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

S.A. No. 1404 of 2000-01

(Arising out of the order of learned ACST, Balasore Range, Balasore, in Sales Tax Appeal No. AA- 165/BA- 1994-95, disposed of on dt. 30.11.2000)

Present : **Smt. Suchismita Misra, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri Prabhat Ch. Pathy, Accounts Member-I

M/s. Birla Tyres,
At/PO- Chhanapur, Dist. Balasore. . . . Appellant

- V e r s u s –

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

For the Appellant … Mr. D.K. Mohanty, Advocate
For the Respondent … Mr. M.S. Raman, Addl. S.C. (CT)

Date of hearing: 14.08.2019 **** Date of order: 10.09.2019

O R D E R

This appeal is directed against the order dated 30.11.2000 passed by the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (in short, "first appellate authority") in Sales Tax Appeal No. AA- 165/BA- 1994-95 confirming the order of assessment passed by the Sales Tax Officer, Balasore Circle, Balasore (in short, 'assessing officer') against the dealer-assessee u/S. 12(4) of the Odisha

Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the period 1992-93.

2. The facts, in brief, are that the assessee M/s. Birla Tyres, Proprietor M/s. Kesoram Industries Ltd. at Balasore is a manufacturer of automobile tyres, tubes etc. In response to the notice which was issued u/S. 12(4) of the OST Act and served on the dealer for assessment pertaining to the period 1992-93 its Advocate appeared before the authority concerned and produced the books of account of the dealer before him. The Asst. Officer-in-charge of the dealer-Company who was looking after the sales tax matter of the business establishment appeared before the assessing officer at that time. This dealer M/s. Birla Tyres is a Unit of Kesoram Industries Ltd. which was granted industrial licence in May, 1988 by the Government of India, Ministry of Industry to manufacture automobile tyres and tubes with annual capacity of 15,00,000 in number and the project was ready for production on 10.05.1991. Since regular sales from this business concern started taking place w.e.f. 26.08.1991 the dealer Unit was assessed for the year 1991-92. After allowing certain exemptions in favour of the dealer-assessee in terms of provisions of law the assessing officer calculated the total tax liability of the dealer at ₹51,08,347.52 and surcharge @ 10% thereon amounting to ₹5,10,834.75, thus in total ₹56,19,182.27. As the dealer had already paid ₹974.12 at the time of

submission of returns and ₹49,99,653.00 on demand u/S. 13(4)(a) of the OST Act a notice was issued requiring it to pay a sum of ₹6,18,555.00 only towards its tax liability for that year.

Being aggrieved with this order the dealer preferred an appeal before the first appellate authority. As revealed from the order of the first appellate authority the dealer's only contention before him was that the Sales Tax Officer did not believe the return of goods by the purchasers as per the stock account and entries made by this dealer in its sales register despite his verifying all the documents of the business concern of the dealer-appellant. Further on account of dealer's not having relevant way bill and transport receipt to prove return of those goods he (the Sales Tax Officer) refused to deduct a sum of ₹66,00,197.00 from its GTO while calculating its tax liability. The dealer-assessee contended before the first appellate authority that it had shown the stock register wherein relevant entries were made pertaining to those return goods and had shown the credit notes in respect of those transactions indicating adjustment of dues against the bills raised. However, the first appellate authority after hearing the appeal preferred by the dealer with the aforesaid contention also held that the goods in question worth ₹66,00,197.00 were never brought back by the assessee from the purchasers and thus he confirmed the order of assessment.

3. The dealer-assessee then preferred this second appeal assailing the aforesaid order of the first appellate authority on the grounds that it had sold tyres, tubes and flaps to its customers worth ₹66,00,197.00 at Cuttack and Sambalpur Branch. As the goods sold were not released by the purchasing dealers those were returned to the Company particularly at Sambalpur and Cuttack Branch. The dealer while filing returns had paid tax on sale of those goods worth ₹66,00,197.00 and when the goods were not released by the purchasing dealers the dealer-assessee claimed deduction of the said amount from its GTO as well as from the TTO alongwith tax paid thereon. At the stage of assessment the dealer had produced all its books of account which included receipt register of goods, stock register, sales register, debit vouchers, stock receipt invoices, sales invoices and other relevant accounts. The assessing officer after examining its books of account did not allow the deduction of ₹66,00,197.00 from the GTO of the dealer-assessee. The Sales Tax Officer though had accepted about the return of goods yet he refused to consider its genuineness only on the ground that the dealer could not place before him documents such as way bills and other transport documents indicating the return of goods physically to the business concern of the dealer-assessee during that relevant period. It was further contended on behalf of the dealer-assessee that the goods in question though sold out to some dealers inside the State

yet when they failed to lift the same from its premises and did not show their interest to take delivery of the same in time those articles were again returned to the stock of the dealer-assessee. In the circumstances the dealer-assessee submitted that the aforesaid sum i.e. ₹66,00,197.00 be deducted from its GTO as well as TTO and the amount of tax paid by it in excess be refunded to it.

