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

S.A. No. 12 of 2012-13

(Arising out of the order of learned Addl. CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA- 91/2003-04, disposed of on dt. 25.01.2012)

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

M/s. Rajpath Motors,
Bapuji Nagar, Bhubaneswar. . . . Appellant

- V e r s u s –

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

For the Appellant … Mr. B.K. Patnaik, Advocate
For the Respondent … Mr. S.K. Pradhan, Addl. S.C. (CT)

Date of hearing: 13.01.2020 **** Date of order: 31.01.2020

O R D E R

This appeal is directed against the order dated 25.01.2012 passed by the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, "first appellate authority") in Appeal Case No. AA-91/2003-04 confirming the assessment done by the Asst. Commissioner of Sales Tax (Assessment), Puri Range, Bhubaneswar (in short, 'assessing officer') u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in

short, 'OST Act') in respect of the dealer-assessee for the tax period 1999-2000.

2. As revealed from the case record the dealer-assessee M/s. Rajpath Motors, Bhubaneswar is a partnership firm and it deals in TV sets, VCD, Audio, Fridge, Washing machine, Grinder, Cooler and Stabilizer, Tulu pumps, water heater etc. and spares on retail as well as wholesale basis. To run this business it purchases goods both from inside as well as outside the State of Odisha. A notice was issued to the dealer u/S. 12(4) of the OST Act for its assessment pertaining to the period 1999-2000 and in response to that notice the Accountant of the firm had appeared before the assessing officer and produced its books of account consisting of purchase register supported with purchase invoices, sale register supported with sale bills before him (the assessing officer) for examination of the same. The assessing officer could find that the dealer had made purchases worth ₹9,59,77,331.43 out of which it had purchased first point tax paid goods worth ₹8,39,39,209.68, against Form-XXXIV worth ₹46,69,928.34 and exempted purchase worth ₹30,08,467.00 thus in total ₹9,16,17,605.02. The balance amount of purchases i.e. ₹43,59,726.41 relates to outside purchase against Form-C. The dealer had returned the GTO at ₹9,49,47,985.79 which was accepted. However, as the dealer could not furnish Form-XXXIV in respect of sale of goods u/S. 5(2)(A)(a)(ii) worth

₹3,51,014.94 the same was disallowed by the assessing officer and it was taxed @ 12% Sales Tax. The assessing officer further disallowed the claim of the dealer-assessee towards exempted sales at ₹31,12,937.50 in respect of cooler and stabilizer purchased by the dealer from M/s. Protection Manufacturers and Patriot Marketing as there was no exemption certificate in respect of those goods after 01.08.1999. The exemption certificate of M/s. AARAM revealed that the unit was eligible for exemption of sales tax on sales of finished products only when sold at sales outlets of authorized Cooperative/Government agencies as defined in IPR, 1996. Therefore, it was held by the assessing officer that sales effected by the instant dealer (M/s. Rajpath Motors) was not exempted and for this he taxed the same @ 12% Sales Tax. He thus determined the GTO of the dealer-assessee at ₹9,49,47,985.79 and out of this amount he deducted ₹8,03,12,684.71 towards sale of 1st point tax paid goods. He further allowed deduction of ₹24,02,026.89 towards sales to registered dealer against Form-XXXIV; ₹73,684.50 towards labour and service charges and ₹9,37,859.13 towards collection of OST and then determined the TTO of the dealer at ₹1,12,21,730.56. He taxed the same @ 16% on ₹23,46,710.97, @ 12% on ₹87,15,479.00 and ₹4% on ₹1,59,540.59 and ultimately calculated the tax due of the dealer which came to ₹14,27,712.85. He calculated surcharge on this amount @ 15% which came to ₹2,14,156.92. Then

taking tax and surcharge together he calculated the total amount to be paid by the dealer towards its tax for that relevant period at ₹16,41,869.77. The dealer had already paid ₹10,66,463.00 u/R. 36 of the OST Rules for which the assessing officer had sent a demand notice requiring the dealer to pay ₹5,75,407.00 only.

