

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

**S.A. No. 198(C) of 2003-04**  
**&**  
**S.A. No. 199(C) of 2003-04**

(Arising out of order of the learned Asst. Commissioner of  
Sales Tax, Balasore Range, Balasore  
in Sales Tax Appeal No. AA 30 & 42/BAC-2002-2003,  
disposed of on dated 22.11.2003)

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

M/s. Jaiswal Plastic Tubes Ltd.,  
Januganj, Balasore. ... Appellant

**-Versus-**

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

For the Appellant : Mr. L.N. Sahoo, Advocate  
For the Respondent : Mr. D. Behura, S.C.

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Date of hearing:02.08.2022 \*\*\* Date of order: 26.08.2022  
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**ORDER**

Both the second appeals though relate to two  
different periods involve common question of fact and law  
for which they are taken up together for hearing and are  
disposed of by this composite order.

The dealer-assessee filed S.A. No.198(C) of 2003-04 and S.A. No.199(C) of 2003-04 challenging the order dtd.22.11.2003 passed by the learned Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter referred to as, first appellate authority) in Sales Tax Appeal No. AA 30 & 42/BAC-2002-2003 respectively, thereby confirming the order of assessment dtd.31.01.2002 passed by the Taxing Authority, Balasore Circle, Balasore (hereinafter referred to as, assessing authority) raising extra demand of Rs.21,42,543.00 for the assessment year 1998-1999 and 5,02,639.00 for the assessment year 1999-2000 in the assessment framed u/r.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. Facts common in both the appeals are that, the dealer-assessee is a manufacturer of P.V.C. pipes and fittings and for the purpose of assessment u/r.12(4) of the CST(O) Rules, a notice was issued to it (dealer) u/r.12(5) of the said Rules. Pursuant to such notice, the Chief Accountant of the company appeared and produced the books of account. The learned assessing authority on examination of the books of account observed that the dealer disclosed annual gross turnover at Rs.7,67,774.37 for the year 1998-99; that it (dealer) had supplied goods of Rs.1,85,87,352.00 to the Executive Engineer (A.M.), Calcutta, Resource Division, Bardhwan and that it had also transferred goods to the Branch Office at Calcutta for

Rs.1,46,54,663.37. The learned assessing authority further noticed that the dealer submitted revised return for the month of February, 1999 and March, 1999 disclosing inter-State sale made to the Executive Engineer (A.M.), Calcutta, Resource Division, Bardhwan and furnished xerox copy of the sale bills to substantiate such contention. The dealer also furnished declaration form 'F' to the tune of Rs.1,46,54,663.37 in support of claim of branch transfer. The learned assessing authority accepted the 'F' forms and stock statement submitted by the dealer-assessee. The learned assessing authority further noticed that the dealer claimed sale of goods to registered dealers for Rs.1,93,25,596.67 outside the State of Odisha at the concessional rate of 4% on the strength of 'C' and 'D' declaration forms. But it could furnish valid declaration forms for Rs.7,38,244.67. It failed to furnish declaration form against the sales made to the Executive Engineer (A.M.), Calcutta, Resource Division, Bardhwan for Rs.1,85,87,352.00 on account of which, the learned assessment authority disallowed the concessional rate of tax thereon.

3(a). The learned assessing authority determined the GTO for the year 1998-99 at Rs.3,40,09,789.74 and taxable turnover at Rs.1,93,25,596.67 on which he determined the tax due at Rs.18,88,264.98 and surcharge u/s.8(2)(b) of the CST Act @ 15% of the tax due. It raised

extra demand of Rs.21,42,543.00 against the dealer for the assessment year 1998-99.

3(b). Similarly, for the assessment year 1999-2000, the gross turnover was determined at Rs.68,06,561.95 and taxable turnover at Rs.67,33,844.89 on which total tax due was determined at Rs.5,72,921.86 including surcharge of Rs.600.00 u/s.8(2)(b) of the CST Act. As the appellant had already paid Rs.70,883.00, the assessing authority raised extra demand of Rs.5,02,639.00.

