

SECOND APPEAL ORDER DISPOSAL STATUS FOR ORDERS RECEIVED IN JULY-2020

FULL BENCH

Sl No.	Name of Dealer R.C. No.	Range/Circle/AU	First Appeal No. & Date	Second Appeal Number & Date of Order	Act	Period	Second Appeal filed by State/ Party	Amount Demanded /Refunded (BY 1ST Appellate Authority)	Grounds of Appeal	Result of Second Appeal Order
1	M/S AMCD TRANSPORT & MINERALS PVT.LTD., KEONJHAR	BARBIL CIRCLE	AA.KJ/391/D CST/2011-12, DT.23.02.2015, AA.550-KJB(C) OF 2014-15, DT.30.01.2016	8(C) OF 2015-16, 9(C) OF 2015-16, DT.3(C) OF 2016-17, DT.17.07.2020	CST	01.10.2010 TO 31.12.2010	BOTH	38309230	The assessment was completed u/s 12(4) of the OST Act. In case of S.A. no. 8(C) of 2016-17, the state filed appeal on the ground that the dealer is liable to pay compensatory interest and penalty as the required declaration forms have not been furnished. In case of S.A. no. 9(C) of 2016-17, the dealer filed appeal on the grounds that reasonable opportunity was not provided to the dealer for collection and submission of "H" declaration forms and rectify other defects. The "H" declaration forms submitted by the dealer was not accepted by the FAA as they were not original. In case of S.A. no. 3(C) of 2016-17, for the period from 01.04.2011 to 30.06.2011, the state filed appeal on the grounds that annulment of assessment by the FAA on account of want of valid notice is illegal. As the parties are same, the Tribunal disposed of all the appeals by following common order.	After considering the facts, the Tribunal concluded that the dealer should be given due opportunity to rectify the defects with acceptability of "H" forms as the "H" declaration forms in original could not be produced before the FAA as the same have already submitted at the earlier assessment. Regarding annulment of assessment, it is only permissible when the taxing authority would have no jurisdiction to assess. The assessment may be set aside if there is any error which requires further enquiry. Therefore the provisional assessment could not be annulled on the ground of improper or invalid notice. In the result, the appeals stand allowed and the orders are set aside for fresh assessment with acceptance of "H" forms by giving due opportunity to the dealer to rectify the defects and pass the order w.r. t. compensatory interest and penalty if really justified on acceptance with law.
2	M/S MANGALAM TIMBER PRODUCTS LIMITED, BHUBANESWAR	BHUBANESWAR II CIRCLE	AA-164(ET)/BH-II/2004-05, DTD.21.12.2004	283(ET) OF 2004-05, DT.24.06.2020	OET	2000-01	PARTY	810883	The assessment was completed under OET Act. with demand of Rs. 8,10,883.00. The dealer filed first appeal on the grounds of levy of entry tax on industrial chemicals. The manufacturing unit being situated in local area for the period from 01.04.2000 to 05.11.2000, it is not liable to pay entry tax on raw materials as per clause (a) of sub-section (4). The purchase of chemicals was not liable to entry tax as they are not falling under sl. no. 9 of part - II of the schedule. The FAA confirmed the assessment order. The dealer file second appeal against the order of the FAA.	After considering the facts, the Tribunal concluded that the purchase of industrial chemicals and paper worth Rs. 2,27,66,552.84 and Rs. 46,01,776.00 respectively during the period from 01.04.2000 to Rs. 05.11.2000, the exemption as per Rule 3(4) (b) of the Rules is claimed. If the manufacturing unit found to be situated not within the notified area as specified in Rule 3(4)(a) till 05.11.2000, the dealer shall not be liable to pay ET on the scheduled goods. In the result, the appeal is partly allowed and the impugned order is set aside and the matter is remitted back to the AO for fresh computation of tax liability by providing an opportunity of hearing to the dealer.
3	M/S GAMMON INDIA LIMITED, BHUBANESWAR	BHUBANESWAR II CIRCLE	AA/150/BH-II/2006-07, DTD.24.02.2007	10 OF 2008-09, DT.18.06.2020	OST	2002-03	STATE		The assessment was completed u/s 12(4) of the OST Act. 1. The LAO raised demand of Rs. 10,84,733.00 2. The FAA set aside for fresh assessment 3. The state filed second appeal on the grounds that payment received by the dealer should not be excluded from GTO and deduction at a particular rate of tax towards L & S charges from the gross receipt is not correct.	The OSTT set aside the order of the FAA and directed to assess as per Rule- 4B of the OST Rules.
4	M/S BHUBANESWAR CLUB LTD., BHUBANESWAR	BHUBANESWAR II CIRCLE	AA.1106110611000008/06-07, DT.16.10.2007	60(vat) OF 2007-08, DT.25.06.2020	OST	01.04.2005 TO 31.12.2005	PARTY		The assessment was completed u/s 44 of the OVAT Act with demand of Rs. 23,32,474.00 on supply of food to club members. The FAA confirmed the assessment order.	The OSTT held that the supply of foods to its club members is not sale. In the result, the appeal is allowed and the order of the assessment is confirmed.

