

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 1174 of 2001-02

(Arising out of the order of the learned ACST, Balasore Range, Balasore,
in Sales Tax Appeal No. AA/367/BD-1996-97,
disposed of on dtd.31.05.2001)

Present: **Shri Sashikanta Mishra**, Chairman,
Shri Ashok Kumar Panda, 1st Judicial Member
&
Shri Ranjit Kumar Rout, Accounts Member-II.

M/s. Utkal Synthetics (P) Ltd.,
At/P.O.- Charampa,
Dist.- Bhadrak. ... Appellant

- V e r s u s -

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

For the Appellant ... N o n e
For the Respondent ... Mr. M.L. Agrawal, S.C.

Date of hearing: 07.05.2018 **** Date of order: 15.05.2018

ORDER

This appeal is directed against the order dtd.31.05.2001 passed by the learned Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter referred to as, the learned ACST) in Sales Tax Appeal No. AA/367/BD-1996-97, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Bhadrak Circle, Bhadrak (hereinafter referred to as, the learned STO) passed in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST

Act) in respect of the appellant-dealer for the assessment year 1994-95 raising a tax demand of Rs.9,42,405.00.

2. The appellant-dealer, a private limited company is a manufacturer and seller of HDPE oven sacks and fabrics. The small scale industrial unit of the appellant-dealer undertook an expansion in between 01.04.1986 and 01.12.1989 and its commercial production in enhanced capacity was started from 14.11.1991 and it obtained a certificate from the G.M., DIC, Balasore that it is eligible for exemption from payment of sales tax on its finished products to the extent of increased commercial production over and above the installed capacity for a period of seven years from the date of the commercial production i.e. from 14.11.1991. For an assessment of the appellant-dealer u/s.12(4) of the OST Act for the assessment year 1994-95, the learned STO issued a notice to it to appear and to produce the books of account and in response to the notice, the authorized representative of the appellant-dealer along with his Advocate appeared and produced the books of account, which were duly been examined. On examination of the books of account and the other relevant documents, the learned STO found out that, as per the IPR, 1989 and the Finance Deptt. Notification No.SRO-789/90 dtd.16.08.1990, the expanded industrial units are eligible for exemption from payment of sales tax on raw materials and finished products over and above the installed capacity. Similarly, the learned STO further found out that, the existing installed capacity of the appellant-dealer before expansion was 20,00,000 nos. of HDPE woven sacks and there was an additional installed capacity of 3,20,000 nos. of HDPE woven sacks by way of expansion after 01.04.1986 and before 01.12.1989 and hence the appellant-dealer is eligible for exemption on sale of 3,19,000 nos. of HDPE woven sacks as per Entry 30-FFFFF of the tax free schedule of the OST Act and the same is assessed to be Rs.24,75,622.00. Finally, taking note of all the transactions, the learned STO determined the TTO on consideration of the exempted sale and levied tax and surcharge

thereon at the appropriate rates and the same resulted in a balance tax demand of Rs.9,42,405.00, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST bearing Sales Tax Appeal No. AA/367/BD-1996-97. On hearing and on consideration of the materials on record, the learned ACST did not accept the contention of the appellant-dealer and accordingly dismissed the appeal by confirming the order of the learned STO. Thus, again being aggrieved with the order of the learned ACST, the appellant-dealer has preferred this second appeal.

4. No cross objection has been filed by the respondent-Revenue.

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard *ex parte* and is disposed of on merit. The learned Standing Counsel appearing for the respondent-Revenue submitted that both the learned fora below have considered the matter in its proper perspective and have passed the order and as the order passed by them suffers from no infirmity, the same needs no interference of this forum. On such submission, he prayed for dismissal of the appeal.

6. Perused the orders of both the learned fora below and the other materials on record. On perusal of the materials on record, it is seen that, the appellant-dealer has mainly challenged the determination of its installed capacity by the learned STO. On examination of the materials on record, the learned STO has determined the installed capacity of the appellant-dealer to be 20,00,000 nos. of HDPE woven sacks and its installed capacity after the expansion between 01.04.1986 and 01.12.1989 to be 3,20,000 nos. of HDPE woven sacks and has also determined the exempted sales accordingly. Though, the appellant-dealer has challenged the finding of the learned STO in this regard, it has failed to substantiate its plea by producing sufficient documentary evidence either before the learned ACST or before this forum. The burden of proof always lies upon a person who asserts a fact to exist. But, as the appellant-dealer has failed to prove its contention by producing sufficient

convincing evidence, there was no option for the learned ACST rather to confirm the finding and order of the learned STO. On further consideration of the entire materials on record, it is found that, the learned STO has considered the matter in its proper perspective and has arrived at a just conclusion and the same has further been confirmed by the learned ACST at the first appeal stage. As the finding and order arrived at by both the learned forums below can be considered to be proper and justified within the existing materials, the same needs no interference of this forum.

7. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

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I agree,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

Sd/-
(Ranjit Kumar Rout)
Accounts Member-II