BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 24(V)/2015-16

(Arising out of order of the ld. Addl. CST (Appeal), South Zone, Berhampur, in Appeal No. AA(VAT)30/2012-13, disposed of on dtd.12.02.2015)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Trupti Enterprises Pvt. Ltd.,
At/P.O. N.H.-5, Patrapada,
Bhubaneswar. ... Appellant

-Versus-

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

For the Appellant : Mr. D. Pati, Advocate
For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 05.05.2018 *** Date of Order: 10.05.2018

ORDER

The dealer has preferred this second apepal against a confirming order passed by the First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/Addl.CST) in First Appeal Case No. AA(VAT)30/2012-13 vide Order dtd. 12.02.2015.

2. The brief fact of the case giving rise to this appeal are as follows :

The assessee-dealer was subjected to audit assesmsent u/s.42(4) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) upon receipt of an audit visit report submitted by ACST, Central Audit Unit of Puri Range for the tax period from 01.10.2008 to 30.09.2011 relating to the dealer's unit. In the AVR, three allegations were brought against the dealer such as, the dealer had claimed excess ITC to the tune of Rs.9.58, the dealer had not paid due tax for some period but had paid excess tax for some period and the dealer has not paid tax on the credit notes received from his selling dealer against warranty replacement for the period from Oct, 2009 to March, 2010. The AO on acceptance of the allegations held that, the dealer is not entitled to the excess claim of ITC i.e. only Rs.9.58. So far as the payment on non-payment of tax, claim of ITC and excess payment of tax as well as filing of revised return in time

were taken into consideration and decided in favour of the dealer whereas, the AO levied tax on the amount received by the dealer through credit notes against warranty replacement.

When the matters stood thus, being aggrieved with such assessment, the dealer preferred first appeal. In the said appeal the FAA reiterating the grounds and reasonings given by the AO confirmed the assesmsent with the findings that, the amount received by the dealer against the warranty replacement is exigible to VAT even though it is a reimbursement from the company but in the form of credit notes.

3. Being aggrieved, the dealer has preferred this apepal with the contentions like, both the fora below are wrong in levying tax on the credit notes received by the assessee-dealer from the company against the warranty replacement and accordingly the dealer has prayed for deletion of the tax and penalty levied by both the fora below.

4. The moot question to be decided in this appeal is, whether the dealer is liable to pay tax on the amount received through credit notes from the company for the parts supplied to the purchasers under the scheme of warranty replacement.

The AO simply accepted upon the return submitted by the audit team and held that, the dealer is liable to pay tax on the credit notes. When the FAA has taken a view that, since the credit notes are received by the dealer, the dealer is liable to pay tax. Here in this case, there is no dispute that, spare parts were given to the ultimate customers under the warranty scheme but the fact remains, the assessee has supplied the spare parts to the customers and against that he received the credit notes from the company. It is not the case that, he has received spare parts in lieu of spare parts, he has received credit notes in lieu of spare parts. If that be, in application to the ratio laid down by the Apex Court in **Mohd. Ekram Khan & Sons Vrs. Commissioner of Trade Tax, U.P. Lucknow, (2004) 136 STC 515 (SC)** it can be said that, since the assessee-dealer has received payment of the price for the parts supplied to the customers, the transaction is subject to levy of tax. Thus here in this case, it is held that, neither the AO nor the FAA are wrong in levying tax on credit notes received by the dealer from the company in lieu of spare parts supplied to the

ultimate customer under the warranty scheme. Resultantly, the impugned order calls for no interference. Accordingly, it is ordered.

The tax appeal by the dealer sans merit and hence dismissed on contest.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member