

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

S.A. Nos. 1153 & 1154 of 2004-05

(Arising out of order of the learned ACST, Cuttack-II Range,
Cuttack in First Appeal Nos. AA- 556/CU-II/03-04 &
AA- 557/CU-II/03-04, disposed of on dated 26.02.2004)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Dhanesh Poly & Allied Chemicals,
Plot No. 109, I.E. (New), Jagatpur,
Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri J.J. Pradhan, Advocate
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

Date of hearing: 05.09.2022 *** Date of order: 07.09.2022

O R D E R

These two second appeals though relate to two different periods involve common question of fact and law for which they are taken up together for hearing and are disposed of by this composite order.

2. These two second appeals at the behest of the dealer-assessee is directed against the common order

dated 26.02.2004 passed by the learned Asst. Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter referred as 'first appellate authority') in Appeal Case Nos. AA- 556/ CU-II/03-04 and AA- 557/CU-II/03-04, thereby confirming the orders dated 31.03.2003 passed by the Sales Tax Officer, Cuttack-II Circle, Cuttack (in short, 'assessing authority') raising demand of ₹9,80,269.00 and ₹8,31,191.00 for the years 2000-01 and 2001-02 respectively in the assessment framed u/s.12(4) of the Orissa Sales Tax Act, 1947 (in short, 'OST Act').

3. The facts and circumstances of the case giving rise to the present appeal are that, the dealer- assessee carries on business in manufacturing and sale of detergent powder and maintains required books of account to that effect. The dealer is a small scale industrial unit having PMT Registration Certificate No.15/16/00358 dated 07.08.1997 for manufacturing of acid, slurry, detergent acid. The unit started fixed capital investment on or after 01.12.1989 and had gone into commercial production on 01.08.1997. The unit being a new SSI Unit as defined in IPR, 1989 is eligible for exemption from payment of sales tax on sale of finished products for a period of seven years from the

date of commercial production subject to some restrictions and conditions as laid down in Finance Department Notification No. SRO 789/90 dated 16.08.1990, SRO 1012/90 dated 12.11.1990 and SRO 1013/90 dated 11.12.1990 as amended from to time. The dealer-assessee was eligible for exemption during the period from 01.04.1999 to 31.07.1999 as per the eligibility certificate issued by DIC, Jagatpur.

3(a). The dealer in response to the notice issued u/s. 12(4) of the OST Act, produced the books of account such as purchase register, purchase invoices, sale accounts supported by sale register and sale invoices. The assessing authority on examination of the books of account found that the dealer during the years 2002-01 and 2001-02 purchased raw materials worth ₹23,09,628.00 and ₹62,93,757.00 and returned his sales at ₹74,26,280.60 and ₹70,52,407.00 respectively. It claimed the entire sale as exempted sale as per entry No.30FFF of the tax free schedule under IPR, 1989. The assessing authority on account of failure to produce eligibility certificate from the concerned DIC after withdrawal of the IPR benefit w.e.f. 01.08.1999, the sale turnover was determined as GTO and TTO for the period

2000-01 and after allowing deduction of ₹6,99,656.00 towards discount and ₹55,849.00 towards collection of ET, TTO for the period 2001-02 was determined at ₹62,96,902.00. The learned assessing authority levied Tax @ 12% which on calculation came to ₹8,91,153.60 and ₹7,55,628.24 respectively and surcharge of ₹89,115.36 and ₹75,562.82 was levied. So, the tax and surcharge together calculated at ₹9,80,269.00 and ₹8,31,191.00 for periods 2000-01 and 2001-02 respectively.

3(b). The dealer-assessee challenging the aforesaid demands raised by the assessing authority for the assessment years 2000-01 and 2001-02, filed first appeals bearing Appeal Case No. AA- 556 & 557/CU-II/03-04 before the first appellate authority on different grounds. The first appellate authority on going through the assessment order, grounds taken in the memorandum of appeal and the materials on record confirmed the order of assessment holding that in view of the judgment of the Hon'ble High Court in the case of **Shivani Vanaspati Vrs. State of Orissa, reported in 127 STC 168**, the State Government is empowered to withdraw the incentives given to the SSI Unit and after withdrawal such benefit given in the IPR w.e.f.

01.08.1999, the dealer-assessee is not entitled to claim IPR benefit.

4. The dealer-assessee being further aggrieved with the order passed by the first appellate authority confirming the orders of assessment filed the present second appeals on different grounds.

No cross objection has been filed by the revenue.

5. We have given our anxious consideration to the contentions raised by the learned Counsel for the parties, gone through the grounds raised in the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The only issue that falls for consideration in the present second appeals is whether there was service of notice on the dealer-assessee for assessing it u/s. 12(4) of the OST Act for the periods 2000-01 and 2001-02. Learned Counsel for the dealer-assessee relying on the certified copy of the order sheet vehemently urged that there was no service of notice on the dealer-assessee for assessing it u/s. 12(4) of the OST Act. Learned Standing Counsel (CT) for the revenue countering the argument advanced by the learned Counsel for the

dealer-assessee urged that the assessment proceedings were proceeded with by the assessing authority after due service of statutory notice and there is no illegality in the assessments made by the assessing authority. Now in view of such rival contention of the parties, the materials on record need thorough scrutiny to find out whether assessing authority assessed the dealer after service of notice on it or it proceeded with assessment proceeding without service notice on it. The certified copy of order sheets filed by the dealer-assessee show, the same are blank and nothing has been mentioned regarding issuance of statutory notice to the dealer-assessee for assessing it u/s. 12(4) of the OST Act, but it is found from the assessment record that the statutory notice for assessing the dealer-assessee u/s. 12(4) of the OST Act in respect of assessment periods 2000-01 and 2001-02 was served on it and pursuant to such notice, the dealer-assessee consciously participated in the assessment proceeding and put forth its claim before the assessing authority. Even though issuance of statutory notice to the dealer-assessee has not been reflected in the order sheet produced by the dealer, assessment record clearly indicates service of notice on it. Therefore, the assessing authority did

not lack jurisdiction to proceed with the assessment u/s. 12(4) of the OST Act as contended by the learned Counsel for the dealer-assessee. The dealer not only participated in the assessment proceeding, but also actively and consciously put forth its claim before assessing authority. It also filed appeals before the first appellate authority, who confirmed the orders of assessment after hearing the dealer-assessee and examining the materials on record. The dealer-assessee neither raised plea of non-service of statutory notice on it before the assessment authority, nor before the first appellate authority. It for the first time raised such issue before this forum. The material on record is sufficient enough to falsify the contention raised by the dealer-assessee that no statutory notice was served on it by the assessing authority for assessing it u/s. 12(4) of the OST Act. We do not find any force in such contention raised by the learned Counsel for the dealer-assessee. The dealer-assessee did not raise any other issue on the merit of the assessment orders except the aforesaid issue regarding non-service of statutory notice for initiating proceedings u/s. 12(4) of the OST Act. Therefore, we do not find any illegality or impropriety in the impugned orders of the forums below.

6. In view of the discussions made above, both the second appeals filed by the dealer-assessee being devoid of any merit stand dismissed and the impugned orders of the forums below are hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I