Being aggrieved by this order the dealer preferred an appeal before the first appellate authority challenging the order of assessment to be unjust and improper in the facts and circumstances of the case. The dealer contended before the first appellate authority that it should have been given reasonable opportunity for production of wanting declaration in support of its claim for deduction towards sales to registered dealer under declaration in Form-XXXIV and that apart stabilizer and cooler being subject to levy of tax at the first point of sale and the dealer having purchased such items from M/s. Protection Manufacturers and Patriot Marketing who are manufacturers and registered dealers inside the State of Odisha, this dealer was not required to produce exemption certificate in support of its claim for a sum of ₹31,12,937.50 as per the settled principle of law. The finished products of M/s. AARAM having been purchased by the dealer from the registered dealer and sold thereafter the dealer should not have been saddled with levy of tax as those goods were sold according to IPR, 1996. However, when the first appellate authority noticed that the

dealer certainly failed to produce the balance declaration in Form-XXXIV for ₹3,51,014.94 as well as the required exemption certificate he confirmed the order of assessment as the same was found to be justified and as such did not require to be interfered with by him.

3. The dealer-assessee then carried the second appeal before this forum challenging the order of assessment as well as the order passed by the first appellate authority on the ground of same being arbitrary and bad in law in the facts and circumstances of the case. It contended before this forum that it was being engaged in trading of TV sets, VCD, Audio, Fridge, Washing machine, Grinder, Cooler, Stabilizer, Tulu pumps, water heaters etc. by purchasing these goods from inside and outside the State of Odisha. The stabilizers and coolers are first point tax paid goods and the dealer had purchased the same from M/s. Protection Manufacturers and M/s. Patriot Marketing who are manufacturers inside the State of Odisha as well as registered dealers. Therefore, as per settled position of law the instant dealer was not required to produce exemption certificate in support of its claim of deduction for a sum of ₹31,12,937.50 as the second seller inside the State. It had rightly claimed deduction towards sales to registered dealers against Form-XXXIV and in this regard the first appellate authority should have allowed sufficient opportunity to the dealer for submitting the wanting declaration forms before him. It is also

contended on behalf of the dealer-assessee that as the second appeal being the continuation of the assessment proceeding, it (the dealer) be given another opportunity to file the wanting declaration form. In the aforesaid circumstances it is urged on behalf of the dealer-assessee that as the finished products of M/s. AARAM were purchased by the dealer-assessee from Cooperative agencies and sold thereafter, the conclusion drawn by the assessing officer as well as the first appellate authority with regard to the tax liability of the dealer-assessee is arbitrary and as such should be quashed.

4. In this case cross-objection on behalf of the State has been filed wherein the State has challenged the maintainability of this appeal. It is also asserted on behalf of the State that the assessing officer has rightly completed the assessment basing on the statutory provisions under the Act and Rules and the same has been rightly confirmed by the first appellate authority. This second appeal as preferred by the dealer-assessee being not maintainable should be dismissed and the order passed by the first appellate authority may be upheld.

5. In course of hearing of the appeal learned Counsel appearing on behalf of the dealer-assessee submitted that it is always the first seller made liable to pay the tax on the first point tax paid goods. Section 8 of the OST Act provides the power of the State

Government to notify the points at which goods may be taxed or exempted. Under this provision the State Government issues notifications relating to the point in a series of sales or purchases at which any goods or classes of goods may be taxed or exempted from taxation as under this provision the same goods cannot be taxed at more than one point in the same series of sales or purchases by the successive dealers. Thus placing reliance on the judgments rendered by the Hon'ble Apex Court in the case of State of Tamil Nadu Vs. Govindan & Co., reported in [1994] 93 STC 185 (SC) he (learned Counsel for the dealer) pleaded that the dealer is not at all liable to pay tax on sale of coolers and stabilizers which it had purchased from the registered dealers inside the State of Odisha as the goods are liable for tax at the first point of sale.

