

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

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri P.C. Pathy, Accounts Member-I**

S.A. No.162 of 2005-06

S.A. No.163 of 2005-06

S.A. No.164 of 2005-06

S.A. No.166 of 2005-06

S.A. No.167 of 2005-06

(From the order of the ld. ACST, Koraput Range, Koraput,
in First Appeal Case No. AA. (KOI) 240-244/2003-2004 and
AA (KOI) 98-102/2004-2005, disposed of on 29.01.2005)

M/s. Telecom District Manager,
Bharat Sanchar Nigam Limited,
Koraput.

... Appellant

- V e r s u s -

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

... Respondent

S.A. No.233 of 2007-08

S.A. No.234 of 2007-08

S.A. No.235 of 2007-08

S.A. No.236 of 2007-08

S.A. No.237 of 2007-08

S.A. No.238 of 2007-08

S.A. No.239 of 2007-08

S.A. No.240 of 2007-08

S.A. No.241 of 2007-08

S.A. No.242 of 2007-08

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

... Appellant

- V e r s u s -

M/s. Telecom District Manager,
Bharat Sanchar Nigam Limited,
Koraput.

... Respondent

For the Dealer : Mr. P.K. Harichandan, Advocate
For the State : Mr. M.L. Agrawal, S.C.

Date of Hearing: 27.06.2019 ***** Date of Order: 27.06.2019

ORDER

The aforementioned five number of appeal preferred by the dealer with cross objections advanced by the respondent along with aforementioned ten numbers of counter appeals preferred by the Sate with cross objections by the dealer, all relates to five successive assessment periods i.e. 1998-99, 1999-2000, 2000-01, 2001-02, 2002-03 relates to the assessee-dealer M/s. Bharat Sanchar Nigam Limited, Koraput arised out of assessment u/s.12(5) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) and 12(8) of the OST Act by the assessing authority separately under two provisions but decided jointly in the impugned order by the first appellate authority, involves identical issues between the same parties, taken up jointly and decided by this common order for sake of convenience and to avoid conflicting opinion, if any.

2. The assessee-dealer M/s. Bharat Sanchar Nigam Limited, Koraput faced assessment u/s.12(5) of the OST Act for five consecutive assessment year separately but in a later period, the assessments are reopened and the dealer was subjected to reassessment u/s.12(8) for the same five consecutive periods The assessments and reassessments are ended with demand of tax on the dealer.

3. Being aggrieved, the dealer challenged all the assessments and reassessments in appeals before the first appellate authority. But, surprisingly the first appellate authority decided all the appeals in a common order which is impugned in present appeals and cross appeals. A

comparative chart of the assessment u/s.12(5), u/s.12(8) and appeals with results are produced below:-

1998-99		As determined by the S.T.O. u/s.12(5)	As determined by the S.T.O. u/s.12(8)	As determined by the A.C.S.T.
i.	Gross turnover	Rs.96,59,610.00	Rs.1,03,09,610.00	Rs.1,06,01,092.00
ii.	Taxable turnover	Rs.96,59,610.00	Rs.1,03,09,610.00	Rs.1,06,01,092.00
iii.	Tax	Rs.11,59,153.20	Rs.12,17,153.20	Rs.8,48,087.00
iv.	Surcharge	Rs.1,15,915.32	Rs.1,82,572.98	Rs.1,27,213.00
v.	Penalty	Rs.19,12,602.78	Rs.20,99,589.27	Rs. Nil
vi.	Interest	Nil	Nil	Nil
	Total	Rs.31,87,671.00	Rs.34,99,315.45	Rs.9,75,300.00
vii.	Paid/Assessed	Nil	Rs.31,87,671.00	Rs. Nil
viii.	Demand Raised	Rs.31,87,671.00	Rs.3,11,644.00	Rs.9,75,300.00
1999-2000		As determined by the S.T.O. u/s.12(5)	As determined by the S.T.O. u/s.12(8)	As determined by the A.C.S.T.
i.	Gross turnover	Rs.1,38,41,154.00	Rs.1,40,41,154.00	Rs.1,38,41,154.00
ii.	Taxable turnover	Rs.1,38,41,154.00	Rs.1,40,41,154.00	Rs.1,38,41,154.00
iii.	Tax	Rs.16,60,938.48	Rs.16,84,938.48	Rs.11,07,292.32
iv.	Surcharge	Rs.2,49,140.77	Rs.2,52,740.77	Rs.1,66,093.84
v.	Penalty	Rs.28,65,118.87	Rs.29,06,518.88	Rs. Nil
vi.	Interest	Nil	Nil	Nil
	Total	Rs.47,75,198.12	Rs.48,44,192.12	Rs.12,73,386.00
vii.	Paid/Assessed	Nil	Rs.47,75,198.12	Nil
viii.	Demand Raised	Rs.47,75,198.12	Rs.69,000.00	Rs.12,73,386.00
2000-2001		As determined by the S.T.O. u/s.12(5)	As determined by the S.T.O. u/s.12(8)	As determined by the A.C.S.T.
i.	Gross turnover	Rs.2,24,62,248.00	Rs.2,24,62,248.00	Rs.2,24,62,248.00
ii.	Taxable turnover	Rs.2,24,62,248.00	Rs.2,24,62,248.00	Rs.2,24,62,248.00
iii.	Tax	Rs.26,95,469.76	Rs.27,13,049.76	Rs.18,14,559.84
iv.	Surcharge	Rs.4,04,320.46	Rs.4,04,320.46	Rs.2,72,183.97
v.	Penalty	Rs.46,49,685.33	Rs.46,80,010.83	Nil
vi.	Interest	Nil	Nil	Nil
	Total	Rs.77,49,975.55	Rs.78,00,018.05	Rs.20,86,743.81

vii.	Paid/Assessed	Nil	Rs.77,49,476.00	Nil
viii.	Demand Raised	Rs.77,49,476.00	Rs.50,542.00	Rs.20,86,744.00

