

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**Present: Sri S. Mohanty  
1<sup>st</sup> Judicial Member**

**S.A. No.239(V) of 2017-18**

(From the order of the ld. Addl. CST (Appeal), Odisha,  
Cuttack, in Appeal Case No. AA/95/2012-13,  
disposed of on 19.08.2017)

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

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

M/s. Pidilite Industries Ltd.,  
At/P.O.- Andei Sahi, In front of  
Reliance Petrol Pump, Jagatpur,  
Cuttack. ... Respondent

For the assessment period: 01.08.2008 to 31.08.2010

**S.A. No.240(V) of 2017-18**

(From the order of the ld. Addl. CST (Appeal), Odisha,  
Cuttack, in Appeal Case No. AA/CUII-110/2013-14,  
disposed of on 19.08.2017)

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

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

M/s. Pidilite Industries Ltd.,  
At/P.O.- Andei Sahi, In front of  
Reliance Petrol Pump, Jagatpur,  
Cuttack. ... Respondent

For the assessment period: 01.10.2006 to 31.07.2008

For the State : Mr. M.L. Agarwal, S.C.  
For the Dealer : Mr. P.K. Harichandan, Advocate

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Date of hearing: 30.05.2019 \*\*\*\* Date of order: 30.05.2019  
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**ORDER**

The appeals above are taken up together and decided by this common order to avoid conflicting opinion, if any and for sake convenience.

The appeals above as preferred by the State involves identical issues for decision with a prayer to set aside the order of first appellate authority, whereby and wherein it has reversed the finding of assessing authority in assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The laconic facts giving rise to these appeals may be stated as follows.

The respondent-dealer is a registered TIN dealer under the name and style of M/s. Pidilite Industries Ltd., At/P.O.- Andei Sahi, In front of Reliance Petrol Pump, Jagatpur, Cuttack engaged in trading of adhesive, paints, distemper, drawing materials, construction chemicals, wood polish, insulated goods, printed catalogue, ranipal etc. on wholesale basis. It is a limited company which faced audit assessment u/s.42(4) of the OVAT Act for the tax period 01.10.2006 to 31.07.2008 and 01.08.2008 to 31.08.2010 separately under two different order of assessment on the basis of single audit visit report (in short, the AVR). For the tax period 01.10.2006 to 31.07.2008, the rate of tax on five numbers of item like, furniture book, prime tape, steel grip, terminator and ranipal were objected by the audit team, whereas for the tax period 01.08.2008 to 31.08.2010 the items like furniture book, terminator and ranipal were questioned on the point of appropriate rate of tax. For better appreciation following chart may be

referred to hereinafter relating to the item-wise tax rate claimed and tax rate assessed by two authorities below.

Item	Claim of dealer	2013-15 Order u/s.42 01.04.13 to 31.03.15
Furniture	Sl. No.5 of Schedule-A, rate of tax Nil	Sl. No.90 of Schedule-B, rate of tax 4%
Book	Sl. No.83 of Schedule-B, rate of tax 4%	Unspecified, rate of tax 12.5%
Prime Tape	Sl. No.83 of Schedule-B, rate of tax 4%	Unspecified, rate of tax 12.5%
Steel Grip	Sl. No.83 of Schedule-B, rate of tax 4%	- do -
Terminator	Sl. No.83 of Schedule-B, rate of tax 4%	- do -
Ranipal	Sl. No.83 of Schedule-B, rate of tax 4%	- do -

3. The contention of the Revenue-appellant is, furniture book should come under entry Sl. No.90 of the Schedule-B Part-II of the OVAT rate chart, whereas, wood preserver terminator and ranipal as a whitening agent should be treated as an unspecified item. In the audit assessment, the assessing authority treated furniture book as an item under entry Sl. No.90 of the Schedule-B Part-II of the OVAT rate chart exigible to tax @ 4%, prime tape is an unspecified item upon which tax rate is 12.5%. Similarly, steel grip, wood preserver and ranipal are all treated as unspecified item exigible to tax @ 12.5%. The assessing authority determined the balance tax due from the dealer accordingly. In addition to that, he imposed penalty i.e. twice of the tax due as per sec.42(5) of the OVAT Act thereby, the total demand against the dealer was raised at Rs.35,49,201.00.

4. Felt aggrieved with the assessment, the dealer knocked the door of the Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack, the first appellate authority who in turn treated the furniture book covered under entry Sl. No.5 of Schedule-A as tax free goods, prime tape covered under

entry Sl. No.83 of Schedule-B Part-II taxable @ 4%, steel grip covered under entry Sl. No.60 of Schedule-B Part-II exigible @ 4%, wood preserver covered under entry Sl. No.30 of Schedule-B Part-II exigible @ 4%, fibre whitener branded as ranipal is similarly covered under entry Sl. No.17 of Schedule-B Part-II exigible to tax @ 4%. Accordingly, he re-determined the tax liability and the tax due became reduced to return figure.

