

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.  
S.A.No. 53(C)/2016-17**

(From the order of the Id.Addl.CST (Appeal), South Zone, Berhampur, in Appeal  
No. AA(CST)41/2015-16,  
dtd.30.07.2016, modifying the order of Assessing Officer)

**Present: Sri S. Mohanty & Sri R.K. Pattnaik**  
**2<sup>nd</sup> Judicial Member Accounts Member-III**

M/s. Adani Enterprisers Ltd.,  
At-HIG-20, BDA Colony,  
Jaydev Vihar, Bhubaneswar. ... Appellant

**-Versus-**

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

For the Appellant : Mr. P.K. Harichandan, Advocate  
For the Respondent : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

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Date of Hearing: 23.06.2018 \*\*\* Date of Order: 25.06.2018

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**ORDER**

Provisional assessment for the period from 01.07.2014 to 30.09.2014 u/r.12(1) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules) had taken place relating to dealer's unit. In course of the proceeding, the Assessing Officer/Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (in short, AO/DCST) determined the GTO of the dealer at Rs.40,35,30,219/- and NTO at Rs.39,56,17,862/-. Since the dealer could produce declaration form 'C' in original for an amount of Rs.26,91,37,359/-, the rest amount of NTO i.e. Rs.12,64,80,503/- was taxed without concession. Accordingly, the total tax due was calculated at Rs.1,17,06,772/-. The dealer was found to have paid tax of Rs.79,12,358/- along with the return. Hence, the balance tax due was determined at Rs.37,94,414/-.

2. The assessee-dealer carried the matter before the First Appellate Authority/Addl.Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/Addl.CST) on the plea that, sufficient opportunity was not

provided to procure and produce the necessary declaration form 'C'. The appellate authority in the impugned order accepted two numbers of declaration forms on production by the dealer to the extent of Rs.11,93,82,216/-. As a result, the dealer was still found short for declaration form 'C' for the balance amount of Rs.70,98,287/-. Thereafter, the FAA re-calculated the tax due which is reduced to Rs.2,12,948/-.

3. When the matters stood thus, on this backdrop the dealer preferred this second appeal on the contention that, both the fora below were in hurry in disposing the lis. As such the dealer could not get sufficient opportunity to produce declaration form in full. It is further contended that, the original assessment was barred by limitation.

4. In course of the hearing, the counsel for the dealer advanced additional grounds with notice to the State stating therein the fact that, as per the terms and conditions of the trade relationship between the dealer and his purchaser NTPC and the latter on due acceptance of the goods settles the price finally and in that procedure during the tax period in question though the dealer had shown to have sold goods amounting to Rs.11,15,43,877/- but the final price settled at a latter period at Rs.10,44,45,591/-, thereby, the price became reduced to Rs.70,98,286/-. In consequence thereof, the purchaser NTPC had issued 'C' declaration form of Rs.10,65,34,502/-, which was accepted by the FAA. But at a latter stage, the purchaser NTPC issued credit notes for this differential amount. It is contended that, the amount of credit notes should be taken into consideration and the tax due as calculated should be deleted.

In support of his contention, the dealer has filed four numbers of credit notes (in Xerox). Learned Counsel for the dealer, Mr. Harichandan placed reliance in the matter of **Parishudh Machines Private Limited Vrs. Commissioner of Trade Tax, U.P., Lucknow (2007) 8 VST 547 (All)**, whereby the Hon'ble Court has held that, the amount of credit notes cannot be treated as taxable turnover since the same is not a part of sale price.

With the above undisputed factual scenario, when we perused the assessment order, we found that, the dealer's collection of CST of Rs.79,12,358/- against the total sale was considered by both the fora below. Learned Addl. Standing Counsel Mr. Pradhan argued that, the CST will necessarily be reduced in the event of acceptance of credit notes. But, here the fact remains the dealer has not filed any revised return on receipt of credit note. We also found that, other discrepancies between the assessment order and the submission of the dealer. As per the assessment order, an amount of Rs.12,64,80,503/- was a part of the NTO. As per the impugned order, the FAA has held the base value against this amount at Rs.11,93,82,216/-. From this discrepancy as mentioned above and in view of the consensus view of us regarding the credit notes mentioned above in the light of the decision relied by the dealer, we are of the view that, this is a fit case to be remanded back to the AO for assessment afresh. Accordingly, it is ordered.

The appeal is allowed. The matter is remanded back to the AO, who will do well to consider the credit notes produced by the dealer and the discrepancies in the TTO and base value as per the observation above and then calculate the tax due, if any, to be paid by the dealer. The whole exercise must be completed within a period of four months from the date of receipt of this order. The dealer is directed to appear before the AO within a fortnight with copy of this order to take further instruction in the matter.

Dictated and Corrected by me,

(S. Mohanty)  
2<sup>nd</sup> Judicial Member

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I agree,

(R.K. Pattnaik)  
Accounts Member-III