6. In reply to this argument as advanced from the side of the dealer learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that first point levy of tax is no doubt a single point levy and for this the subsequent purchaser may not be made liable to bear the tax but the onus is always on this dealer to prove that the earlier sales made to it were taxable sales and that the tax was really payable by its seller. In the instant case the present dealer sought exemption from tax liability on the ground that those were exempted sales even at the hands of its seller. The decision cited on behalf of the

dealer-assessee does not cater to a situation as projected by the dealer in the instant case but the same precisely provides that in order to claim the benefit of tax exemption on the ground that the sales effected by the assessee being second sales, the assessee need not show that its seller had in fact paid the tax and further it is enough for the dealer to show that the earlier sales were taxable sales and as such the tax is really payable by its seller. In the instant case the dealer had submitted declarations in Form-XXXIV in support of certain amount and failed to submit the required forms in respect of the balance amount as determined by the assessing officer and confirmed by the first appellate authority. Not only that it (the dealer) also failed to establish that the purchases which it claimed to be exempted sales on the part of its seller were actually not taxable as such or the sales effected by its seller were taxable being first point tax paid goods and tax was really payable by its seller. It is further contended on behalf of the State that cooler and stabilizer were not first point tax paid goods as per the Rate Chart under the OST Act and as such Form-XXXIV were supposed to have been submitted by the dealer to seek exemption from its tax liability.

Learned Counsel for the dealer submitted that air cooler is a first point tax paid goods since the year 1978. The assessing officer should have verified all the documents pertaining to the present

dealer alongwith the documents of its seller for coming to a just conclusion in the case.

7. On a thorough reading of the orders of the assessing officer as well as the first appellate authority it is found that they both should have scrutinized the documents more thoroughly for segregation of the demand raised by the assessing officer and allowance of exemption in favour of the dealer on proper calculation of its tax liability taking into account the taxability of the voltage stabilizer during the relevant period as first point tax paid goods. Had they come to a conclusion that these two articles were first point tax paid goods during the assessment period i.e. the year 1999-2000 then they would have afforded the dealer an opportunity for adducing evidence to show that its seller was a registered dealer and the sales made by the selling dealer were taxable under the Act.

As per the Rate Chart under the OST Act the item 'Air-Cooler' is liable to OST @ 16% for the relevant period. The item is subjected to first point tax in a series of sales by successive dealers liable under the Act. As per Sl. No.8 of the List-D of the Rate Chart goods subject to first point sales tax under Rule 93-H includes air conditioning and cooling appliances and apparatus, including room cooler and water cooler are liable to be taxed at the first point of sales tax w.e.f. 01.04.1978 and the item 'Voltage Stabilizer' is not covered

under the category of goods subject to first point sales tax at that time. There was no specific entry of the item 'Voltage Stabilizer' under the OST Rate Chart prior to 01.04.2001. The rate of tax of Voltage Stabilizer as per Sl. No. 181 of List-C of the Rate Chart is 12% w.e.f. 01.04.2001. Prior to 01.04.2001 the item 'Voltage Stabilizer' being an electronics goods (as per the law settled by the Hon'ble Apex Court in the case of Commissioner of Trade Tax, U.P. Vs. S/S. Parikh Gramodyog Sansthan and the Commissioner of Trade Tax, U.P. Vs. S/S. Pushkar Control Pvt. Ltd. in Civil Appeal Nos.651 to 656 of 2005 decided on 11.08.2010) was exigible to tax @ 4% from 01.04.1999 to 17.02.2000 and the rate of tax for the electronics goods became 8% for the period from 18.02.2000 to 31.03.2000. Therefore, it seems the rate of tax applied for the items 'Cooler' and 'Voltage Stabilizer' by the forums below are not in accordance with the provision under the law so far as the period covered under this appeal. It is thus not ascertainable as to what was the sale turnover of the item 'Voltage Stabilizer' from the period 18.02.2000 to 31.03.2000.

8. Under such circumstances we feel it would be appropriate to remit the case to the assessing officer for making the assessment afresh keeping in view that if the goods stated to have been purchased by the dealer-assessee from registered dealers were actually first point tax paid goods at that relevant time and for that its sellers

were only responsible to make payment of tax. The assessing officer will make the assessment afresh after affording an opportunity to the dealer-assessee that it had purchased the goods in question which are taxable at the first point of sale at the hands of the sellers as well as keeping in view the observations of this Tribunal in the foregoing paragraph.

9. In the result, the appeal is disposed of accordingly. The impugned order of the first appellate authority is hereby set aside. The assessing officer is instructed to complete the reassessment in accordance with law in terms of the observations made above within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

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