

BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK  
(Full Bench)

S.A. No. 227 (VAT) of 2015-16

&

S.A. No. 259 (VAT) of 2015-16

(Arising out of order of the learned Additional CST (Appeal), South Zone,  
Berhampur in Appeal Case No. AA (VAT)-20/2014-15  
disposed of on dated 16.07.2015)

Present: Shri R.K. Pattanaik, Chairman,  
Shri A.K. Dalbehera, 1<sup>st</sup> Judicial Member, and  
Shri R.K. Pattnaik, Accounts Member-III

S.A. No. 227 (VAT) of 2015-16

M/s. Century Plyboards India Ltd.,  
Plot No. 40 & 41, N.H. 5,  
Rasulgarh, Bhubaneswar ... Appellant

-Versus-

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

S.A. No. 259 (VAT) of 2015-16

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

-Versus-

M/s. Century Plyboards India Ltd.,  
Plot No. 40 & 41, N.H. 5,  
Rasulgarh, Bhubaneswar ... Respondent

For the Dealer : Sri B.K. Patnaik, Advocate  
For the State : Sri S.K. Pradhan, ASC (CT)

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Date of hearing: 18.08.2020 \*\*\*\*\* Date of order: 15.09.2020  
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**ORDER**

. Both the appeals involve same parties and are directed against the  
impugned order dated 16.07.2015 promulgated in Appeal No. AA (VAT)-20/ 2014-

15 by the learned Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, 'FAA') on the assessment 22.03.2014 passed under Section 42(4) of the Odisha Value Added Tax Act, 2004 (in short, 'the Act') by the learned Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (in short, 'AA') are hereby disposed of by the following common order.

S.A. No. 227 (VAT) of 2015-16:

2. Instant appeal is at the behest of the dealer assessee on the grounds, such as, the Gross Turnover (in short, 'GTO') and Taxable Turnover (in short, 'TTO') have not been properly determined; the books of account and other documents maintained by the dealer assessee were not duly considered; the explanations and materials produced before the authorities below were not properly appreciated and without considering the same, additional demand of tax was raised along with penalty being imposed which is bad in law; all the discounts viz. Special discount, extra discount, quantity discount in the shape of trade discount in certain cases in excess of trade discount and cash discount are nothing but trade discounts allowed in a normal trade practice, but disallowed by the AA and partly allowed by the FAA; and under such circumstances, imposition of penalty without any foundation vis-a-vis estimation of alleged purchase or sale suppression is absolutely uncalled for, morefully when, there was no malafide on its part.

S.A. No. 259 (VAT) of 2015-16:

3. This appeal is preferred by the State on the grounds inter alia that the Act does allow deductions on trade discount and cash discount at the time of

or before delivery of goods, but the authorities below have not complied the statutory mandate, inasmuch as, the impugned order dated 16.07.2015 and also the order of assessment dated 22.03.2014 are totally silent in that respect; and before allowing trade or cash discount, the trading policy of the dealer assessee should have been examined, which the authorities below failed to do so.

4. Whether, the dealer assessee rightly allowed the deductions on the goods as contemplated under law is to be examined by the Tribunal. It is contended by the learned Counsel for the dealer assessee that the trading business is in relation to sale of plywoods, laminates etc. on wholesale and retail basis having its head office at Kolkata and in so far as the extra demand of tax with penalty raised by the authorities below is concerned, the same is not tenable in law. While contending so, the learned Counsel for the dealer assessee highlighted the definition of 'sale price' under Section 2(46) of the Act which means the amount of valuable consideration received or receivable for the sale of any goods to be less any sum allowed as cash or trade discount at the time of delivery or before delivery of such goods, but inclusive of any sum charged for anything done in respect of the goods at the time of or before delivery thereof and the expression 'purchase price' shall be construed, accordingly and applying the settled law, the discounts allowed by them are permissible, the fact which was not duly taken cognizance of by the authorities below. It is further contended that with respect to special discounts, the same is allowable considering the fact that it has been a part and parcel of trade practice which is followed and also referred to a decision of the Hon'ble Apex Court in the case of IFB Industries Ltd. Vs. State of Kerala reported in

(2012) 49 VST 1 (SC). It is lastly contended that the special discounts which are nothing but trade discounts and since a consistent practice has been followed by them, the same cannot be recovered from the purchasing dealers, either. The learned ASCT (CT) for the State, on the other hand, confines the argument to the special discounts allowed by the dealer assessee as to be not permissible in law.

5. As per Section 2(46) of the Act, 'sale price' shall be the consideration either received or receivable on sale of goods less any sum as cash discount or trade discount at the time of delivery or before delivery of such goods. The 'TTO' is defined in Section 2(56) of the Act which means the turnover on which a dealer is liable to pay tax as determined after making such deduction from its GTO and in such manner as may be prescribed. The 'turnover of purchases' and 'turnover of sales' are defined in Section 2(59) and 2(60) of the Act, respectively. Rule 6 of the Odisha Value Added Tax Rules, 2005 (in short, 'the Rules') relates to determination of TTO. The entitlement and adjustment of ITC, credit notes and debit notes are contemplated in Section(s) 22 and 23 of the Act, respectively. By looking at the above provisions, it can be said that the 'sale price' excludes cash discount, trade discount etc. allowed at the time of delivery or before delivery of such goods. As is normally understood, a trade discount is an amount which is deducted from the price list of the goods sold, inasmuch as, the selling dealers fix up invoice price or sale price deducting trade discount therefrom and such a discount is not accounted for. With respect to cash discount, the selling dealer grants some amount as discount for realization of outstanding sales within the term 'period of sales', which is, however, accounted for. There are other discounts like quantity

