

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 101(C)/2014-15**

(Arising out of order of the ld. DCST (Appeal), Cuttack-I Range,
Cuttack, in First Appeal Case No. AA(C)2/CUIW/2014-15,
disposed of on dtd.24.10.2014)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Sandip Kumar Jain, Proprietor of
M/s. Kan Power Rubber Industries,
Manisahu Chhak, Buxibazar,
Dist. Cuttack. Appellant

-Versus-

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

For the Appellant : None
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2006 to 31.03.2011)

Date of Hearing: 09.03.2021 *** Date of Order: 17.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/ Deputy Commissioner of Sales Tax (Appeal), Cuttack-I Range, Cuttack (in short, FAA/DCST) in First Appeal Case No. AA(C)2/CUIW/2014-15 dtd.24.10.2014 in confirming the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Cuttack-I West Circle, Cuttack (in short, STO/AA) for the assessment period from 01.04.2006 to 31.03.2011 u/r.12(3)(f) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules.)

2. The brief facts of the case is that :

The instant dealer M/s. Kan Power Rubber Industries carries on business in rubber goods, welding accessories, water pump, safety shoes, rubber mats etc. on wholesale and retail basis. The STO, Cuttack-I West Circle, Cuttack has completed assessment u/r.12(3) of CST(O) Rules for the period from 01.04.2006 to 31.03.2011 basing on the AVR received. On examination of books of accounts, the learned STO revealed that, the dealer-appellant has effected inter-state sale of goods worth Rs.40,43,192/- at concessional rate of tax against Form 'C'. The appellant submitted Form 'C' to the tune of Rs.15,01,241/- but failed to submit the same form for an amount of Rs.25,41,958/- which the learned STO taxed at general rate of tax. Accordingly, he determined the GTO at Rs.40,43,192/- which is also the NTO of the dealer-appellant. He taxed Rs.5,98,690/- @2%, Rs.6,54,643/- @3% and Rs.27,89,859/- @4% to calculate total CST due at Rs.1,43,207.45. The dealer-appellant having already paid an amount of Rs.1,06,959/- at the time of filing of return, the net tax due was computed to Rs.36,248.45. He imposed penalty of Rs.72,496.90 u/r.12(3)(g) of the CST(O) Rules and thus calculated total tax and penalty due at Rs.1,08,745.35, which was required to be paid by the dealer-appellant at the assessment stage.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal),

Cuttack-I Range, Cuttack, who in turn, dismissed the appeal and confirmed the order of assessment.

4. Being further aggrieved with the order of the learned FAA/DCST (Appeal), Cuttack-I Range, Cuttack, the dealer has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the ld.FAA/DCST (Appeal) is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the State-respondent in this case.

6. Despite affixture service of hearing notice on the dealer, for reasons best known to it, neither engaged a counsel nor anybody on its behalf remained present before this Tribunal. This Tribunal, therefore, left with no other alternative except to hear the argument of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing on behalf of the State and to dispose of the matter on ex-parte basis.

7. Perused the assessment order as well as first appeal order. All the materials available in the record, grounds of appeal submitted by the dealer, cross objection filed by the State-respondent. During the course of hearing, Mr. Pradhan, Addl. Standing Counsel for the State argued that, the order of the learned FAA is just and proper. So it should be confirmed by this Tribunal. Despite reasonable opportunities, the dealer has not appeared before this Tribunal. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The learned Assessing Officer and First Appellate Authority have rightly completed the

assessment and first appeal respectively basing on the statutory provisions under the Act and Rules. Opportunity of being heard has been duly extended and natural justice has been duly rendered. The grounds raised in the appeal petition being erroneous, unreasonable, unfair and misconceived are liable to be dismissed in toto. The learned Addl. Standing Counsel has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State in absence of participation of the dealer in hearing of this appeal. Gone through the grounds of appeal, the impugned orders of appeal and assessment, cross objection filed by the State-respondent and argument of the learned Addl. Standing Counsel at the time of hearing. The dealer has not adduced any evidence on his behalf nor he has appeared before this Tribunal to substantiate the grounds of appeal filed by him. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, penalty should be deleted but the dealer-appellant has to pay the interest from the date of return and this is a fit case where the matter should be remitted back to the learned FAA to re-compute the tax liability of the dealer giving the dealer a reasonable opportunity of being heard. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed in part and the order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned

FAA to re-compute the tax liability of the dealer giving the dealer a reasonable opportunity of being heard keeping in view the observations made above within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S. Mishra)
2nd Judicial Member

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