

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

**S.A. Nos. 325 & 326 of 2009-10**

(Arising out of orders of the learned ACST, Cuttack-I Range,  
Cuttack in First Appeal Nos. AA- 78/CUIE/2006-07 &  
AA- 204/CUIE/2008-09, disposed of on dated 07.07.2009  
& 10.09.2009 respectively)

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

M/s. Rupy Enterprises,  
Canal Road, Jobra, Cuttack ... 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. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

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Date of hearing: 13.06.2022 \*\*\* Date of order: 21.06.2022  
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**O R D E R**

Both the second appeals, though relate to  
different assessment periods, are heard together and  
disposed of by this composite order as the facts and law  
involved therein are identical.

2. The dealer-assessee has filed S.A. No. 325 of 2009-10 assailing the order dated 07.07.2009 passed by the learned Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack (hereinafter called as 'first appellate authority') in Appeal No. AA- 78/CUIE/2006-07 thereby enhancing the assessment to ₹5,46,540.00 from ₹2,22,280.00 raised by the Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, 'assessing authority') **for the tax period 2002-03** in the assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

3. The dealer-assessee has also preferred S.A. No. 326 of 2009-10 challenging the impugned order dated 10.09.2009 passed by the same first appellate authority in Appeal No. AA- 204/CUIE/2008-09 thereby confirming the extra demand of ₹29,13,199.00 raised by the same assessing authority **for the tax period 2004-05** in the assessment framed u/s. 12(4) of the OST Act.

4. The sole dispute in the present second appeals is whether sale of old newspapers for ₹24,56,519.40 for the period 2002-03 and ₹2,06,79,081.48 for the period 2004-05 by the dealer-assessee is taxable under the OST Act or are tax free sales?

5. Before addressing the above question, it is necessary to narrate some relevant facts for proper adjudication of the dispute. The dealer is a partnership concern and is carrying on business in waste paper by effecting purchase of the same from local hawkers located at different places of Odisha. The dealer-assessee was assessed u/s. 12(4) of the OST Act for the year 2002-03 for which the assessing authority determined its GTO at ₹56,21,142.55 and allowed deductions of ₹67,732.60, ₹24,56,519.40 and ₹1,19,111.21 towards sales to registered dealers, tax free sales, sales tax collected respectively. He determined the TTO at ₹29,77,779.34 on which tax demand was raised @12%, which was calculated at ₹3,57,333.52 and surcharge was levied @ 10%, which was calculated at ₹35,733.35. The dealer-assessee having paid ₹1,70,787.00, the balance tax payable was determined at ₹2,22,280.00. The dealer-assessee challenging such demand raised by the assessing authority, filed appeal before the first appellate authority, who after giving enhancement notice, enhanced the assessment to ₹5,46,540.00. The first appellate authority treated the sale of old newspaper to the tune of

₹24,56,519.40 as taxable sales, which was treated by the assessing authority as tax free sales.

Similarly, for the assessment period 2004-05, the assessing authority determined the GTO as well as the TTO at ₹2,26,80,731.48 on which tax and surcharge was levied at the appropriate rate and the tax demand was raised at ₹29,93,856.54. The dealer-assessee having paid ₹80,658.00, the balance tax payable was determined at ₹29,13,199.00. The aforesaid demand was challenged in appeal before the first appellate authority, who confirmed the demand and dismissed the appeal exparte.

The dealer-assessee being further aggrieved with the finding of the first appellate authority that the sale of old news paper was taxable, preferred the present second appeals.

6. When the dealer-appellant was called on for hearing, none appeared on behalf of it despite due service of notice, for which the matters were taken up exparte in the presence of the learned Standing Counsel (CT) for the State.

7. Learned Standing Counsel (CT) for the State supporting the impugned orders of the first appellate authority vehemently urged that the decision on which the

dealer-assessee placed reliance has no application to the facts and circumstances of the present case. The first appellate authority referring to two judgments of the Hon'ble Apex Court has negated the finding of the assessing authority that sale of old newspapers was tax free sales and accordingly, enhanced the assessment for the year 2002-03 after due compliance of the statutory rules and also confirmed the assessment for the year 2004-05. There is no illegality in the impugned orders of the first appellate authority warranting interference of this Tribunal. He submitted to dismiss the appeals.

8. We have given our anxious consideration to the contention raised by the learned Standing Counsel CT) for the State, gone through the grounds of appeal vis-a-vis the impugned orders of the first appellate authority and the materials on record. The dealer-assessee placing reliance on the decision of the Hon'ble Apex Court in case of **Sait Rikhaji Furtarnal and another Vs. State of Andhra Pradesh, reported in [1992] 85 STC 1 (SC)**, has questioned the finding of the first appellate authority that sale of old newspaper is taxable. On going through the impugned orders of the first appellate authority, we find that it has

placed reliance on two judgments of the Hon'ble Apex Court, one in case of **The Indian Express (P) Ltd. Vs. State of Tamil Nadu, reported in [1987] 67 STC 474 (SC)**, and another in case of **The Hindu Vs. State of Tamil Nadu, reported in [1987] 67 STC 477 (SC)**. Now, it is to be seen whether the first appellate authority was correct in its approach in reversing the finding of the assessing authority for the assessment for the year 2002-03 that sale of old newspapers to the tune of ₹24,56,519.40 was tax free sales and confirming demand raised on TTO of ₹2,26,80,731.48 for the assessment year 2004-05 treating the sale of old newspapers as taxable sales. We have thoroughly gone through the judgments relied upon by the first appellate authority as well as the judgment on which the dealer-assessee placed reliance in challenging the impugned orders. The judgments on which the first appellate authority placed reliance was rendered in different context, whereas the judgment on which the dealer-assessee placed reliance was rendered in other context. So far as the facts and circumstances of the present case is concerned, the judgments on which the first appellate authority placed reliance are squarely applicable, whereas the judgment on

which the dealer-assessee placed reliance is distinguishable from the facts and circumstances of the present case. With due respect to the judgment of the Hon'ble Apex Court rendered in the case of Sait Rikhaji Furtarnal (supra), we are of the humble view that when the old newspapers are sold as such, it is not taxable, but when old newspapers are sold as waste papers, it is taxable. In case of Sait Rikhaji Furtarnal (supra), the Hon'ble Apex Court upheld the contention of the appellant of that case, who contended that even if newspapers are not of the same date or of a current period, their contents had news value and thus, they continued to be the newspapers and the mere fact they were out of date did not take away the news element therefrom. Accordingly, it was held by the Hon'ble Apex Court that when the old newspapers are sold as such, it would be covered by the exemption provided in the Constitution and the sale of old newspaper would not be liable to sales tax. In the present case, the old newspapers were not sold as such, but were sold as waste papers. Therefore, in view of the judgments of the Hon'ble Apex Court in cases of **The Indian Express (P) Ltd.** (supra) and **The Hindu** (supra), the sale of old newspaper to the tune of ₹24,56,519.40 for the year

2002-03 and ₹2,06,79,081.48 for the year 2004-05 is taxable as held by the first appellate authority. The first appellate authority rightly enhanced the demand raised by the assessing authority for the year 2002-03 and confirmed the demand for the year 2004-05 holding the sale of old newspapers as taxable. We do not find any illegality or impropriety in the orders of the first appellate authority warranting interference of this Tribunal.

9. In view of the discussions made above, the appeals filed by the dealer-assessee being devoid of any merit stand dismissed and the impugned orders of the first appellate authority are hereby 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/-  
(S. Mishra)  
Accounts Member-II