discount, special discount etc. which are also permitted depending on the trade practices of the dealers. In the present case, what is objected is, the special discounts allowed by the dealer assessee. In fact, the FAA allowed certain special discounts as trade discounts, but disallowed other discounts viz. extra discounts 1 & 2 and quality discount mentioned in the sale invoices on the ground that the dealer assessee neither explained in detail nor furnished supporting documentary evidence to that effect. In other words, the extra discounts and quantity discount to the tune of ₹82,72,115.83 were disallowed and distributed among different taxable groups returned by the dealer assessee. According to the learned Counsel for the dealer assessee, such disallowance of special discounts, which are, in fact, trade discounts and shown in the sale invoices is totally unjustified. If Section 2(46) of the Act is read and understood properly, cash discount or trade discount is permissible which is allowed at the time of delivery or before delivery of goods. In the instant case, it is suggested that the discounts have been allowed in the shape of trade discount at the time of delivery of the goods. If a discount is allowed after the supply is effected; the discounts which are in the nature of periodical turnover, volume discount, etc. are allowable subject to a condition that there is an agreement between the selling and buying dealers prior to the supply of goods. At this juncture, it would be profitable to refer to the decisions of the Hon'ble Apex Court on the aforesaid point. In *Southern Motors Vs. State of Karnataka*: (2017) 3 SCC 467 the Hon'ble Apex Court held and observed that if TTO is to be comprised of sale/purchase price, it is beyond one's comprehension as to why the trade discount should be disallowed, subject to the proof thereof, only because it was

effectuated subsequent to the original sale, but evidenced by contemporaneous documents and reflected in the relevant accounts; and to insist on the quantification of trade discount for deduction at the time of sale itself by incorporating the same in a tax invoice/bill of sale would be to demand the impossible for all practical purposes and thus, would be illogical, irrational and absurd. In another decision of the Hon'ble Apex Court in the case of *M/s. Maya Appliances (P) Ltd. Vs. Additional Commissioner of Commercial Tax*: (2018) 2 SCC 756, it is further observed that the liability to pay tax is on the TTO which is arrived at after making permissible deductions from GTO; such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case; the expression 'in respect of the sales relating to such discount' cannot be construed to mean that discount would be inadmissible as a deduction unless the tax invoice pertaining to the goods originally issued shows the discount which is again a matter of ascertainment and in that respect, the assessee must establish from its account that the discount relates specifically to the sales with reference to which it is allowed. In *IFB Industries Ltd.* *ibid* the Hon'ble Apex Court categorically held that claim for deduction on trade discount cannot be disallowed solely on the ground that the amounts were not shown in the sale invoices. The above are the basic principles which are to be borne in mind while considering the claim of discount deductions as against the sale price. To sum up, as per Section 2(46) of the Act, cash and trade discounts are permitted; certain other discounts allowed at the time of delivery or before delivery of such goods may also be treated as trade discounts; and other kinds of discounts

which are allowed after supply of the goods effected are permissible subject to the satisfaction of the assessing authority that there is a contract or agreement between the concerned dealers in that behalf. The learned Counsel for the dealer assessee strongly urged that since the discounts have been shown in the invoices, the authorities below could not have disallowed the same. The learned ASC (CT), on the other hand, vehemently objected to it, rather, opposed the discounts allowed by the FAA for not being supported by any trading policy inter se parties. The extra discounts and quantity discount at times are employed in trading business in order to boost the volume of sale. In the case at hand, such is the claim of the dealer assessee contending that all such discounts allowed at the time of sale of goods are outrightly trade discounts and nothing else. In fact, the rulings of the Hon'ble Apex Court *ibid*, on its proper reading, enunciate that special discounts in the shape of trade discounts are permissible subject to a satisfaction being arrived at that such is the trade practice followed by the concerned dealers. Having regard to the facts and circumstances of the case, the Tribunal is not inclined to interfere with the discounts allowed by the FAA which are declared as trade discounts. But as is suggested, the dealer assessee while demanding deductions on the heads of 'quantity and extra discounts' did not either explain in detail or furnish any documentary evidence to that effect, so also, on the trade practice regularly followed by them. Under such circumstances, the Tribunal is of the considered view that in the interest of justice, an opportunity should be provided to the dealer assessee to justify its claim of such discounts as trade discounts being a part of trade practices followed in due course.

6. Hence, it is ordered.

7. In the result, S.A. No. 227 (VAT) of 2015-16 is allowed and S.A. No. 259 (VAT) of 2015-16 stands dismissed. As a necessary corollary, the impugned order dated 16.07.2015 promulgated in Appeal No. AA (VAT)-20/2014-15 is hereby set aside to the extent indicated above. Consequently, the AA is to consider admissibility of the alleged discounts as claimed by the dealer-assessee respecting the period under assessment by providing due opportunity of hearing to it and to recompute the tax liability in the light of the decision of the Tribunal, as aforesaid, preferably within a period of three months from the date of receipt of the present order. The cross-objections are accordingly disposed of.

Dictated & Corrected by me

Sd/-  
(R.K. Pattanaik)  
Chairman

Sd/-  
(R.K. Pattanaik)  
Chairman

I agree,

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

I agree,

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