

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

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

S.A. No. 112(C) of 2006-07

(Arising out of the order of the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar, in First Appeal Case No.AA(C)8/BH-II/06-07, disposed of on dtd.16.08.2006)

M/s. Protection Manufacturers (P) Ltd.,
At:- Bhatkuri, P.O.-Gangapada,
Dist.-Khurda. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. B.B. Panda, Advocate
For the Respondent : Mr. D. Behura, S.C. &
Mr. S.K. Pradhan, A.S.C.

Date of hearing: 24.02.2022 *** Date of order: 16.03.2022

ORDER

The dealer-appellant has preferred this appeal challenging the order dtd.16.08.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter referred to as, the learned FAA) in First Appeal Case No.AA(C)8/BH-II/06-07, thereby rejecting the appeal summarily u/r.49 of the Orissa

Sales Tax Rules, 1947 (hereinafter referred to as, the OST Rules) r/w. Rule 22 of the Central Sales Tax (Orissa) Rules, 1957.

2. The factual background of the case is that, the dealer-appellant is a SSI unit engaged in manufacturing and sale of cooler, geyser, moulded furniture and moulded stand etc. The dealer-appellant was assessed under the OST Act for the year 2002-03 and notice was issued u/r.12(5) of the CST(O) Rules for CST assessment for the said period also. Pursuant to the notice u/r.12(5) of the CST(O) Rules, the authorised representative of the dealer-appellant appeared before the assessing authority and produced the books of account. On examination of the books of account, the assessing authority found that the dealer was a SSI unit as per the provisions of the IPR'89 and was availing tax holidays. After withdrawal of sales concession w.e.f. 01.08.1999 by the Government vide Finance Department Notification dtd.30.07.1999, the dealer-appellant also used to sale its products as exempted from sales tax under the policy of IPR'96. The dealer-appellant had undertaken extension/modernisation /diversification after 01.03.1996 on the basis of exclusive project report and had gone into commercial production on 12.11.2001. The new items were also incorporated in the certificate.

2(a) There was a fraud case report submitted by the STO (Vig) flying Squad, Cuttack, wherein it was alleged

that during the visit of business premises of the dealer on 26.02.2002, it was found that the dealer was availing sales tax concession/exemption under IPR'89 and subsequently under IPR'96. After withdrawal of sales tax concession w.e.f. 01.08.1999, the dealer continued to sale its product as exempted from sales tax under the policy of IPR'96. The dealer-appellant in order to remain on safer side, devised a new method for selling its products outside the State on consignment sale basis against form 'F'. On 01.10.2000, the dealer-appellant entered into an agreement with nine business concerns for selling its product on consignment basis to outside the State. On examination of the copies of the agreement kept in the registration record of the dealer-appellant, it was found that out of these nine business concerns, seven belonged to M/s. Rajanath Enterprisers with various branches spreading throughout India and was stated to be the sister concern of the dealer-appellant. The other two business concerns namely M/s. Apex Marketing, Chennai and Anil Trading, Kolkata represented by one Sunil Goel and Abdul Hayat respectively though were parties to the agreement, the same was not signed by both of them. It was further alleged in the fraud case report that besides the above nine business concerns, the dealer-assessee was maintaining the sales records in respect of Rajanath Enterprisers, Rajapath Enterprisers, Ranchi, Rajapath Enterprisers, Lucknow, Rajapath Enterprisers, Chennai,

Trupti Electro Marketing Ltd., Indore. Rajapath Enterprisers, a sister concern of Rajanath Group having its principal place of business at Ashoknagar, Bhubaneswar. This was a proprietorship concern which was subsequently amended to partnership concern with partners namely Sri Pritish Gupta, son of Sri M.K. Gupta and Smt. Pusalata Gupta, wife of Sri M.K. Gupta and Smt. Renu Gupta, wife of Sri Piyush Gupta. Sri Pritish Gupta, Managing Director of M/s. Protection Manufacturers Pvt. Ltd. is also the active partner of M/s. Rajanath Enterprisers. Sri Milind Gupta had no legal status in the business of M/s. Rajapath Enterprisers. So signing of agreement by Sri Milind Gupta is null and void. Sri Pritish Gupta, the Managing Director of M/s. Protection Manufacturers Pvt. Ltd. had also entered into agreement with himself being the active partner of M/s. Rajapath Enterprisers for which the agreements for consignment sale were fabricated and false. It is further alleged that M/s. Rajapath Enterprisers had no additional place of business outside the State. On 25.09.1998, the dealer filed a petition to amend the R.C. for incorporation of the additional place of business at Patna, Vijaywada and Raipur without detail address of these branches.

