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

S.A.No.20 of 2017-18.

(Arising out of the order of the ld. Addl. Commissioner of Sales Tax, Odisha, Cuttack, in First Appeal Case No. CU-II-AA-22/2003-04 disposed of on 31.05.2017.)

Present: Smt. Suchismita Misra & Shri P.C. Pathy
Chairman Accounts Member-I

M/s. Ashok Leyland Ltd.,
Parts Ware House, At/Po- Gopalpur,
Cuttack. ... Appellant.

- V e r s u s -

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

For the Appellant ... Shri S.R Das, Advocate.
For the Respondent ... Shri M.L. Agarwal, S.C. (C.T.)

Date of Hearing: 24.07.2018 *** Date of Order: 21.08.2018

O R D E R

The dealer challenges the order dated 31.05.2017 passed by learned Addl. Commissioner of Sales Tax, Odisha, Cuttack (in short, 'ld. first appellate authority') in appeal case no. CU-II-AA-22/2003-04 in reducing the demand of Rs.3,69,332.00 raised by the ld. Asst. Commissioner of Sales Tax, (Assessment), Cuttack-II Range, Cuttack (in short, 'ld. assessing authority') under section 12(4) of the Orissa Sales Tax Act (in short, 'OST Act') for the tax period 2000-01 vide order of assessment dated 31.12.2003, to Rs.1,68,483.00.

2. The brief facts of the case are that the appellant-company carries on business in motor parts (manufacture by the company). In course of verification of the books of accounts at the time for assessment the ld assessing

authority found that the instant dealer has claimed deduction for Rs.12,33,044.00 on account of credit note issued but on demand the representative on behalf of the dealer failed to produce the account of stock in relation to the goods sold and returned even though the opportunity of time was extended for the purpose. As no proof was produced to explain that the goods sold is debited from the stock and when returned there is credit of same into the stock account, the ld. assessing authority subjected the amount exigible to tax @12% OST. In addition to this, the ld. assessing authority also observed that the dealer has sold diesel engines to the tune of Rs.10,91,574.00 against declaration in Form-XXXIV which he treated as machineries subject to tax at the first point of sale by the dealer @16% OST. Accordingly the assessment was completed resulting in extra demand of Rs.3,69,332.00. This led the dealer to prefer first appeal against the order of ld. assessing authority.

The ld. first appellate authority after careful consideration concluded that the engine assembles/diesel engines of Ashok Leyland sold by the instant dealer against Form-XXXIV is exigible to tax @12% as per entry sl. No.93-A of List-C of OST rate to be taxed at the last point of such sale and does not fall under sl. No. 70 of such list as claimed by the ld. assessing authority. The ld first appellate authority was satisfied that the goods sold by the dealer against Form-XXXIV has already suffered OST in the hands of the subsequent purchasers on subsequent sale who have filed evidence to this effect. Hence, turnover of Rs.10,91,574.00 on the score was treated as out of the purview of further taxation as the OST Act prescribes levy of tax on a single point. But so

far the issue of credit note for Rs.12,33,043.00 is concerned towards sale return, the findings of the ld. assessing authority was accepted by the ld. first appellate authority in absence of any corroborative and factual evidence adduced on behalf of the dealer towards sales return.

3. Being aggrieved the instant dealer has preferred second appeal on the following grounds:-

The impugned order dated.31.4.2017 (with ought to be 31.05.2017) passed by the learned Appellate Authority regarding law-full claim of Sales Return is highly unlawful and illegal, null and void, erroneous and highly capricious, highly perverse and arbitrary and is not sustainable in the eye of law.

The ld Addl. Commissioner of Sales Tax has not considered the facts of the case as well as the judicial norms and judicial precedents relating to issue involved in the matter and arbitrarily passed the impugned order without considering that the appellant is a company and not a retail dealer.

The ld. assessing authority has failed to understand the matter of sales return due to manufacturing defect and unspecified motor parts worth Rs.12,33,043.00. In the instant case the sale was cancelled rather than altered, due to the fact of supply of defective goods by the principal, and total money was refunded to the dealer.

There can be no sale of defective goods so sale cannot take place, the appellant produce all the related documents relating to this matter.

The contention of the ld. first appellate authority regarding non submission of stock account in page 6 of his

appeal order has been misquoted rather in the face of record during the time of disposal of stay petition the appellant approached the authority with clean hand, produced all other records including stock register showing the parts when sold is debited from the stock and when returned, credited in the stock register, for which the ld. first appellate authority considering the prima-facie merit of the matter stayed the operation of the assessment order in full.

As for as production of credit notes are concerned those were not statutory forms like in the VAT Act, in OST Act there was no provision for Credit notes. The appellant is entitled to deduction on credit notes amounting to Rs.12,33,043.00 as the goods sent on sale were subsequently returned to the appellant company being found to be damaged and non specific. The state cannot levy tax in a transaction of sale involving goods which are non specific and damaged and that explanation to sec.2(i) of the O.S.T. Act delineating turnover of Sales and Rule 4(A) of the O.S.T. Rule only deals with Sales return and not with the returns of damaged and unspecified goods by the purchaser.

The case of the appellant does not fall into the definition U/s.2(i) of the OST Act as the goods were sent to the customer not on approval but on sale or return basis. Till such time goods are not accepted by the customer, there cannot be a concluded event of sale for the state to get its tax. The ld. assessing authority as well as the ld. first appellate authority did not examine the transaction of the petitioner in its full legal implication and applied inapplicable law in consideration of irrelevant facts, only to create a demand on the appellant.

