

**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. 840 of 2003-04

(Arising out of the order of the learned ACST,
Appellate Unit, Bhubaneswar, in Sales Tax Appeal
No.AA 16/BH-II/02-03, disposed of on dtd.06.03.2003)

M/s. Protection Manufacturers (P) Ltd.,
Plot No.-SCR-18, Suryanagar,
Bhubaneswar. ... Appellant

- V e r s u s -

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

S.A. No. 968 of 2003-04

(Arising out of the order of the learned ACST,
Appellate Unit, Bhubaneswar, in Sales Tax Appeal
No.AA 16/BH-II/02-03, disposed of on dtd.06.03.2003)

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

- V e r s u s -

M/s. Protection Manufacturers (P) Ltd.,
Plot No.-SCR-18, Suryanagar,
Bhubaneswar. ... Respondent

For the Dealer : Mr. B.B. Panda, Advocate
For the Dealer : 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

These two second appeals, one at the instance of the State and the other at the instance of the dealer-assessee have been filed against the order dtd.06.03.2003 passed by the Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter referred to as, the learned FAA) in Sales Tax Appeal No. AA 16/BH-II/02-03, thereby reducing the tax demand to Rs.8,62,400.00 from Rs.13,56,080.00 raised by the learned Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as, the learned AA) invoking power u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act).

2. The relevant facts of the case in nutshell are that, the dealer-assessee is a manufacturing concern engaged in manufacturing of air-cooler and is registered as a SSI unit under IPR'89 who started its commercial production of air-cooler w.e.f.10.04.1994. The dealer-assessee enjoyed the tax exemption on purchase of raw materials and sale of finished products during the period in question. The optimum production capacity of the company was initially fixed at 1,600 nos. which are subsequently increased to

8,000 nos. w.e.f. 28.03.1998. Accordingly, the unit was granted certificate of eligibility of sales tax concession on sale of finished products. The certificate of eligibility of sales tax concession on finished goods issued by DIC, Bhubaneswar with maximum production capacity of 8,000 nos. of air-coolers for the period from 01.04.1998 to 31.03.1999. The dealer-assessee also maintains accounts on purchase of raw materials and sale of finished products. The assessing authority started proceeding u/s.12(4) of the OST Act for the year in question against the dealer and issued notice to it (dealer-assessee) for production of books of account. In response to such notice, one Sri A.K. Satpathy, Accountant-cum-authorized person of the dealer appeared and produced the books of account for exemption. On examination of the books of account, the assessing officer found that the dealer had shown total purchase of raw materials of Rs.3,28,89,999.83 which includes purchase of raw material of Rs.13,07,104.89 from inside the State and of Rs.3,15,82,894.94 from outside the State. The dealer-assessee manufactured 10,450 nos. of air-coolers out of which 7800 numbers of air coolers had been sold inside the State and 2,650 nos. of air-coolers had been sold in course of interstate trade and commerce. The dealer-assessee has returned GTO at Rs.1,99,74,441.80 which includes Rs.2,500/- towards SRD. The dealer-assessee

had shown the entire sale as tax exempted goods and as such no tax had been paid during the year.

2(a) The assessing officer in course of examination of books of account took into consideration the fraud case report dtd.19.08.2000 submitted by the STO, Bhubaneswar II Circle, Bhubaneswar and found from it that the STO visited the business premises of the dealer on 27.11.1998 and in course of inspection detected 93 pieces of challans/documents relating to dispatch of finished products to M/s. Horizon, Bapuji Nagar and spare parts to M/s. Protection Equipments, Rudrapur, its sister concern which is a SSI unit engaged in manufacturing of voltage stabilisers only. The assessing officer found excess production and sale of 2,450 nos. of air-coolers as against its installed capacity and on being confronted the dealer-assessee failed to give reasonable explanation. The assessing officer was of view that the dealer having produced more air-cooler than its installed capacity, the excess production was liable for appropriate tax. Accordingly, the assessing officer fixed the average rate of sale at Rs.2,600.00 per cooler and determined the taxable turnover at Rs.63,70,000.00. The assessing officer calculated the tax and surcharge at Rs.13,56,080.00.

3. The dealer-assessee challenging the above demand raised by the assessing officer preferred appeal before the first appellate authority u/s.23(1) of the OST Act which was disposed of on 06.03.2003 allowing the

appeal in part and reducing the tax to Rs.8,62,400.00. The first appellate authority fixed price of the coolers at Rs.2,000.00 per cooler. The dealer-assessee being further aggrieved with the demand of Rs.8,62,400.00 raised by the first appellate authority preferred Second Appeal No.840 of 2003-04, whereas the State being aggrieved with the reduction of the price of the cooler from Rs.2,600.00 to Rs.2,000.00 preferred the Second Appeal Nno.968 of 2003-04. These two second appeals are taken up together for hearing and are disposed of by this common order as common question of fact and law involve in both the cases.

