

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

S.A. No. 1030 of 2006-07

(Arising out of order of the learned Asst. Commissioner of
Sales Tax, Appellate Unit, Bhubaneswar,
in Sales Tax Appeal No. AA 262/BHII/01-02,
disposed of on dated 27.02.2002)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Ceat Financial Services Ltd,
presently known as
M/s. C.F.L. Capital Financial Services Ltd.,
C/o.- S.B. Agarwal, Advocate,
Old College Lane, Nimchoudi,
Cuttack. ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C.
Sri S.K. Pradhan, A.S.C.

Date of hearing: 17.05.2022 *** Date of order:21.05.2022

ORDER

The dealer-assessee has preferred this appeal
assailing the order dtd.27.02.2002 passed by the learned

Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (hereinafter referred to as, the learned FAA) in Sales Tax Appeal No. AA 262/BHII/01-02, thereby confirming the order dtd.31.08.2001 passed by the Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar raising an extra demand of Rs.8,05,409.00 for the assessment year 1996-97 in the assessment framed u/s.12(8) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act).

2. The factual matrix of the case leading to the filing of the present second appeal are that, the dealer-assessee is engaged in business of sale of machineries by way of transfer of right to use for valuable consideration. The dealer-assessee was assessed u/s.12(4) of the OST Act on 26.02.2000, subsequent to which it was detected that rate of tax has been levied @ 12% instead of 16% i.e. the rate applicable to the machineries as per entry in Sl. No.70 of the rate chart. Thereafter, the notice was issued to the dealer-assessee u/s.12(8) of the OS Act for reassessment which was duly served on him. Pursuant to such notice, Sri R.S. Agarwal appeared on behalf of the dealer-assessee and furnished written note of submission contending *inter alia* that there being no specific entry as to rate of tax applicable to lease rental for transfer of right to use of machineries, the same should be taxed as unspecified goods i.e. @ 12% as per entry in Sl. No.105 of the list 'C'. The learned assessing authority rejecting the contention

raised by the dealer-assessee levied tax @ 16% and raised an extra demand of Rs.8,05,409.00.

3. The dealer-assessee challenging such demand raised by the assessing authority preferred appeal before the first appellate authority who also dismissed the appeal confirming the order of assessment. The present second appeal has been filed by the dealer being aggrieved with the order of the first appellate authority confirming the order of assessment.

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

5. When the appeal was called on for hearing, none appeared on behalf of the dealer-appellant in spite of valid service of notice for which this Tribunal proceeded with the hearing of the appeal exparte in presence of the learned Standing Counsel for the Revenue as this appeal relates to the year 2006 and in the meantime 16 years have elapsed.

6. We have heard the learned Standing Counsel for the Revenue, gone through the memorandum of appeal filed by the dealer-appellant vis-a-vis the impugned orders of the forums below and the materials on record. The learned Standing Counsel for the Revenue supporting the impugned orders of the forums below vehemently urged that the dealer-appellant having transferred right to use of machineries, the forums below rightly levied tax @ 16% as per entry in Sl. No.70 of the List 'C' of the OST rate chart.

There is no illegality in the orders of the forums below in raising extra demand of Rs.8,05,409.00 levying tax @ 16%. The grounds taken by the dealer-appellant in the memorandum of appeal are misconceived having no sanction of law. He submitted to dismiss the appeal and confirm the orders of the forums below.

7. On going through the memorandum of appeal, we find that the dealer-appellant has challenged the impugned orders of the forums below only on the ground that levying tax @ 16% resorting to entry in Sl. No.70 of List 'C' of the rate chart was illegal and tax should have been levied @ 12% as per entry in Sl. No.105 of List 'C' of the rate chart as unspecified goods. There is no dispute in the present case that the dealer-appellant has received gross payment of Rs.1,83,04,760.00 from M/s. Jeypore Sugar Co. Ltd. towards lease rental of machineries and it is liable to pay tax under the Orissa Sales Tax Act. The dispute is with regard to rate of tax to be imposed on such receipt. List 'C' of the rate chart of the Orissa Sales Tax Act does not specifically provide rate of tax on lease rental of machineries. Entry No.70 of List 'C' of the rate chart provides rate of tax 16% for machineries and entry No.105 of List 'C' of the rate chart provides rate of tax 12% for all other goods. The dealer-appellant in the present case having received payment towards lease rental for transferring of right to use the machineries, in our view the payments so received is taxable @ 16% as per entry in

Sl. No.70 of List 'C' of the rate chart which is meant for the machineries. The ground taken by the dealer-appellant in the memorandum of appeal that the rate of tax should have been 12% as per entry in Sl. No.105 of List 'C' of the rate chart is misconceived one and not legally tenable. The decision on which the dealer-appellant placed reliance i.e. in case of M/s. Rajashree Pictures (P) Ltd. and others v. State does not speak about the rate of tax applicable to the payment received towards lease rental for transferring right to use of the machineries. In the aforesaid decision on which strong reliance was placed the dispute was whether transfer of right to use any goods for any purpose for cash, deferred payment or valuable consideration is sale and is taxable under the Orissa Sales Tax Act or not to which the Hon'ble Court while deciding this issue held that levy of tax on transfer of right to use of goods is not unreasonable piece of legislation resulting indiscrimination and is not violative of Article 14 of the Constitution and the total consideration received from transfer becomes the turnover subject to deduction as admissible.

8. On perusal of the impugned orders of the forums below, we find that the assessing authority resorting to entry in Sl. No. 70 of List 'C' of the rate chart imposed tax on the gross payment received by the dealer-company which was confirmed in appeal. The impugned orders of the forums below are in conformity with law and there is

no illegality in those orders warranting interference of this Tribunal.

9. For the foregoing discussions and reasons assigned above, we are of the considered view that the gross payment received by the dealer-company towards lease rental for transfer of right to use machineries is taxable @ 16% under entry in Sl. No.70 of List 'C' of the rate chart. The appeal filed by the dealer-appellant being devoid of any merit, the same stands dismissed and the orders of the forums below stand confirmed.

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/-
(M. Harichandan)
Accounts Member-I