

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

S.A. No. 416 of 2005-06

(Arising out of W.P.(C) No.1665/2002 dtd.27.02.2019)

(From the order of the Id. ACST, Sundargarh Range,
Rourkela, in First Appeal Case No. AA-329 (RL-II) of 2004-05,
on 16.03.2005)

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III**

M/s. Pareek Ferro Pvt. Ltd.,
Beldihi, Kalunga,
Dist.- Sundargarh, Orissa. ... Appellant

- V e r s u s -

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

For the assessment period: 2001-02

For the Appellant ... Mr. S.N. Patel, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 15.10.2019 ***** Date of order: 15.10.2019

ORDER

This appeal is preferred by the dealer against the order of first appellate authority in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act).

2. The facts relevant for the purpose of disposal of this appeal are, the assessee-dealer's claim of set off was denied by the taxing authority in the assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) in strict adherence to

the finance department notification dtd.31.03.2001, Note No.1 & 2 more particularly Note No.2, clause-III, the provision reads as follows.

“(iii) In respect of goods exigible to tax on sale turnover the amount of Orissa Sales Tax realized separately from the dealer on the body of the purchase invoice in respect of the purchases from the registered dealers during a particular year shall be eligible for computation of the amount of set off to which the dealer shall be entitled, during the same year. It is the responsibility of the dealer for proper custody of those purchase invoices to facilitate verification by Sales Tax Officer.”

3. In the assessment u/s.12(4) of the OST Act for the assessment period 2001-02 which was an exparte order denied the claim of set off raised by the dealer, resulting thereby demand raised against the dealer. The matter was carried in appeal before the first appellate authority but to the ill luck of the dealer, ld. first appellate authority only confirmed the order of assessment. Resultantly, the demand remained undisturbed.

Thereafter, being unsuccessful before both the fora below, the dealer preferred this second appeal challenging the sustainability of the impugned confirming order to the extent that, the denial of set off is illegal.

4. At the outset, before delving into the merit of the appeal, it is pertinent to mention here that, the validity of the notification mentioned above was challenged before the Hon’ble Court by many of the dealers including the present dealer. While disposing the batch of W.P.(C)s, the Hon’ble Court has held that the Finance Deptt. notification verified above is binding. However, while arriving at this conclusion, the Hon’ble Court has held as follows,

“Accordingly, we direct that the orders of the Assessing Authority under Annexure-11 in W.P.(C) No.1195 of 2002 and Annexure-8 in W.P.(C) No.9910 of 2003 are hereby quashed and the Assessing Authority is directed to consider the claim of the petitioners regarding set off under the Notification dated 31.3.2001 in terms of aforesaid findings.”

It is noteworthy to mention here that, on the very same day vide same separate order while disposing dealer's W.P.(C) No.1665/2002, the Hon'ble Court has held as follows,

“This writ petition is disposed of today vide common judgment passed in W.P.(C) No.1195 of 2002 and other connected writ petitions and Sales Tax Revisions.”

5. Reverting to the case in hand, the order of both the fora below as it revealed, all along the dealer took a plea that, it has preferred W.P.(C) before the Hon'ble Court challenging the validity of the notification set off. So, it is noticed that, both the fora below have not discussed the matter of controversy in detail but only applied the notification and denied the set off to the dealer. On this backdrop, the present appeal is taken up for hearing along with the order of the Hon'ble Court as mentioned above.

6. Once the order of assessment is set aside by the Hon'ble Court, then any order passed by the first appellate authority arising out of that assessment order or by this Tribunal arising out of the confirming order of assessing authority will not be enforceable in law, more to say the, present appeal became stood infructuous in view of the order of the Hon'ble Court consequent upon the order of the Hon'ble Court in W.P.(C) No.1665/2002. Therefore, we are constrained to hold that, the assessment order is no more in force so also the impugned order. The matter need to be remitted for assessment afresh in the light of observation by the Hon'ble Court W.P.(C) above. The remedy of the dealer lies before the assessing authority. The dealer should take shelter of the assessing authority accordingly.

In the result, it is ordered.

The impugned order is set aside. Consequentially, the order of assessing authority is set aside in the light of decision by the

Hon'ble Court. The matter is remitted back to the assessing authority for assessment afresh as per the direction in the W.P.(C) No.1665 of 2002 and W.P.(C) No.1195 of 2002. The dealer is directed to appear before the assessing authority without waiting for any notice within a period of one month hence. The assessing authority will do well to dispose of the matter before him within a period of three months thereafter as per law.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

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