2001-2002		As determined by the S.T.O. u/s.12(5)	As determined by the S.T.O. u/s.12(8)	As determined by the A.C.S.T.
i.	Gross turnover	Rs.3,22,25,551.00	Rs.3,22,25,551.00	Rs.3,22,25,551.00
ii.	Taxable turnover	Rs.3,22,25,551.00	Rs.3,22,25,551.00	Rs.3,22,25,551.00
iii.	Tax	Rs.38,67,066.12	Rs.38,75,826.12	Rs.25,86,804.00
iv.	Surcharge	Rs.3,86,706.61	Rs.3,87,582.61	Rs.2,58,680.00
v.	Penalty	Rs.63,80,659.09	Rs.63,95,113.10	Nil
vi.	Interest	Nil	Nil	Nil
	Total	Rs.1,06,34,431.82	Rs.1,06,34,431.82	Rs.28,45,484.00
vii.	Paid/Assessed	Nil	Rs.1,06,34,432.00	Nil
viii.	Demand Raised	Rs.1,06,34,431.82	Rs.24,090.00	Rs.28,45,484.00

2002-2003		As determined by the S.T.O. u/s.12(5)	As determined by the S.T.O. u/s.12(8)	As determined by the A.C.S.T.
i.	Gross turnover	Rs.3,86,76,050.00	Rs.3,86,76,050.00	Rs.3,86,76,050.00
ii.	Taxable turnover	Rs.3,86,76,050.00	Rs.3,86,94,050.00	Rs.3,86,94,050.00
iii.	Tax	Rs.46,41,126.00	Rs.46,43,346.00	Rs.30,96,304.00
iv.	Surcharge	Rs.4,64,112.60	Rs.4,64,334.60	Rs.3,09,630.00
v.	Penalty	Rs.76,57,857.90	Rs.76,61,520.90	Nil
vi.	Interest	Nil	Nil	Nil
	Total	Rs.1,27,63,096.50	Rs.1,27,69,202.00	Rs.34,05,934.00
vii.	Paid/Assessed	Nil	Rs.1,27,63,097.00	Nil
viii.	Demand Raised	Rs.1,27,63,097.00	Rs.6,105.00	Rs.34,05,934.00

4. **Contention of the Revenue**

Revenue has challenged the sustainability of the first appellate authority order on the grounds that, when the assessing authority has passed separate order under assessment u/s.12(5) and 12(8) of the OST Act, the first appellate authority has committed wrong in passing the impugned order taking appeals under assessment under both sections in one order which is not sustainable. It is further contended that, the rate of tax levied by the first appellate authority @ 8% is not just and proper as the appropriate rate of tax should be @ 16% as per entry 92 of List 'C' of the Rate Chart. The next contention of the Revenue is, the first appellate authority has committed wrong in modifying imposition of penalty. As an error apparent on the manifest of the impugned judgment which goes to the root of the appeal.

5. **Findings and reason thereof-**

It is not felt necessary to go for detailed discussion on the rival facts. The disputed questions raised for decision in this appeal. As it revealed, the first appellate authority has dealt with appeals against assessment u/s.12(5) of the OST Act and appeals against reassessment u/s.12(8) of the OST Act jointly. The assessing authority has rightly passed separate orders, whereas, the first appellate authority in a slipshod manner taken up both the appeals by the dealer challenging the assessments under two separate provisions in one order is a patent mistake never can be rectified.

A order u/s.12(5) relates to regular assessment and the assessment u/s.12(8) relates to re-assessment. The very word of u/s.12(8) as it denotes the provision is applied in case of escaped assessment, under assessment etc. So, for an assessment u/s.12(8) of the OST Act, it must have preceded by an assessment u/s.12(5) of the OST Act. The assessing authority has rightly followed the procedure, whereas the first appellate authority which is an extended forum of assessment has committed a gross error in law.

It that view of the matter for the ends of justice, it is found necessary to remit the matters back to the first appellate authority to dispose of the appeals against assessment u/s.12(5) of the OST Act and appeal against assessment u/s.12(8) of the OST Act separately. It is found clear that, appeal against assessment u/s.12(5) of the OST Act should be decided ahead of the appeal against assessment u/s.12(8) of the OST Act. As the impugned order suffers from this patent mistake, we are of the view to remand the matter back to the first appellate authority. Accordingly, it is ordered.

6. The appeals preferred by the State are allowed in part on contest. The impugned orders are set aside. The matters are remitted back to the first appellate authority for disposal afresh vide separate appeal orders as observed above. The appeals preferred by the dealer are accordingly disposed without any findings on the disputed questions but the

dealer can exercise the right to argue the appeals before the first appellate authority on merit.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I