2(b) The assessing officer observed that the dealer disclosed consignment sale to the tune of Rs.95,21,563.80. The dealer could furnish declaration form 'F' against M/s. Rajapath Enterprisers, Ranchi and

Raipur. The dealer effected interstate sale to the tune of Rs.3,50,846.41 against which no declaration form 'C' could be furnished. On being confronted, the authorised representative of the dealer neither satisfactorily explained nor produced copies of sale patties by M/s. Rajapath Enterprisers to the dealer-assessee and sale patties in case of M/s. Ani Trading and Star Electronics. So, in the absence of the relevant documents, the dealer claim of consignment sale couldnot be allowed.

2(c) The assessing officer observed that the dealer has adopted such device of consignment sale in order to evade payment of tax and so observing completed the assessment to the best of his judgment. The assessing officer determined the gross turnover at Rs.98,72,410.21 and after deducting Rs.31,899.58, the NTO was determined at Rs.98,40,510.63 on which CST @ 12% was calculated at Rs.11,80,561.27 and surcharge @ 10% determined at Rs.1,18,086.12. The dealer having paid Rs.6,828.00 as tax, it was required to pay the balance amount of Rs.12,92,119.00.

3. The dealer-appellant being aggrieved with such demand raised by the assessing authority preferred appeal before the first appellate authority who summarily rejected the appeal for non-payment of the admitted tax. The dealer being further aggrieved with such summary rejection of the appeal, filed the present second appeal.

4. It was vehemently urged by the learned Counsel for the dealer-appellant that, the forum below have illegally rejected the appeal summarily without giving due opportunity to pay the admitted tax. The dealer-appellant is seriously prejudiced for failure of the first appellate authority in not giving due opportunity to him to pay the admitted tax and not examining the legality and propriety of the assessment order on merit. He submits to set aside the orders of the first appellate authority and to give an opportunity to the dealer-assessee.

On the other hand, the learned Standing Counsel (C.T.) supporting the impugned order of the first appellate authority vehemently urged that the dealer in spite of repeated opportunity did not pay the admitted tax for which the appeal was dismissed summarily as per Rule 49 of the OST Rules r/w. Rule 22 of the CST(O) Rules. There is nothing wrong in the order of the first appellate authority in summarily rejecting the appeal filed by the dealer-appellant for non-payment of admitted tax. The appeal filed by the dealer-assessee is only with an intention to evade payment of tax.

5. We have heard the rival submissions of the parties, gone through the impugned orders of both the forums below, memorandum of appeal vis-a-vis the materials on record. The order of the first appellate authority reveals that he rejected the appeal summarily for non-payment of admitted tax and the order of the

assessing authority was not examined by it on merit. The dealer-appellant has been deprived of the opportunity of hearing only on technical ground of non-payment of admitted tax. If such course is adopted, no doubt the dealer-assessee would be seriously prejudiced. In this circumstance, we would have set aside the order of the first appellate authority and would have give an opportunity of hearing to the dealer-assessee by remitting the matter back to the first appellate authority. But the dealer-assessee who was assessed under the OST Act for the same period also filed second appeal before this forum vide S.A. No.2078-79 of 2005-06 which was today allowed by us and the matter was remitted back to the assessing authority for re-computation of the tax liability keeping in view the observations made in the said order. So under this circumstance it would be just and proper to set aside the orders of the forums below and to remit the matter back to the assessing authority to recompute the tax liability of the dealer-assessee keeping in view of the observations made by this forum in S.A. No.2078-79 of 2005-06 and taking into consideration the judgments of the Hon'ble High Court in W.P.(C) No.5491 of 2009, wherein the dealer-assessee was held to be a priority industry and it was extended the benefit of IPR'96 for the extended period of two years.

6. For the foregoing discussions, the appeal filed by the dealer is allowed and the impugned orders of the

forums below are hereby set aside and the matter is remitted back to the assessing authority to recompute the tax liability of the dealer keeping in view of the observations made hereinabove within a period of three months from the date of receipt of this order.

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