



assessee u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the tax period 2002-03.

2. The facts leading to this appeal are as follows :-

The dealer-assessee named and styled as "M/s. Maxcare Laboratories Ltd., Bhubaneswar" is a manufacturer of hair oil, Lal Dantamanjan and coconut oil which it sells in the brand name of 'Anmol and Dabur Lal Tel'. During the period of assessment this dealer was found to have sold red tooth powder (Lal Dantamajan) worth `1,24,05,829.20 as a medicine in the tax group of 8% as per Entry No. 54 of List-C of OST Rate Chart. The dealer had also possessed a Drug Licence to that effect during that period. However, the assessing officer treated the product 'Lal Dantamanjan' as a tooth powder only and not a medicine as projected by the dealer-assessee and taxed the same @ 12% following the decision of Hon'ble High Court of Orissa rendered in the case of M/s. Dabur India Ltd. Vs. Commissioner of Sales Tax and others in O.J.C. Nos. 11356 to 11358 of 1997. The assessing officer then issued a demand notice with an instruction to the dealer-assessee to pay balance amount of `5,45,757.00 towards its tax liability.

Being aggrieved with the said order the dealer-assessee preferred an appeal before the first appellate authority while claiming that the article i.e. 'Lal Dantamanjan' should have been taxed

@ 8% instead of 12% as the same is a medicine. Therefore, it challenged the order of assessing officer for taxing the said article @ 12% which was not only arbitrary but too high. The first appellate authority, however, considering the materials pertaining to the case as well as the above decision of Hon'ble Court agreed with the finding of the assessing officer and confirmed the order of assessment.

3. The dealer-assessee then preferred this appeal assigning the grounds that the order of assessment as framed is bad in law and as such not maintainable. Further the dealer was not given the opportunity of hearing and then in this case demand of surcharge is illegal, excessive as well as arbitrary and when the assessing authority was satisfied with the books of account maintained by the dealer-assessee he should not have taxed 'Lal Dantamanjan' @ 12%.

The State-respondent has not filed cross-objection in the instant appeal.

4. In course of hearing learned Counsel appearing on behalf of the dealer-assessee submitted that the article concerned should not have been taxed arbitrarily by the assessing officer without affording an opportunity to the dealer to be heard in the matter. The surcharge demanded on the tax is also found to be quite excessive in the particular case. However, at the same time learned Counsel for the dealer-assessee as well as learned Addl. Standing Counsel(CT)

appearing on behalf of the State fairly submitted that the article i.e. 'Lal Dantamanjan' does not come under the category of cosmetic or medicine and as such, is exigible to tax @ 12% as per the residual item 105. In this regard both the parties cited the decision rendered by the Hon'ble High Court of Orissa in O.J.C. Nos.11356 to 11358 of 1997 and the order passed by the Hon'ble High Court of Orissa in RVWPE No. 110 of 2003 to apprise this Tribunal that this matter has already been set at rest by virtue of the orders of the Hon'ble Court.

5. Admittedly legal position with regard to the product 'Lal Dantamajan' has already been well settled in the decision of the Hon'ble Court rendered in the case of M/s. Dabur India Ltd. Vs. Commissioner of Sales Tax, Orissa and others, reported in [2004] 135 STC 187 (Ori.). In the above decision it has been held that "Lal Dantamanjan" is not a drug as defined in Sec. 3(b) of the Drugs and Cosmetic Act, 1940 and, therefore, the same is exigible to sales tax under residual entry. In the instant case the dealer had manufactured this Lal Dantamanjan and sold the same in the brand name of 'Anmol and Daburlal Tel' and further treating this product as medicine paid tax @8%. However, in view of the findings of the Hon'ble Court in the aforesaid decision it is certainly liable to pay tax @ 12% on sale of this article during that relevant period. Therefore, we do not find any reason

to hold that the order of assessment in the instant case is arbitrary or incorrect in any manner.

6. In the circumstances, as discussed in the foregoing paragraphs it is held that the order passed by the first appellate authority confirming the order of assessment does not suffer from any sort of infirmity so as to be interfered with by this Tribunal.

7. In the result, the appeal is dismissed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**1<sup>st</sup> Judicial Member**

I agree,

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