For the other tax period i.e. from 01.08.2008 to 31.08.2010, in the similar fashion the assessing authority determined the tax due and penalty at Rs.8,33,762.00, whereas, the first appellate authority reduced the tax demand to return figure holding the tax rate as above.

5. The appeal is heard with cross objection from the side of the dealer, whereby the dealer has contended that, the tax rate as determined by the first appellate authority is in accordance to law and should not be disturbed with. Further, it is also contended that, since the taxing authority has consistently assessed the dealer for the previous and subsequent period to the assessment periods in question in the manner with the tax rate as declared by the dealer and/or as decided by the first appellate authority in the impugned order, there is no question for deviation of the same for the impugned tax periods.

6. From the rival contentions, following questions are struck for decision in this appeal.

- (i) whether the first appellate authority is wrong in reversing the findings of the assessing authority with regard to the rate of tax on the goods dealt by the dealer;
- (ii) whether the taxing authority is bound by the rule of consistency and in accordance to that the authority cannot levy tax at a different rate on the self-same goods for which it has levied tax

at a particular rate for the previous period and subsequent period to the periods in question.

7. As mentioned above, the tax rate on five numbers of articles were questioned by the audit team. The assessing authority determined the same in accordance to the suggestion of the audit team, whereas, the first appellate authority has reversed the finding by treating the item No.1 i.e. furniture book as tax free, prime tape, steel grip, terminator and ranipal are taxable @ 4%. In both the appeals Revenue has disputed the determination of tax rate by the first appellate authority on three items i.e. furniture book, fibre whitener/ranipal and wood preserver terminator. On verification of the rate chart and items included in the entry serial, almost it is remained undisputed that, wood preserver/terminator is necessarily an insecticides covered under Sl. No.30, Part-II of Schedule-B of OVAT Rate Chart taxable @ 4%.

8. Learned Standing Counsel, Mr. Agarwal vehemently objected the finding of the first appellate authority by treating the furniture book as tax free covered under entry Sl. No.5 of the Schedule-A and rate of tax @ 4% on fibre whitener/ranipal. According to him, the 'fibre whitener' should be treated as an unspecified goods exigibel to tax @ 12.5% and the furniture book is covered under entry Sl. No.90 of the Schedule-B of the OVAT Rate Chart taxable @ 4%.

9. Before delving into the merit of the observations of the first appellate authority with regard to the literature of the goods, to which entry serial of rate chart cover the goods in question, another question which goes to the root of this appeal i.e. rule of consistency and its applicability in the appeal in hand needs to be decided first.

10. Learned Counsel for the dealer argued that, it is the same assessing authority had accepted the rate of tax as claimed by the dealer for previous and subsequent period to the period in question here in this appeal. It is peculiar enough to notice that, the assessing authority when accepted rate of tax @ 4% on Prime Tape and Steel Grip for the tax period 01.08.2008 to 31.08.2010 but objected the same for the tax period 01.10.2006 to 31.07.2008.

11. Learned Counsel for the dealer advanced the decision in Bio Pharma Capsules v. Deputy Commissioner of Commercial Tax, Government of A.P. (2007) 6 VST 35 (AP), wherein the Hon'ble Court placing reliance on the decision of the Apex Court in Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC) and Godrej & Boyce Manufacturing Co. Ltd. has held that, the department should not have passed order in view of the fact that, rule of consistency is to be applied into the case in hand. In Radhasoami Satsang v. CIT (supra), the Apex Court has held as follows.

“We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”

One cannot brush aside the “Principle of Consistency”, which requires that when the facts and circumstances continue to remain the same, then there should not be any variation in the treatment from earlier year. In Commissioner of Income Tax v. M/s. Quest Investment Advisors Pvt. Ltd. under Income Tax Appeal No.280 of 2016 – High Court of Bombay dealt with “Res Judicata” and “Principle of Consistency” as held as under: (i) “Principle of res judicata” does not apply in matters pertaining to tax for different assessment years. (ii) The duty of the Revenue is to adhere to a

consistent practice which has been accepted and followed. (iii) “Principle of Consistency” can be changed only if there is a change in law or facts-not otherwise.”

12. Thus, for the authoritative pronouncements above, when the rule of consistency applied to the case in hand, it can be said that, the taxing authority is under obligation to maintain uniformity in the interpretation of classification of goods related to the same dealer in different periods under assessment. Hence, it can safely be said that the first appellate authority is justified under law while following the above rule. So the impugned orders call for no interference.

13. For the foregoing reasons, it is observed that, both the appeals stand dismissed as of no merit. The cross objections are disposed of accordingly.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member