

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

**S.A.No.49/2016-17**

(Arising out of the order of the ld. Addl.CST (Appeal) Central Zone, Odisha,Cuttack, in First Appeal Case No.CU-II-AA-DL-26/03-04 disposed of on 24.12.2016.)

**Present: Shri A. K. Panda & Shri P.C. Pathy**  
**Judicial Member-I Accounts Member-I**

M/s. National Thermal Power Corporation Limited, Talcher.

... Appellant.

**- V e r s u s -**

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

... Respondent.

For the Appellant : ... Shri A.K. Panda, Advocate.  
For the Respondent : ... Shri M.L. Agarwal, S.C.(C.T).

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Date of Hearing: 20.06.2018 \*\*\*\*\* Date of Order: 27.06.2018  
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**ORDER**

The dealer challenges order dated 24.12.2016 passed by the learned Additional Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, 'ld. first appellate authority') in appeal Case No. CU-II-AA-DL-26/03-04 in confirming the demand of Rs.3,27,303.00 raised by the learned Assistant Commissioner of Sales Tax (Assessment), Cuttack-II Range, Cuttack (in short, 'ld. assessing authority') under section 12(4) of the Orissa Sales Tax Act (in short, 'OST Act') for the period 2000-01 vide order of assessment dated 27.01.2004.

2. The brief facts of the case are that the dealer-appellant is engaged in generation and sale of electricity during the period under assessment. The dealer-appellant has effected purchases of various goods worth Rs.1,40,79,95,786.00. The dealer has effected purchases of various machinery and scraps are generated. The ld. STO in course of examination of books of accounts notices that the dealer has sold brass ware scraps, aluminium scraps worth Rs.23,80,456.00 against declaration Form-XXXIV to M/s. Brundaban Traders of Rourkela. But as

the instant dealer has failed to produce the original declaration form in support of the claimed sale without collecting tax the claim of exemption from tax was disallowed. The ld. assessing authority passed order levying OST @12% on Rs.23,80,456.00 and levied appropriate surcharge after due adjustment of tax paid along with return which resulted in demand of tax including surcharge to the tune of Rs.3,27,303.00. Being aggrieved with the order of assessment the instant dealer preferred first appeal before the ld. first appellate authority on the grounds that the disallowance of claim of exemption against Form-XXXIV is not lawful. At the stage of first appeal, the instant dealer took the contention that the dealer had already submitted an application U/r.83 of the OST Rules seeking rectification of order which was rejected. The ld. first appellate authority held that it was not lawful on the part of the dealer-assessee seeking rectification by submission of original forms after the order was passed. Further, as no evidences of submission of forms to the ld. assessing authority was produced at the first appeal stage, the ld. first appellate authority dismissed the appeal as devoid of merit with the following findings that iron and steel scraps is taxable at first point in a series sale as per the Sl. No.153 of List-D. The dealer purchases various machineries and scraps are generated. Spare parts of machineries are taxable at first point in a series of sales as per Entry-261 of List-D. The brass materials and aluminium materials are rejected machinery parts which are taxable at first point in a series of sales. This led the dealer-appellant to prefer appeal before this Tribunal.

3. The dealer-appellant has filed appeal before this forum with the following grounds:-

- (i) The order passed by the Ld. first appellate authority (Appeal), Central Zone, Cuttack in confirming the order of the ld. assessing authority, Cuttack II Range, Cuttack is based on non-application of judicious mind, whimsical and biased.
- (ii) The order passed by the ld. first appellate authority after a period 12 years is barred by limitation and as such to be quashed in limine.
- (iii) The ld. first appellate authority has erred in law to disallow the appellant's claim of exemption against the sale made to the Registered Dealer on furnishing of Declaration Form-XXXIV.

- (iv) The ld. first appellate authority should not have disallowed the above, in spite of the details of evidences produced as such the confirmation of the demand raised by the ld. Assessing Officer is arbitrary, excessive and bad in law.
- (v) The ld. first appellate authority should not have misinterpreted the Sale of “Scraps” of various items to be the 1<sup>st</sup> point sale and as such the conclusion made therein to raise the demand is arbitrary and untenable in the eye of law.

4. AT the time of hearing, Shri Arup Kumar Panda, ld. Counsel appearing on behalf of the dealer-appellant reiterated the grounds of appeal already filed. He has vehemently contended that the goods sold are not taxable at first point in a series of sales as per the provisions contained. He further took the contention that the dealer-appellant has already submitted declaration Form-XXXIV in original before the ld. assessing authority but the same were not considered while disposing of the petition of the instant dealer U/r.83 of the OST Rules. The ld. Advocate on behalf of the dealer-appellant allowed to produce fresh evidence U/r.61 of the OST Rules in connection with submission of original declaration forms subsequent to the assessment proceedings by way of rectification and rectification order dated 31.1.2004 passed by the ld. assessing authority rejecting the petition holding the opinion that the goods Copper spare parts, Copper winding iron and aluminium cables are machinery spares and taxable at the first point in a series of sales as per the Finance Department Notification dated 22.1.1989.

In filing petition U/r.61 of the Odisha Sales Tax Rules the ld. Advocate on behalf of the dealer-appellant made the following submissions.