4. It was vehemently urged by the learned Counsel for the dealer-assessee that the first appellate authority committed error in holding that the installed capacity of the dealer was 8000 nos. and excess production made by it was exigible to tax under the Orissa Sales Tax Act, ignoring the observation of the assessing officer in page-2 of the impugned order that, the dealer had been allowed to produce/manufacture 24000 nos. of air-cooler w.e.f. 14.03.1999. The finding of the first appellate authority that the installed capacity of the dealer is 8,000 in number, is not based on the materials on record. The first appellate authority while passing the impugned order has not applied its independent mind to the actual controversy between the parties and in a very perfunctory manner has disposed of the appeal simply reducing the tax demand

raised by the assessing authority. He vehemently urged to allow the claim of the dealer-assessee that entire 10,450 number of air coolers manufactured and sold by it are exempted from sales tax as per the scheme of IPR'89. He submits to allow the appeal and set aside the impugned order of the forums below.

5. On the other hand, learned Standing Counsel (C.T.) representing the State supporting the impugned order of the first appellate authority forcefully argued that it (first appellate authority) was in complete error in reducing the price of the cooler from Rs.2,600.00 to Rs.2,000.00 without assigning any reason. In course of hearing the appeal, he drew our attention to the sale statement of the dealer-assessee to substantiate its contention that the first appellate authority was wrong in its approach in reducing the sale price of the cooler from Rs.2,600.00 to Rs.2,000.00. He further argued that the dealer is only entitled to exemption only to the extent of its installed capacity, not in respect of production in excess of its installed capacity and submitted to set aside the order of the first appellate authority and restore that of the assessing authority.

6. We have heard the rival submissions of the parties, gone through the impugned orders of the forums below, grounds of appeal raised by both the parties in their respective appeals vis-a-vis the materials on record.

The following two issues emerge from the rival contention of the parties for adjudication by this Tribunal:-

- (i) Whether the authorities below were correct in their approach in levying tax on 2,450 nos. of air-coolers manufactured and sold by the dealer-assessee which was a SSI unit under IPR'89, over and above the installed capacity of 8,000 nos. of air-coolers ?
- (ii) Whether the first appellate authority was correct in its approach in reducing the price of the cooler fixed by the assessing officer from Rs.2,600.00 to Rs.2,000.00 for the purpose of determining the tax implication ?

7. As regards the first issue, there is no dispute in the present case that the dealer-assessee is a small scale industrial unit and is registered as such under IPR'89. It enjoys tax exemption on purchase of raw materials and on sale of finished products. The industrial unit of the dealer-assessee started commercial production of the air-cooler w.e.f. 10.04.1994 and installed capacity of the company was fixed at 1,600 numbers by the DIC as per the PMT certificate which was subsequently enhanced w.e.f. 28.03.1998 and accordingly the unit was granted certificate of eligibility of sales tax concession on sale of finished products. There is also no dispute that the period from 01.04.1998 to 31.03.1999 is covered under the certificate of eligibility of sales tax concession of sale of

finished products issued by the DIC, Bhubaneswar. The whole dispute in the present case is with regard to production capacity of the industrial unit as per the certificate of eligibility. The learned Counsel for the dealer-assessee drawing our attention to the observation of the assessing officer at page-3 of its order argued that the industrial unit was permitted to manufacture 24,000 nos. of air-coolers w.e.f. 14.03.1999. Therefore, the production of 10,450 nos. of air-cooler was within the permissible limit and the dealer-assessee was entitled to sales tax exemption on sale of the entire air-cooler produced by it. But on verification of the assessment record, we found that certificate of eligibility issued by the Project Manager, DIC, Bhubaneswar shows that the annual installed capacity of the unit was enhanced from 2,000 to 8,000 nos. w.e.f. 28.03.1998 and again enhanced the capacity of air-cooler from 8,000 no. to 24,000 w.e.f. 14.03.1999. So during the relevant year the installed capacity of the dealer-assessee was fixed at 8,000 nos. as against which the dealer has manufactured 10,450 nos. of air-cooler for which he is not entitled to sales tax exemption in respect of the excess air-coolers manufactured by it than its installed capacity. The forums below were correct in their approach in restricting the sales tax exemption on sale of finished products to 8,000 nos. of air-cooler which the dealer-assessee was permitted to manufacture during the relevant year. There is no illegality or impropriety in such

finding of the forums below warranting interference of this Tribunal.

8. The second issue that emerges for consideration by this Tribunal is, whether the first appellate authority is correct in its approach in reducing the price of the air-cooler from Rs.2,600.00 to Rs.2,000.00. In course of hearing of the second appeal, the learned Standing Counsel (CT) for the Revenue drew our attention to the sale statement of the dealer-assessee which shows that 7,800 nos. of air-cooler of different model have been sold for Rs.1,99,71,941.80. So the average price of each cooler comes to Rs.2,560.50 or to say Rs.2,560.00. The assessing authority as well as the first appellate authority has not discussed anything while fixing the average price of the air-cooler. Therefore, the order passed by both the forums below is not sustainable. The average price of the cooler is fixed at Rs.2,560.00 for the purpose of calculation of tax implication in respect of 2,450 nos. of air-coolers manufactured and sold by the dealer-assessee which is excess than the installed capacity of 8,000 nos. of air-cooler.

9. For the foregoing discussions, the appeal filed by the dealer-assessee being devoid of merit stands dismissed and the appeal filed by the State is allowed to the above extent. The impugned orders of both the forums below are set aside to the extent of fixing the price of the cooler without assigning any reason and the matter is

remitted back to the assessing authority for re-computing the tax liability of the dealer-assessee keeping in view the observations made hereinabove within a period of three months from the date of receipt of the copy 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