputy Commissioner is said to have been made on January 6, 1973, but it was served upon the assessee on November 21, 1973, i.e. precisely 10½ months later. There is no explanation from the Deputy Commissioner why it was so delayed. If there had been a proper explanation, it would have been a different matter. But, in the absence of any explanation whatsoever, we must presume that the order was not made on the date it purports to have been made…"

Our Hon'ble High Court in the case of ***Chandrika Sao v. Sales Tax Officer, Balasore Range, & Another***, reported in **[2015] 81 VST 86 (Orissa)**, also held that-

> " … there is no explanation for the delay of more than four months caused in issuing the assessment order to the petitioner except stating that due to clerical mistake there has been a delay of four months. Nothing has been stated in detail as to when the order of assessment has been handed over to the dispatch section and who is responsible for such delay. Therefore, we have no hesitation to hold that the order of assessment under annexure-1 was not made on the date it was purported to have been made. In order to given an impression that the impugned order of assessment was passed within the period of limitation, the order bears the date June 18, 2008 whereas it has been passed much later that."

7. In the instant case, the order of assessment relating to the period 01.04.2007 to 30.11.2012 was passed on 19.12.2013, but the same was issued on 14.07.2014, which is after about more than six months of the date of order passed. Record is silent about plausible

explanation regarding inordinate delay in issuing the order of assessment passed on 19.12.2013. Therefore, it can well be inferred from such belated despatch of assessment order that the assessment was not made on the date it purports to have been made within the period of limitation as prescribed u/s. 9C(6) of the OET Act. Accordingly, the order of assessment dated 19.12.2013 of the Assessing Authority for the impugned period is hereby set aside.

8. In the result, the appeal filed by the Dealer stands allowed. The impugned order of First Appellate Authority and the assessment order are hereby set aside. Cross objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman