

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

Present: **Smt. Suchismita Misra**, Chairman,  
**Shri A.K. Dalbehera**, 1<sup>st</sup> Judicial Member,  
&  
**Shri R.K. Pattnaik**, Accounts Member-III.

**S.A.No.1632 of 2006-07**

(Arising out of the order of the learned ACST (Appeal), Sundargarh Range,  
Rourkela, in First Appeal Case No. AA 57(RL II) 2005-06,  
disposed of on dtd.31.10.2006)

M/s. Hari Machines Limited,  
At/P.O.- Rajgangpur,  
Dist.- Sundargarh. ... Appellant

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

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

For the Appellant : N o n e  
For the Revenue : Mr. M.L. Agarwal, S.C.

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Date of hearing: 27.01.2020 \*\*\*\* Date of order: 10.02.2020  
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**ORDER**

This appeal is directed against the order dtd.31.10.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA 57(RL II) 2005-06, wherein he remanded the matter to the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, the learned STO) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter

referred to as, the OST Act) in respect of the appellant-dealer for the assessment year 2003-04.

2. The brief facts of the case are that, the appellant-dealer runs a heavy engineering work shops where it manufactures machineries, spare parts etc. basically of cement and refractory plants and sponge iron factory. The appellant-dealer used to purchase its raw materials and consumables etc. inside and outside the State and sells the finished products to the parties by both intrastate and interstate trade and commerce. In addition to the manufacturing activities of the dealer-company it undertakes job works i.e. machining of goods on pure labour charges according to the demands of the intending parties. In response to notice, the authorized representative of the appellant-dealer appeared and produced the books of account. On scrutiny of the documents the learned STO found that the dealer-appellant had utilized a little portion of consumables like electrodes, industrial gases, paints etc. in these works but had no definite account thereon. The learned STO as per the best judgment estimated such materials at Rs.1,00,000.00 and determined the GTO at Rs.36,20,31,308.00. After allowing deduction of Rs.1,52,47,968.00 towards STC and Rs.4,02,300.00 towards labour charges, the TTO was determined at Rs.34,63,81,040.00. Surcharge @ 10% on Rs.1,44,41,771.00 came to Rs.14,44,177.00. Tax along with surcharge came to Rs.1,60,22,263.00. The dealer having paid Rs.1,52,47,968.00 was required to pay the balance amount of Rs.7,74,295.00.

3. Being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST who after thorough verification remanded the matter back to the learned STO for fresh assessment. Being aggrieved by the order of the learned ACST, the appellant-dealer preferred this second appeal.

4. No cross objection has been filed by the respondent-Revenue.

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such it was heard *ex parte* and is disposed of on merit. The learned Standing Counsel appearing for the respondent-Revenue submitted that, the learned ACST has considered the matter properly and passed the order and as such the order passed by the learned ACST suffers from no infirmity. The second appeal preferred by the appellant-dealer has no merit and as such the same is liable to be dismissed.

6. Perused the orders of both the learned fora below and the other materials on record. We also perused the grounds of appeal. From the materials on record, it is seen that the items used by the appellant-dealer are electrodes, industrial gases and paints. The only item i.e. industrial gases comes within the purview of consumables and the appellant-dealer did not maintain any type of account to show the exact amount of consumables utilized in the job work. Since paints and electrodes are not consumables, the learned STO was justified to determine the same at Rs.1,00,000.00 in absence of proper books of account. The appellant-dealer had produced limited number of form-IV and the wanting forms were not submitted by the appellant-dealer fully. The assessment order reveals that the appellant-dealer failed to furnish the form-IV for Rs.1,34,82,375.00 and calculated the differential tax which he is liable to pay after allowing the concessional rate of tax @ 4%. Finally, the taxable turnover was determined and the tax together with surcharge was calculated to be Rs.1,60,22,263.00. As the appellant-dealer had paid Rs.1,52,47,968.00 he was required to pay the balance amount of Rs.7,74,295.00. As the appellant-dealer could produce some declarations in form-IV for Rs.1,71,68,000.00 before the first appellate authority (learned ACST), the learned ACST has rightly remanded

back the matter to the learned STO for necessary verification regards the validity and correctness of the forms so submitted and also to complete assessment again. The grounds taken by the appellant-dealer at the stage of second appeal are baseless. Hence we do not find any infirmity in the order of the learned ACST.

7. In the result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

Sd/-  
(A.K. Dalbehera)  
1<sup>st</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(R.K. Pattnaik)  
Accounts Member-III