

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

**S.A. No.105 (C) of 2006-07**

(Arising out of the order of the ACST, Balangir Range,  
Balangir, in First Appeal Case No. AA-05(BPCI) of 2002-03,  
disposed of on dtd.21.07.2006)

Present: **Mrs. Suchismita Misra**, Chairman,  
**Shri Subrata Mohanty**, 2<sup>nd</sup> Judicial Member,  
&  
**Shri R.K. Rout**, Accounts Member-II.

M/s. Sri Ambika Oil Industries,  
P.O./Dist.- Balangir. ... Appellant

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

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

(Assessment year : 1998-1999)

For the Appellant : Mr. D. Pati &  
Mr. B.K. Agrawal, Advocate  
For the Respondent : Mr. M.S. Raman, Addl. S.C. (CT)

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Date of Hearing: 20.12.2018 \*\*\*\* Date of Order: 28.12.2018  
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**ORDER**

The appellant-dealer has preferred this second appeal against the order of First Appellate Authority/ learned Asst. Commissioner of Sales Tax, Balangir Range, Balangir (hereinafter referred to as the, ACST) in First Appeal Case No. AA-05(BPCI) of 2002-03, whereby the first appellate authority has confirmed the findings of learned Assessing Authority, the learned Sales Tax Officer, Balangir I Circle, Balangir (hereinafter referred to as, the STO) regarding tax demand of Rs.30,45,112.00.

2. To recapitulate the facts required for decision of this appeal, it is stated that the dealer is a SSI unit availed exemption on expanded capacity under IPR' 1989. The original assessment u/r.12(5) of the CST(O) Rules was completed raising tax demand of Rs.30,45,112.00. Thereafter, on the basis of A.G. (O) objection the assessment u/r.10 of the CST(O) Rules was reopened but the reassessment also in a later period dropped. When the matter stood thus sou motu revision proceeding was initiated. In the sou motu proceeding also extended IPR exemption as granted by DIC, the competent authority, was considered and decided in favour of the dealer. However, the revisional authority thereafter asked the STO concerned for calculation of the tax liability, if any, taking consideration of the details of sale/purchase as well as interstate sale and branch transfer on submission of declaration forms. On the basis of said order of the revisional authority, the STO calculated the tax liability but while doing so the STO declined the concession in the rate of tax against interstate sale on furnishing of declaration form 'C' and upon branch transfer on furnishing of declaration form 'F'. It is held that, once the dealer was allowed exemption under IPR in that effect such interstate sale or branch transfer will not give benefit of concessional rate in tax to the dealer. The said order was challenged before the first appellate authority. The first appellate authority in the impugned order has confirmed the order of assessing authority.

3. Felt aggrieved, the dealer has preferred the second appeal challenging the calculation of tax liability to be wrong to the extent that the fora below could not impose tax on branch transfer.

In the appeal in hand, the status of the dealer as SSI unit and eligibility for exemption under IPR scheme is not in dispute. However, the only dispute requires adjudication is:- whether the appellant was required to pay tax without concession on interstate sale or branch transfer in view of the fact of availing tax exemption under IPR' 89 even on the face of furnishing of declaration forms? The claim of the dealer

is, the authorities below have misread the direction of the revisional authority and as the revisional authority has only directed for calculation and the order is explicit that the dealer is entitled to concession on submission of declaration form 'C' and 'F' against Sec.6-A sale transactions.

4. It is pertinent to mention here that, for the assessment periods 1993-94, 1994-95, 1995-96, 1996-97, 1998-99 and 1999-2000 i.e. six numbers of assessment periods of the assessee was initially found assessed u/s.12(4) of the OST Act or Rule 12(5) of the CST(O) Rules as the case there may be. At a later period basing on A.G. Audit report the assessments were reopened as per Sec.12(8) of the OST Act or as per Rule 10 of the CST(O) Rules but ultimately these reassessment proceedings were dropped on due consideration of the dealer's plea. Thereafter, at a later period sou motu revision invoking sec.23(4)(a) of the OST Act read with Rule 80 of the OST Rules was initiated and the revisional authority passed order in presence of the dealer inasmuch as, after giving the dealer an opportunity of being heard, whereby the STO concerned was directed to calculate the tax liability of the dealer as per the observation in revision order. The STO thereafter exempted the tax due. However, the method of calculation was questioned by the dealer as not in accordance with the direction of Revisional Authority in first appeal before the First Appellate Authority. The first appeals for some periods are allowed and assessments are dropped, whereas for some periods the assessments are confirmed. The appeals in which the assessments were dropped are carried in appeal before this Tribunal by the Revenue. On the other hand, the appeals in which the demand raised by STO are confirmed are carried in appeal by dealer before this Tribunal. It is pertinent to mention here that, all the orders passed by learned STO and thereafter by the first appellate authority are nothing but to make assessment in accordance to the direction by the revisional authority. The authorities below had nothing to do, save and except to execute the order passed by the revisional authority. The revisional

authority passed the order in presence of the dealer and the order was not questioned or challenged by both the sides before the higher forum. Since the order of revisional authority was not challenged at any time rather accepted by the parties, the consequential act left for the taxing authority is to calculate the tax liability in accordance to the direction in the revisional forum's order scrupulously. It is found that, the authorities have taken inconsistent and contradictory views time to time basing the self-same order of revisional authority. This is a glaring example of callousness and casual approach taken at the sweet whim of the taxing authorities/appellate taxing authorities. The matter is pending and lingering for decades only for calculation and raising tax demand as per the order passed by Revisional Authorities. However, it is found that the taxing authorities have been interpreting the order in their own way time to time by passing self-contradictory, confusing and whimsical orders. With this back drop, when we delve into the merit of the appeal it is pertinent to mention here that in S.A. No.184 (C) to 187(C) of 2002-03 preferred by the State against the order of the first appellate authority, this Tribunal has taken a view that the appeals are not maintainable for the reason that the authorities below only required to pass order in accordance to the order passed by the revisional authority. Any mistake, intentional or unintentional or deviation in following the order of the revisional authority in calculation of the tax liability, the parties aggrieved should have gone to the same revisional authority whose orders were not properly carried out. Thus, to sum up it is held that this appeal is not maintainable.

5. In the discussion above, it is held that, the second appeal is not maintainable. However, delving to the disputed question i.e. the concession against the transaction as per Sec.6-A of the CST Act is available to the dealer keeping view the fact that the dealer is availing exemption under IPR Scheme, learned counsel for the dealer placed reliance on the decision of this forum relating to the same dealer deciding the identical issue in S.A. No.104(C)/2006-07 dtd.01.10.2009.



that as per the discussion hereinabove, as it is held that the parties should have knocked the door of the revisional authority whose order has been carried out by the taxing authority. The dealer is not entitled to any relief for reason of non-maintainability of the appeal. However, it is made clear that, the dealer has every right to knock the door of revisional authority if other found maintainable. Hence, ordered.

6. The appeal is dismissed as not maintainable with the observation hereinabove.

Dictated & corrected by me,

Sd/-  
(Subrata Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(Subrata Mohanty)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(R.K. Rout)  
Accounts Member-II