- (1) While disposing of the said order, the ld. assessing authority has made an observation of non-furnishing of the Original Declaration Form-XXXIV during the course of Assessment Proceedings for the aforementioned period.
- (2) The appellant has submitted the Original Declaration Forms subsequent to the Assessment Proceedings by way of Rectification and the ld. assessing authority vide its Rectification Order dated 31.01.2004 has made an observation that,

“The Petition filed U/r.83 of the Orissa Sales Tax Rules cited supra for rectification of the order with regards to submission of Declaration in Form-XXXIV (bearing No. XXXIV No. 569050 and XXXIV No. 649653 is rejected in view of the fact that, the goods (Copper Spare parts, Copper winding wire and Aluminum cables) are machinery spares, which are taxable at the first point sale vide F.D. Notification dated 22.01.1989.”

5. Shri M.L. Agarwal, the Id. Standing Counsel (C.T.) on behalf of the Revenue reiterated the following contentions taken in the memo of cross objection filed stating that the order of the Id. first appellate authority is crystal clear and he has dealt the points raised by the dealer.

- (a) There is no reasonable merit in the 2<sup>nd</sup> appeal filed by the dealer, which is not sustainable in the eyes of law.
- (b) The Id. Assessing Officer & 1<sup>st</sup> appellate authority have rightly completed assessment/appeal basing on the statutory provisions under the Acts & Rules to the extent the dealer has raised the point.
- (c) The contention taken by the dealer in grounds of appeal sl. no. (ii) is anyhow not prejudicial to him, because even if the order passed by the 1<sup>st</sup> appellate authority is barred by limitation and to be declared as quashed, then also the order passed by the LAO seems to be confirmed. So in no way the dealer is beneficial from this aspect.
- (d) Considering his allegation no.(ii) to be true then the disallowance of exemption against declaration form-XXXIV is justified from that aspect.

6. Heard the rival contentions. Gone through the orders of assessment as well as appeal, grounds of appeal submitted and the cross objection filed as well as fresh evidence adduced by the Id. Counsel on behalf of the dealer-appellant U/r.61 of the OST Rules and the appeal record. The point to be adjudicated in this case is as to whether the Id. first appellate authority is correct in confirming the order of the Id. assessing authority holding the view that the brass materials and aluminium materials are rejected machinery parts which are taxable at first point in a series of sales as per Entry-261 of List D under OST Act? As per the List D goods subject to first point sales tax goods viz. “Spare Parts of pump sets, generators and other machinery not specified

elsewhere in this notification are to be taxed at the point at which the first of such sale is effected by a registered dealer with effect from the 1<sup>st</sup> March, 2002. Here, the impugned order relates to the financial year 2000-01. Hence the Notification of Finance Department vide SRO No.21/2002 is not applicable in this case. The ld. Advocate on behalf of the dealer-appellant failed to furnish the documentary evidences in support of the date of submission of two nos. of declaration Form-XXXIV for which rectification of the assessment order was sought for. It is observed from the order of ld. first appellate authority at page-3 of the appeal order that the original forms were not submitted at the assessment stage and rectification sought on submission of original forms after passing of the assessment order was not lawful. It is pertinent to reproduce here the provision contained U/r.83 of the OST Rules for better appreciation of the matter.

[83.Rectification of mistakes--

“Any taxing authority appointed under Section 3 may at any time correct any arithmetical or clerical mistake or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by it.”

As per the provision U/r.83 of the OST Rules it is not permissible on the part of the ld. Assessing Officer to accept the form after passing of the assessment order. It does not amount to rectification of mistake on account of any arithmetical or clerical mistake or any error apparent on the face of the record. Hence, the dealer-appellant has not acted properly in seeking rectification submitting declaration forms after passing of the assessment order. The declaration forms were not produced for verification before the ld. first appellate authority The view expressed by the ld. assessing authority while rejecting the rectification petition filed by the instant dealer for rectification of the order that the goods (copper spare parts, copper windings wire and aluminium cables) are machinery spares, which are taxable at the first point sale vide notification dated.22.1.1989 (Sl-6) is not based on fact. As per notification no.44987-CTA -105/89-FX, dated.22.12.1989 following goods are covered under Sl. No-6 of the notification declaring levy of tax at the point at which the first of such sale is effected by a registered dealers “Sl. No.6’ machineries including sewing machines, and

component parts and accessories thereof.” In view of the above findings, the order passed by the ld. first appellate authority cannot be sustained in the face of facts. In the assessment order the ld. assessing authority has stated that the original declaration form is not produced. Therefore the claim of deduction is disallowed. The Xerox copies of various correspondences preserved by the dealer and submitted for his perusal creates suspicions and apprehensions about the transactions relating to the above noted Form-XXXIV. In view of the above the case is considered as a fit case for reminding the matter to the ld. assessing authority for proper verification of the books of accounts and the genuineness of transactions with reference to the declaration Form-XXXIV stated to have been submitted earlier in this connection. It is evident that the items brass wire scraps and aluminium scraps are not goods exigible to tax at the first point in a series of sales during the impugned period. Hence the dealer is entitled to effect sale of such goods on the strength of declaration Form-XXXIV during the period to the registered dealers authorised to deal in such goods.

7. In the result, the appeal is partly allowed and the order of the ld. first appellate authority is set aside. The matter is remanded to the ld. assessing authority to verify the genuineness of transactions and allow the transactions as exempted sales after satisfying himself about the genuineness of the declaration forms and the related transactions by providing reasonable opportunity of hearing to the instant dealer, within a period of four months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated and corrected by me,

**(P. C. Pathy)**  
**Accounts Member-I**

I agree,

**(P. C. Pathy)**  
**Accounts Member-I**

**(A.K. Panda)**  
**Judicial Member-I**