



2. The facts as revealed from the case record are as follows :-

The dealer-assessee in the instant case is the Electrical Division, CESCO, Bhubaneswar represented through its Executive Engineer. It was assessed u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the year 1999-2000 on the ground of receiving payments for the meters which it provides to its customers inside the State on hiring basis. According to the Taxing Authority, Bhubaneswar-I Circle, Bhubaneswar (in short, "assessing officer") this system of hiring comes under the purview of 'sale' as per Sec. 2(g) of the OST Act. Thus after issuing a notice to the dealer-assessee u/S. 12(4) of the OST Act the assessing officer proceeded for assessment of the dealer and in course of such assessment he verified the books of account i.e. sales tax file and some other documents which were produced before him. He then held that the dealer had received a sum of ₹37,41,947.00 as hiring charges of meters from the consumers of the electricity connections. He took the same as the GTO as well as TTO of the dealer at ₹37,41,947.00 and then calculated the tax of ₹4,93,937.00 to be paid by the dealer-assessee for that relevant period.

Being aggrieved with this order of assessment the dealer had assailed the same before the first appellate authority on the ground that determination of its GTO and TTO by the assessing officer

was arbitrary and unjustified. The assessing officer taxed the amount which was received by the dealer towards meter rent while holding the same as 'sale' u/S. 2(g)(iv) of the OST Act. In this regard the observation of the assessing officer was that this meter rent was received against transfer of right to the customers for use of all those meters. The dealer's contention is that this observation of the assessing officer regarding sale of the meters is erroneous because the rent received from the customers by providing electric meters cannot be subjected to tax since these meters are not transferred or delivered to the customers with proprietary right over the same. They only have custody of the meters without having effective control over that instrument. The dealer also contended before the first appellate authority that the Division Bench of Odisha Sales Tax Tribunal in the case of Executive Engineer, Electrical Division Vs. State of Odisha represented by C.C.T. (O) in S.A. No. 1149/1999-2000 and S.A. Nos. 1267 to 1271 of 1998-99 had decided in favour of the dealer-assessee while holding that the dominant object of embedding the meters on the walls of the consumers is to measure the electricity energy consumed by that particular consumer and as such realization of rent against such meter per month cannot be considered as 'sale' within the purview of Sec. 2(g)(iv) of the OST Act. The dealer also challenged the rate of tax i.e. 12% which was levied on the amount received towards meter rent

as excessive, arbitrary and not in consonance with the rate of tax as provided in the statute.

3. The first appellate authority considering these grounds of appeal alongwith the order of assessment and relevant assessment record held that in the appeal before him the only dispute raised by the dealer-assessee was regarding levy of tax on the meter rent received by the dealer from the customers. In this regard the assessing officer concluded that the amount received towards meter rent by the dealer was something which accrued due to transfer of right to use the instrument by the consumers and thus the same had to be treated as 'sale' within the meaning of Sec. 2(g)(iv) of the OST Act. Then referring the decision of Hon'ble Apex Court in the case of State of U.P. and another Vs. Union of India and another, he concluded that collection of meter rent by the dealer is taxable as the same should be treated as 'sale' being transfer of right to use the goods. He thus affirmed the order of assessing officer passed in this regard. So far as rate of tax to be imposed on the assessee concerned the first appellate authority held that as no evidence was produced or shown by the dealer-assessee entitling it to pay tax at a rate less than 12% in respect of those meters, he determined the GTO of the dealer at ₹24,78,68,343.56 and allowed deduction of ₹24,41,26,396.56 therefrom towards sale of energy as the same is being tax free. He (the first appellate authority) thus held the

TTO of the dealer was ₹37,41,947.00 only. The first appellate authority while computing tax @ 12% and surcharge on tax @ 15% instead of 10% as originally calculated by the assessing officer found the dealer to be liable to pay tax of ₹5,16,389.00 instead of ₹4,93,937.00 as determined by the assessing officer.