The general scheme of Orissa Sales Tax Act is single point levy. It is left to the State Government, to prescribe point at which goods may be taxed. The legislature has strictly prohibited the State Government from levying tax on the same goods at more than one point in the same series of sales or purchases by successive dealers, at this juncture the judgement of Single Trading Co Vrs. State of Orissa 1988 (69) STC Page 329, is important to refer.

4. The respondent-Revenue has filed cross objections as follows:-

(i) There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law.

(ii) The ld. assessing authority & first appellate authority have rightly completed assessment/appeal basing on the statutory provisions under the Act and Rules with regard to the points raised by the dealer.

(iii) The order of the first appellate authority is crystal clear with respect to all points raised by the dealer. He has dealt each and every item which is self-explanatory & requires no further interference.

5. Shri S.R. Das, the ld. Advocate on behalf of the dealer-appellant appearing at the time of hearing vehemently objected to the findings of the ld. first appellate authority. He laid more stress on stay order passed by the ld. first appellate authority and reiterated the grounds already filed and preferred to file a written submission at the time of hearing in line with grounds of appeal which is permitted.

(a) In written submission he has stated that the only issue involved in the matter of additional demand generation is

due to non-inclusion of Rs.12,33,043.00 towards return goods during the period 2000-2001. The ld. assessing authority completed the process of assessment vide order dated 24.02.2005 (actually the order is dated 31.12.2003) on the ground that the reason for submitting the revised statement showing variation in the return filed and sale statement is not explained. Therefore the statutory returns are accepted as the reflection of sales. The dealer successfully appeared before the Additional Commissioner of Sales Tax, C.Z., produced all the books of accounts including stock register and vide order dated 28.06.2005 got full stay in this matter. It was observed in such order that ..In respect of disallowance of claim of deduction on account of credit noted for Rs.12.33.043.00, it is submitted that the goods were sent on sales or return basis. The sales have not been completed as goods were retuned. Therefore, the turnover could not be assessed to tax. Copies of statements indicating the credit notes are filed. The ld. first appellate authority without considering the issue of sales or return basis, applied an inapplicable law for deduction of taxable turnover subject to submission of credit notes by the appellant. Hence it is a matter of consideration of this Hon'ble Bench whether it is appropriate to impose tax on Credit Notes once again, when the true account of purchase, sale and stock statements were duly produced and maintained under Sec.15 of the OST Act.

(b) On the other hand Sec.2(i) of the OST Act, on turnover of Sales, there is provision of such sales return adjustments without having any credit notes or debit notes.

(c) As for disallowance of credit note is concerned, In a normal motor parts business it is a common practice for dealers for reversal of invoice on account of sales return. The Hon'ble Addl. Commissioner of Sales Tax (C.Z.), rightly accepted the contention of the appellant at the time of disposal of stay petition.

6 Shri M.L. Agarwal, ld. Standing Counsel (C.T.) appearing on behalf of the Revenue reiterated the points raised in cross objections. He vehemently argued that the ld. first appellate authority in his speaking appeal order has elaborately dealt the matter and has come to the definite finding in absence of any corroborative and factual evidence adduced by the dealer either before the ld. assessing authority or before the first appellate authority at the time of hearings of the case.

Heard both the parties. Gone through the grounds of appeal, impugned orders of the assessment as well as appeal, relevant appeal and assessment records, written submission filed on behalf of the dealer-appellant at the time of hearing and cross objection filed by the respondent-Revenue. The question now for consideration is whether, in the facts and circumstances of the case, the ld. first appellate authority is justified in upholding the findings made by the ld. assessing authority in declining the claim of dealer towards deduction for Rs.12,33,043.00 from his turnover of sales on account of sales return in absence of submission of evidence to the effect? In this connection the findings of the ld. first appellate authority at Page-7 is reproduced below.

"....On issue of credit note for Rs.12,33,043.00 towards sale return, it is revealed from the assessment order that the LAO

has rejected the contention taken by the dealer on the grounds of non-submission of stock account at the time of assessment. The LAO concluded that since the dealer could not produce any proof to explain that the goods sold is debited from the stock & when returned, credited to his stock account, he took the above amount to 12% taxable goods & taxed it accordingly. Before this forum, the ld Advocate, reiterating his grounds of appeal, argued that his client is entitled to deduction on credit notes amounting to Rs.12,33,043.00 as the goods sent on sale were subsequently returned to this dealer being found to be damaged and non-specific. He also filed details of turnover statement for the financial year 2000-2001. However, he could not produce the stock account where from it could have been ascertained whether goods sold has been debited from his stock account and subsequently credited on return from respective customers. Further, the ld. Advocate reasonably failed in submitting the credit notes issued by his client and debit notes received from dealers/customers who returned such goods to ascertain claim of such deductions. Moreover, not a single dealer/customer who have returned such goods, have addressed any letter to this dealer towards the same, submitting proof thereon."

The ld. Advocate on behalf of the dealer-appellant failed to produce any valid documentary evidences and books of accounts in support of claim of sales returns made and corresponding entries in the books of accounts before the Bench. He also failed to indicate the applicability of judgment of the Hon'ble Court cited by him so far this appeal is concerned. Thus, he has not been able to prove that

findings of the ld. first appellate authority is wrong and incorrect. We, therefore, find no reason to interfere with the impugned appeal order.

7. In the result, we find no merit in the appeal, which is accordingly dismissed. The impugned order is confirmed. Cross objection is disposed of accordingly.

Dictated and corrected by me,

(P. C. Pathy)
Accounts Member-I

(P. C. Pathy)
Accounts Member-I

I agree,

(Suchismita Misra)
Chairman