

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

S.A. No. 118(C) of 2004-05

(Arising out of the order of the learned Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar, in First Appeal Case No.AAC.1/BH.I/04-05, disposed of on dtd.10.09.2004)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

M/s. Alfa Transformers (P) Ltd.,
3337, Mancheswar Industrial Estate,
Bhubaneswar-751010. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. N. Panda, Advocate
For the Respondent : Mr. M.L. Agarwal, S.C.

Date of hearing: 11.04.2022 *** Date of order: 19.04.2022

ORDER

The dealer-assessee has preferred this appeal assailing the order dtd.10.09.2004 passed by the learned Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter referred to as, the learned FAA) in First Appeal Case No.AAC.1/BH.I/04-05, thereby confirming the order of assessment dtd.16.02.2004 passed by

the learned Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, the learned STO) raising demand of Rs.6,57,972.00 for the assessment year 1991-92 in the assessment framed u/r.12(4) of the CST(O) rules.

2. The relevant facts leading to the filing of the present second appeal are that, the dealer M/s. Alfa Transformers (P) Ltd., Industrial Estate, Bhubaneswar is a SSI unit dealing in assembling of power transformers, manufacturer of distribution transformers, repairing of transformers etc. The dealer-assessee was assessed u/s.12(4) of the CST(O) Rules, wherein he disclosed interstate sales of electrical transformers to the Executive Engineer, Central Rural Electrification Division, Imphal, Manipur for Rs.1,29,22,635.47 which included freight and insurance charges of Rs.11,89,734.36. The entire sale of electrical transformers to the Executive Engineer, Central Rural Electrification Division, Imphal, Manipur was claimed as tax exempted under the CST Act which was not accepted by the assessing authority and due tax had been imposed on such sale. The dealer-assessee challenging such order went in first appeal before the ACST who also dismissed the appeal confirming the order of the assessing authority. The dealer-assessee being further aggrieved with such order of the first appellate authority preferred second appeal before this Tribunal, wherein the order of the first appellate authority was set

aside and matter was remitted back to the assessing authority for fresh examination of the case giving the dealer one more opportunity to produce the documents relating to claim of such exemption.

2(a) Pursuant to the order of this Tribunal, the assessing authority issued intimation to the dealer who appeared through its Advocate and produced the books of account and documents which was disclosed before this forum. The assessing authority on examination of the documents produced by the dealer-assessee found that Annexure-1 was the only amended copy of permanent registration certificate granted by the DIC, Bhubaneswar showing the date of production as 26.03.1988 and the Annexure-10 was the certificate granted by the Project Manager, DIC, Bhubaneswar under IPR'89 disclosing the date of commercial production as 23.01.1988. The certificate issued related to the period from 23.01.1993 to 22.01.1994, whereas the period of assessment was for the year 1991-92. Therefore, the assessing authority did not accept the certificate produced by the dealer and it made correspondence with the DIC. Pursuant to such correspondences the DIC vide letter No.649 dtd.10.02.2004 intimated the assessing authority that the eligibility certificate for the Central Sales Tax sales had been issued in favour of the dealer-assessee vide letter No.1410 dtd.18.02.1993 on finished products of the

dealer from 23.01.1993 to 22.01.1994. Therefore, the assessing authority rejected the claim of exemption for the year 1991-92 and passed order determining the gross turnover at Rs.1,29,22,835.47. Subsequently, the assessment of the dealer-assessee by the same year was completed u/r.10 of the CST(O) Rules in which freight charges was disallowed and demand was raised accordingly. Thus, the assessing authority treated the GTO determined as NTO and it calculated tax @ 10% which came to Rs.15,50,740.25. Since the dealer had already been assessed u/r.10 of the CST(O) Rules and it had paid Rs.7,50,000.00, the balance amount payable was determined at Rs.6,57,972.00.

3. The dealer-assessee challenging the above demand raised by the assessing authority preferred appeal before the first appellate authority on the ground that the order of assessment passed by the assessing authority was arbitrary, excessive and not based on the materials available on record; that the dealer was not given reasonable opportunity of hearing; that when the date of commercial production was 23.01.1988 the exemption of payment of CST would be automatic for a period of seven years covering the impugned period; that the learned assessing authority disallowed the claim of exemption for the year 1991-92 without discussing anything about the entitlement of the dealer-assessee to claim such

exemption as per law and that the first appellate authority on hearing the dealer-assessee and examining the materials on record dismissed the appeal thereby confirming the order of assessment passed by the learned STO on the ground that the dealer-assessee did not produce the required certificate to claim exemption under IPR'89 for the year 1991-92. The dealer being further aggrieved such demand raised by the first appellate authority has preferred the present second appeal.