4. Being aggrieved with this order of the first appellate authority enhancing the assessment for an amount of ₹22,452.00 the dealer-assessee preferred this second appeal on the following grounds :

The order of assessment and the order of the first appellate authority do not rest upon the facts and circumstances of the case or on points of relevant law. They both have exercised their authority exceeding their jurisdiction. The determination of GTO and TTO by the first appellate authority was illegal and wrong. Both the forums below had proceeded on a wrong assumption that receipt of meter rent is a deemed sale u/S. 2(g)(iv) of the OST Act since the dealer-assessee had received the meter rent from the consumers by transferring them the right to use the meter. However, the observations of the assessing officer as well as the first appellate authority in this regard are absolutely erroneous in law because while coming to their own conclusions in respect of the tax liability of the dealer-assessee they (both the forums below) had lost sight of the decisions rendered by the Division Bench of Odisha Sales Tax Tribunal in S.A. No. 1149/1999-

2000 and S.A. Nos. 1267 to 1271 of 1998-99. Besides the above the dealer also assailed the rate of tax which was ordered to be levied from its taxable turnover.

5. The dealer-assessee remained absent during hearing of the appeal despite service of notice on it for which the matter was heard *ex parte*. However, learned Addl. Standing Counsel (CT) for the State filed a xerox copy of the order of the Hon'ble Court passed in STREV No.80 of 2004 wherein the judgment and order of this Tribunal holding against the assessee for the charges it was collecting by way of rent on the meter was challenged. In the said case this Tribunal had held that such assessees were required to pay sales tax. In the aforesaid revision i.e. STREV No. 80 of 2004 the Hon'ble Court while referring a decision of Himachal Pradesh High Court rendered in the case of S.E. Hydrel Circle Vs. Addl. Excise & Taxation Commissioner, (SZ) Shimla, reported in [2008] 18 VST 246 (HP), held that as all meters and other equipments belonging to the Board and installed, fastened, fixed or embedded in the premises or land of the consumer shall be and continue to be at all times the property of the Board and further such equipment shall not be disturbed or dealt with in any manner except by the Engineer or his authorized representative and the consumer shall continue to be the custodian of such properties until they are removed by the Engineer, it is very clear that the ownership as

well as control over the meter always remained with the Board and there is no such transfer of item.

For better appreciation we felt it quite proper to mention here the definition of 'Meter' as given in the Orissa State Electricity (General Conditions of Supply) Regulations, 1981 which was also quoted in the decision of the Hon'ble Court passed in above mentioned STREV No. 80 of 2004.

Quote : "22. Meters. (a) The Board shall provide the meters required for measuring the consumption of electricity by the consumer and shall charge monthly rental for the same in accordance with the charges as laid down in the 'Schedule of Service and Miscellaneous Charges' for the time being in force so long the meter installed is in working order.

Meters will ordinarily be installed at the point of supply and shall be fixed and installed according to the convenience of the Board on the consumer's premises preferably in the ground-floor where it could be easily accessible for reading and inspection at any time or at such other suitable place as the Board's Engineer shall decide and the consumer shall run his wirings from such point of supply and also be responsible for the safety of the meters from theft or damage.

(c) The meters shall be properly sealed by the engineer in presence of and under due acceptance of the consumer and shall not be interfered with except in the presence of the consumer or his representative duly authorized.

(f) Quantum of electrical energy supplied to a consumer or other electrical quantity contained in the supply shall be ascertained by means of defect-free meters hired from the Board and the engineer shall remove the defects or replace the same on such defects being noticed by or notified to the Engineer within a reasonable time. The meters shall be tested for accuracy by the Engineer Prior to its commissioning in the service." Unquote.

In the abovesaid STREV the Hon'ble High Court of Orissa had been pleased to consider this particular question i.e. whether the rent received by the dealer by providing meters to its customers on hire basis could be subjected to tax and it was decided by the Hon'ble Court as follows :-

Quote : "In that view of the matter since it is in higher charge of sales tax, taking into account Clauses 11 & 12 of Regulations, 1981, we are of the considered opinion that there is no transfer and the total control of the item is with the Board. Merely because there is an access of consumer to the meter will not confer any transfer right in favour of the assessee.

In that view of the matter and following the decision of the Himachal Pradesh High Court, we are of the opinion that the view taken by the tribunal is declared to be bad." Unquote.

6. Keeping in view the aforesaid decision of our Hon'ble Court we found that the issue regarding levy of tax on the meter rent

received by the dealer has already been set at rest. Therefore, the order passed by the first appellate authority for levy of tax on the meter rent received by the present dealer-assessee has to be considered as unjust and improper. Accordingly the impugned order is set aside being devoid of merit and as such the order of assessment is also held to be quashed consequentially.

7. In the result, the appeal is allowed and the demand towards tax on meter rent is deleted.

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/-**  
**(Prabhat Ch. Pathy)**  
**Accounts Member-I**