

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

**S.A.No.266(ET) of 2004-05**

(Arising out of the order of the learned ACST, Balangir Range,  
Balangir, in First Appeal Case No. AA 56(BPII) of 2004-05,  
disposed of on dtd.11.10.2004)

Present: **Smt. Suchismita Misra**, Chairman,  
**Shri A.K. Dalbehera**, 1<sup>st</sup> Judicial Member,  
&  
**Shri R.K. Pattnaik**, Accounts Member-III.

M/s. Ordnance Factory,  
P.O.: Badmal, Dist.- Bolangir. ... Appellant

**- V e r s u s -**

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

For the Appellant : Mr. B.R. Mohapatra, Advocate  
For the Respondent : Mr. M.S. Raman, A.S.C.

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Date of Hearing: 06.12.2019 \*\*\*\* Date of Order: 27.12.2019  
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**ORDER**

This appeal is directed against the impugned order dated 11.10.2004 passed by the learned Asst. Commissioner of Sales Tax, Balangir Range, Balangir (hereinafter referred to as, learned ACST) in First Appeal Case No. AA 56(BPII) of 2004-05, wherein he has summarily rejected the appeal as against the assessment made by the learned Sales Tax Officer, Balangir II Circle, Balangir (hereinafter referred to as, learned STO) u/s.12 (4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) for the period 2001-02.

2. The facts of the case are that the assessment of the appellant was completed u/s.12(4) of the OST Act for the period 2001-02 raising a total demand of tax amounting to Rs.18,93,130.00.

During the period in question the appellant-dealer has admitted gross turnover to the tune of Rs.5,29,42,725.40 and taxable turnover at Rs.5,29,42,725.00. Against this turnover it has disclosed admitted tax of Rs.8,27,045.00. As against this learned STO has determined GTO at Rs.11,79,88,633.00 and TTO at Rs.11,29,46,632.00 and calculated extra demand of Rs.18,93,130.00 for the period 2001-02.

3. Being aggrieved by the aforesaid order of assessment, the appellant preferred an appeal before the learned ACST, wherein the learned ACST rejected the appeal of the appellant-dealer summarily.

4. Being aggrieved by the said order, the appellant-dealer had preferred an appeal before the learned ACST. The learned ACST after perusing the order of assessment and on scrutiny of the appeal petition found that the appellant-dealer had shown admitted tax of Rs.8,27,045.00 but the same was not paid by him. The learned ACST found that the fact of non-payment of such admitted tax was also admitted by the appellant-dealer in form XVI filed before the learned ACST. The appellant-dealer was issued with show cause notice for rectification of appeal petition and showing proof of payment of admitted tax if any to which he did not respond despite receiving the notice. From such conduct of the appellant-dealer, the learned ACST came to the conclusion that the appellant-dealer had no interest in the disposal of the first appeal who neither filed any time petition nor appeared before the forum for the purpose. Hence, the appeal preferred by the appellant-dealer was summarily rejected u/r.49 of the OST Rules.

5. Being aggrieved by the order of the learned ACST, the appellant-dealer came up with the appeal before this Tribunal challenging the impugned order on the grounds that, the learned ACST is not justified to reject the appeal petition under rule 49 of the OST Rules. The assessment was completed arbitrarily on GTO and TTO of Rs.11,79,88,633.00 and Rs.11,29,46,632.00 respectively as against

the returned GTO and TTO to Rs.5,29,40,725.40. The Ordnance Factory is a unit of Ordnance Board under the Ministry of Defence, Government of India which is located at Badmal falling under Gandaparapali Grampanchayat. The learned STO has failed to appreciate and properly analyze the submissions made by the appellant-dealer. The learned STO is also not justified to include the purchase of Desert Cooler on dtd.05.03.2002 for Rs.1,35,392.00 again and to charge 12% which has been shown in the list of goods of Part-II. Similarly, the learned STO is not justified to include purchase of High Speed diesel for Rs.19,51,593.00 made from DPCL depot at Sambalpur for which entry tax has been charged in the bills. The other inclusions/additions made for items under Part-I for Rs.1,56,13,640.00 and under Part-II for Rs.4,51,13,296.00 without specifying the details of purchases are liable to be deleted.

6. Cross objection has been filed by the Revenue. As per the cross objection there is no reasonable merit in the second appeal filed by the appellant-dealer which is not sustainable in the eye of law. The learned STO and the ACST have rightly completed the assessment and appeal respectively basing on the statutory provisions under the Act and Rules. The opportunity of being heard has been duly extended and natural justice is duly rendered as stated in the cross objection.

7. On perusal of the order of assessment it is seen that, the total tax calculated came to Rs.18,93,130.00 (i.e. @ 1% on Rs.4,04,36,873.00, @ 2% on Rs.7,21,24,096.00 and @ 12% on Rs.3,85,663.00). Here, although levy of tax @ 12% on the turnover of Rs.3,85,663.00 is not disputed but the learned STO has not allowed any reduction on tax liability as provided u/R.3(4) of the OET Rules. The assessment period relates to 2001-02. Hence, Rule 3(4) of the OET Rules (which was in force prior to amendment) shall be applicable which states that goods specified in Part I and II of the Schedule to the Act shall be exigible to tax at fifty per centum of the rate to which such

goods are exigible under sub-rule(3) and sub-rule(2) respectively of this rule, when such goods -

- (a) are used as raw material by a manufacturer on first entry into a local area; or
- (b) are brought by a registered dealer into any local area and then sold to a manufacturer for use as raw material .....

Taking into consideration this provision, the tax liability should have been Rs.9,69,705.00. In the meantime, the appellant-dealer has claimed to have paid Rs.13,60,088.00 which is subject to verification. It implies that he has paid excess tax of Rs.3,90,383.00 which is refundable to the appellant-dealer. The Revenue has failed to produce the LCR for which it is necessary to remit the matter to the learned STO for fresh computation in view of the aforesaid findings and observations.

8. In the result, the appeal is allowed. The matter is remitted to the learned STO for fresh computation as per the provisions of law and materials available in view of our aforesaid findings and observations.

Dictated & corrected by me,

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(R.K. Pattnaik)  
Accounts Member-III