4. In course of hearing of the second appeal, the dealer-assessee produced the required eligibility certificate showing that it was valid from 01.12.1991 to 23.01.1993 covering major part of the assessment. He vehemently urged that the certificate filed under Annexure-4 was also filed before the assessing authority which was not discussed and taken into consideration. The only dispute before the authorities below was about the claim of exemption under IPR'89 which was rejected solely on the ground that the dealer-assessee did not produce the eligibility certificate. He submits to take into consideration the eligibility certificate filed under Annexure-4 and allow the claim of exemption in respect of the sales effected by the dealer-assessee outside the State.

Per contra, the learned Standing Counsel supporting the impugned order vehemently urged that the dealer-assessee's claim of exemption of tax on CST sale

was disallowed for non-production of the eligibility certificate. Had such certificate been filed before the assessing authority, the same would have been taken into consideration. The claim made by the dealer before this Tribunal that such certificates had been filed before the authorities below is false and unfounded. He submits to disallow the claim of the dealer-assessee for sales tax exemption on CST sale effected by it for non-production of the eligibility certificate.

5. We have heard the rival submissions of the parties, gone through the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials available on record. The sole dispute raised in the present second appeal is, whether the dealer was entitled to sales tax exemption under IPR'89 in respect of interstate sale effected by it during the year 1991-92? There is no dispute that the dealer-assessee is a SSI unit being registered under the DIC, Bhubaneswar having permanent Registration Certificate No.15/15/01886 dtd.16.04.1988. As per the said certificate, the dealer has been authorised of assembling of power transformers with date of production certified as 23.01.1988 and manufacturing of distribution transformers and accessories like H.T. & L.T. coils, core assembly, core and coir assembly, laminated cores and transformer tanks whose date of production has been certified as

26.03.1988. During the year 1991-92, the dealer sold transformers to the Executive Engineer, Central Rural Electrification Division, Imphal, Manipur whose productions are covered under Item No.1 & 2. The exemption under IPR'89 is allowed under Entry No.30FFF which specifies exemption on sale of finished products of new small scale industries set up or expansion, modernisation/diversification undertaken on the basis of separate project report which has been duly apprised by financial institutions and this exemption will be limited to the extent of commercial production over and above the original installed capacity. On perusal of the impugned orders of the forums below, we find that the claim of exemption under IPR'89 was disallowed on account of non-production of relevant documents before them. In course of hearing of the second appeal, the dealer-assessee produced the documents vide Annexure-4 i.e. eligibility certificate issued by the District Industries Centre, Bhubaneswar under IPR'89 vide Sl. No.107 dtd.16.12.1991. The certificate shows that the unit started fixed capital investment on or after 01.04.1986 and has gone into commercial production on 23.01.1988/26.03.1988/24.02.1998. The certificate was valid from 01.12.1991 to 22.01.1993 covering the major part of the impugned assessment year 1991-92. The date of commercial production being 23.01.1988, the dealer was entitled to get such exemption till January, 1995

covering the assessment period 1991-92. The impugned orders of the forum below do not show that such certificate of eligibility issued by DIC, Bhubaneswar was taken into consideration and discussed. It is claimed by the dealer that such certificate was filed before the forums below which was not taken into consideration, on the other hand such allegation was refuted by the learned Standing Counsel. This Tribunal without entering into the dispute whether the certificate was filed before the assessing authority or not, think it prudent to remit the matter back to the assessing authority to examine the genuineness of the certificate to be produced by the dealer-assessee and decide afresh the claim of exemption under IPR'89 for the impugned period in question.

6. In view of the discussions made above, the appeal is allowed. The impugned orders of the forums below are hereby set aside and the matter is remitted back to the assessing authority with a direction to give an opportunity of hearing to the dealer-assessee to produce relevant documents including the eligibility certificate under Annexure-4 filed before us and after examining the genuineness of such documents to recompute the tax liability of the dealer-assessee taking into consideration the eligibility certificate issued by DIC, Bhubaneswar on 17.12.1991. The entire exercise shall be completed within

a period of three months from the date of receipt of copy of this order.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(S. Mishra)
Accounts Member-II