

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

**S.A. No. 455 of 2004-05**

(Arising out of order of the learned Asst. Commissioner of  
Sales Tax, Appellate Unit, Bhubaneswar,  
in Sales Tax Appeal No. AA.559/BH-II/02-03,  
disposed of on dated 30.09.2003)

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

M/s. Sakthi Enterprisers (P) Ltd.,  
Mancheswar Industrial Estate,  
Bhubaneswar. ... Appellant

**-Versus-**

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

For the Appellant : N o n e  
For the Respondent : Sri D. Behura, S.C.  
Sri S.K. Pradhan, A.S.C.

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Date of hearing:23.03.2022 \*\*\* Date of order: 29.03.2022  
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**ORDER**

The instant appeal is at the behest of the dealer-  
assessee challenging the order dtd.30.09.2003 passed by  
the Asst. Commissioner of Sales Tax, Appellate Unit,  
Bhubaneswar (hereinafter referred to as, the first  
appellate authority) in Sales Tax Appeal No. AA.559/BH-

II/02-03, thereby confirming the order dtd.31.01.2002 passed by Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as, the assessing authority) raising an extra demand of Rs.8,87,404.00 which includes surcharge of Rs.89,431.59 for the year 1999-2000 in the assessment framed U/s. 12(4) of the OST Act.

2. The relevant facts leading to filing of the present second appeal are that, the dealer M/s. Sakthi Enterprisers (P) Ltd. deals in electrical goods and machineries on order supply basis. The assessing officer on verification of A.R.P.A. found that the dealer had disclosed the GTO at Rs.98,52,995.55 on which paid tax to the tune of Rs.96,344.00 for the assessment year 1999-2000. The dealer in spite of several opportunities did not produce the books of account for which the learned assessing authority completed the assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) on 31.01.2002 to the best of his judgment. The assessing authority on the basis of the fraud case report No.101/2000 dtd.24.11.2000 submitted by the IST (Vigilance), Balasore determined the GTO and TTO at Rs.70,52,723.55 and computed tax @ 12% on Rs.58,52,995.55 and @ 16% of Rs.11,99,728.00, the total tax was determined at Rs.8,94,315.94 on which surcharge @ 10% on tax due was calculated which was determined

at Rs.89,431.59. As the dealer had paid Rs.96,344.00, the balance tax payable was determined at Rs.80,87,404.00.

3. The dealer-assessee challenging the aforesaid demand raised by the assessing authority, preferred appeal before the first appellate authority u/s.23(1) of the OST Act who also affirmed the order of the assessing authority and dismissed the appeal filed by the dealer-assessee, against which the present second appeal was preferred.

4. When the appeal was called on for hearing, none appeared on behalf of the dealer-assessee despite due service of notice, so this Tribunal left with no other option except proceeding with the hearing exparte in the presence of the learned Standing Counsel representing the State. The dealer-assessee challenged the orders of the fora below mainly on the ground that it effected sales to the Director, Proof and Experiment, Chandipur against form-IV and it had also made sales to the tune of Rs.15,66,842.35 against form-XXXIV. On perusal of the impugned orders of the fora below, we find that the dealer neither appeared before the authorities below at the time of hearing nor raised any such contention before them. So both the forums below had no occasion to examine such issues. It is pertinent to mention here that the IST, Vigilance on the basis of the information collected from the Director, Proof and Experiment, Chandipur, Balasore observed that the dealer-assessee supplied H.T. Shelf Set

for Rs.5,99,864.00 vide bill No.10 dtd.08.07.1999. The dealer though noticed did not explain such allegation made in the fraud case report for which the assessing authority held that sale suppression of Rs.5,99,864.00 stood established. Accordingly, the assessing authority enhanced the turnover by Rs.11,99,728.00. Since the dealer-assessee did not appear and produce any documentary evidence towards sale of tax paid goods or tax exempted goods, the entire GTO determined at Rs.70,52,723.55 was treated as TTO and tax was calculated on the same. The first appellate authority also in page-2 & 3 of the impugned order has clearly observed that the dealer-assessee was given ample opportunity of hearing to explain the allegations made in the fraud case report by producing relevant documents. In the first appeal the dealer-assessee did not appear and explain the allegations made in the fraud case report for which the first appellate authority concurred with the findings of the assessing authority and affirmed the demand of Rs.8,87,404.00 raised by the assessing authority. In the present second appeal also in spite of repeated notice, none appeared on behalf of the dealer-assessee and produced the books of account and relevant statutory form to substantiate the claim of sale against form-IV and XXXIV. So, we are also of the unanimous view that both the fora below are fully correct in their approach in accepting the allegations made in the fraud case report

regarding sale suppression of Rs.5,99,864.00 and enhancing the GTO by Rs.11,99,728.00. There is no illegality or impropriety in the impugned orders of the forums below warranting interference of this Tribunal.

5. In view of the discussions made above and for the foregoing reasons, the appeal filed by the dealer-assessee being devoid of any merit stands dismissed and the orders of the forums below stand confirmed.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

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

I agree,

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