No cross-objection has been filed on behalf of the State.

4. On perusal of the order of assessment as well as the impugned order alongwith the LCR it could be gathered that there had been no denial of the fact about the excess stock worth ₹66,00,197.00 found in the business premises of the dealer when the assessment was completed. In course of hearing learned Counsel for the dealer-assessee submitted that the dealer had sold those goods to different buyers and collected tax thereon. Further it had deposited the said collected tax in the Government Treasury immediately. It had furnished the proof of its depositing the tax in the Government Treasury alongwith its return. However, when those goods were returned to stock the dealer besides entering the same in its stock register also claimed refund of tax already paid by it in respect of those goods. In this regard the order of assessment reveals that the assessing officer had examined a number of documents including the books of account of the dealer-assessee

during the assessment yet he did not choose to ascertain anything from the buyers who were named by the dealer-assessee to have purchased those goods in question. The authenticity or genuineness regarding these questionable transactions between the dealer-assessee and those buyer-dealers could have been verified by the assessing officer because the pre-condition for imposition of tax essentially requires proof of sale or purchase of goods between the dealers respectively. It cannot be perceived that the assessing officer did not have the authority to examine the disputed transactions of the present dealer with those named buyers before raising a demand of tax thereon.

5. In its appeal before the first appellate authority the dealer had brought to the notice of the authority concerned that relevant entries reflecting return of goods were made in the corresponding register maintained by it, but even then the first appellate authority could not believe those entries as the dealer had not submitted the revised returns as per the provisions u/S. 11(2) of the OST Act. On verification the first appellate authority could find that the revised return from the months of January, 1993 to March, 1993 were submitted on 27.10.1993. He further noticed that the revised returns from April, 1992 to March, 1993 were submitted without reflecting the date of its submission for which he concluded that both the revised returns from April, 1992 to March, 1993 and the annual return for the

year 1992-93 were submitted by the dealer at the time of assessment done by the Sales Tax Officer. Therefore, for the aforesaid reason and also on account of dealer's failure to adduce evidence in respect of transportation of goods which was received back by it he concluded that the goods in question were never brought back.

Admittedly in the instant case neither the assessing officer nor the first appellate authority had rejected the books of account of the dealer. On the other hand, it is revealed from the order of assessment that the dealer had meticulously maintained its books of account, ledgers, sales register, invoices etc. which were examined by the assessing officer in detail. It seems the assessing officer as well as the first appellate authority had their reservation with regard to this return of goods as claimed by the dealer since it failed to produce the way bill as a proof of return of those goods. In course of hearing argument it was submitted on behalf of the dealer-assessee that the use of way bill was made mandatory w.e.f. 15.06.1996 and since this assessment was done for the year 1992-93 the authorities below had no justification in rejecting the plea of the dealer-assessee about return of goods on the pretext of its not being able to produce the way bills showing transportation of those goods from the dealers who had purchased those goods from it and subsequently returned the same. It was further contended on behalf of the dealer-assessee that those

goods were not physically removed from its business premises for some unavoidable reasons even though those were sold to some dealers by that time and on this ground alone i.e. non-removal of goods from its premises the dealer could not be held liable for making payment of tax on the value of those goods.

Considering the aforesaid argument as advanced on behalf of the dealer it is felt that either the assessing officer or the first appellate authority should have done well by ascertaining from the buying dealers about the transactions held between this dealer and them in respect of goods worth ₹66,00,197.00. They should have recorded their statements and collected some documentary evidence from them to find out if this dealer was advancing a genuine explanation to reconcile the excess stock position in its business concern. This is a very old case but a dealer certainly cannot be subjected to tax liability unless there had been actually sale or purchase transaction of those goods and further those goods were already taxed once as the dealer claims that he had already paid the tax by submitting its revised returns for that relevant period.

6. In such circumstances it is, therefore, held that ends of justice would serve its best if the matter would be remitted back to the assessing officer for making fresh assessment while verifying the authenticity of the dealer’s transaction of goods worth ₹66,00,197.00

only with the dealers named by it. If it would be found that the goods worth ₹66,00,197.00 was actually returned to stock of the dealer-assessee by those purchasers in question following the relevant rules then only the assessing officer shall do well to make fresh assessment by deducting this amount from the GTO and TTO of the dealer for that relevant period.

7. In the result the appeal is allowed and the impugned order is hereby set aside. The matter is remitted back to the assessing officer with a direction to make fresh assessment in the line of observations as reflected in the foregoing paragraph within three months from the date of receipt of this order.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

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