4. The dealer-assessee being dissatisfied with the aforesaid demand raised by the assessing authority preferred appeal before the first appellate authority u/s.23(1) of the OST Act read with Rule 22 of the CST(O) Rules on the ground that the dealer-assessee was not given ample opportunity to produce the statutory declaration forms before the assessing authority and the assessment was completed in a hurried manner raising extra demand on the dealer-assessee and that the assessing authority had no right to disallow the claim of concessional rate of tax which were sold in course of inter-State sale against form 'C' and 'D' and that the order of the assessing authority was illegal and against the sanction of law. The first appellate authority on hearing the dealer-assessee and on going through the materials on record dismissed the appeal thereby confirming the order of assessment holding that the extra demand was raised due to non-submission of declaration forms 'C' and 'D' at

the time of assessment and at the appellate stage also the dealer failed to produce the declaration forms 'C' and 'D'.

5. The dealer challenging the aforesaid order of the first appellate authority filed both the second appeals on the ground that the assessment order passed by the assessing authority and confirmed by the first appellate authority is arbitrary, unjust and against sanction of law as the self-same transaction has been taxed twice i.e. State of West Bengal taxed the appellant as inter-State sale and State of Odisha under the Orissa Sales Tax Act; that the dealer-assessee was not given sufficient opportunity to furnish declaration in form 'D' to the tune of Rs.1,85,87,352.00 and to the tune of Rs.50,20,414.36 towards inter-State sales effected to the Executive Engineer (A.M.), Calcutta, Resource Division, Bardhwan, West Bengal and that the order passed by the assessing authority and confirmed by the first appellate authority disallowing the claim of the dealer without waiting for the results of the cases pending before the Hon'ble Calcutta High Court is illegal, arbitrary and unsustainable in the eye of law.

6. We have heard the learned Counsel for the dealer-assessee and learned Standing Counsel (CT) for the Revenue, gone through the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. On perusal of the impugned orders of the forums below, we do find that the dealer's claim for

concessional rate of tax was disallowed only on account of non-production of the statutory forms. The dealer claimed before the first appellate authority that it was not given reasonable opportunity to produce the declaration form 'D' to claim concessional rate of tax. It appears from the records of the first appellate authority that the matter was adjourned on several occasions for different reasons and the appeal remained pending before the first appellate authority from 06.03.2002 to 22.11.2003 during which period also the dealer-assessee could not produce the statutory declaration forms. In the present second appeal also the matter was adjourned on several occasions on the prayer of the learned Counsel for the dealer-assessee to produce the declaration forms but in spite of repeated adjournment and sufficient opportunity, such declaration forms could not be produced. Therefore, the claim of the dealer that it was not given reasonable opportunity to furnish declaration form 'D' for an amount of Rs.1,85,87,352.00 and for Rs.50,20,414.36 towards inter-State sales effected to the Executive Engineer (A.M.), Calcutta, Resource Division, Bardhwan, West Bengal is not correct. Both the forums below gave sufficient opportunity to the dealer to substantiate his claim of concessional rate of tax in respect of sales effected against statutory declaration form 'D' but he did not avail such opportunity. Even the dealer failed to substantiate his claim before this forum by producing the statutory

declaration form 'D'. So in the absence of the statutory form, disallowance of claim for concessional rate of tax against inter-State sales for the aforesaid amount by the assessing authority and subsequently confirmed by the first appellate authority cannot be said to be illegal and improper. The forums below rightly negated the claim of the dealer-assessee on this score. We do not find any illegality or impropriety in the impugned orders of the forums below warranting interference of this Tribunal.

7. For the discussions and analysis made above, both the second appeals filed by the dealer-assessee being devoid of merit stand dismissed and the impugned orders of the forums below stand confirmed. Cross objection filed by State in both the appeals are disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

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

I agree,

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