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5	M/S ANIL AGRAWAL, BHUBANESWAR	BHUBANESWAR II CIRCLE	AA.318/BH-II/2006-07, DTD.15.02.2007	397 OF 2007-08, DT.26.06.2020	OST		STATE	12129929	The assessment was completed under OST Act with demand of Rs. 39,20,759.00. The dealer filed first appeal before the FAA who reduced the demand to Rs. 28,74,540.00 by enhancing the percentage of deduction on L & S charges to 55% from 32% allowed by the LAO by realising the nature of works and the extent of labour engagement. The state filed second appeal on the grounds that deduction allowed on L & S charges on higher side. It should be limited to 32% as the execution of works included construction of sub-structure, minor bridge etc. by applying Rule 4B of the OST Act with retrospective effect.	After considering the facts, the Tribunal concluded that the FAA enhanced the deduction to 55% by observing the nature of works, the cost component on labour and service and free supply of certain materials by the contractee which seems to be justified. Hence the enhancement @ 55% towards L & S charges is absolutely justified in accordance with law. The second appeal filed by the state is dismissed and the order of the FAA is confirmed.
6	M/S INDIAN POTASH LTD., BHUBANESWAR	CUTTACK I RANGE	AA-CUIE/DCST/180/2014-15, DTD.22.09.2015, AA-CUIE/DCST/663/2013-14, DTD.17.09.2013 & AA-1081016100099/2016-17, DTD.15.07.2016	126(ET) OF 2015-16, 136(ET) OF 2013-14 & 76(ET) OF 2016-17	OET	01.04.2005 TO 31.03.2009, 01.04.2009 TO 31.03.2011 & 01.04.2013 TO 31.03.2015	PARTY		The assessment was completed u/s 9(C) of the OET Act in all cases. The appeals have been clobbered together due to common questions are involved. The dealer filed appeal on the grounds that proceeding u/s 9(C) is not maintainable. HDPE bags used in disposing of the fertilizers have erroneously treated as scheduled goods. Fertilizers have been sold on MRP which included packing materials and therefore it is a non taxable item under the Act. It is not listed in Entry 23 of Part - I of the schedule.	Considering the facts, the Tribunal concluded that HDPE bags are not scheduled goods as a packing material can't be taxable in absence of any specific entry in part - I of the schedule. Imposition of penalty u/s 9C (5) of the Act on the taxable turnover is unjustified as it has been assessed on account of audit inspections. In the result, the appeals are partly allowed and the orders are set aside to the extent of imposition of penalty on the taxable turnover of HDPE bags for recomputation of tax liability.
7	M/S SAMAL AUTO (INDIA) PVT. LTD., KEONJHAR	KEONJHAR CIRCLE	AA-453/KJ/13-14(VAT), DT.28.06.2014	174(VAT) OF 2014-15, DT.30.06.2020	OVA T	2012-13	PARTY	4116295	The assessment was completed u/s 42 of the OVAT Act with demand of Rs. 41,16,295.00 including tax and penalty u/s 42(5) of the Act. The dealer filed first appeal before the FAA who reduced the demand to Rs. 14,45,788.00 on the grounds that the alleged sale suppression was not a suppression as the tax of Rs. 5,68,913.00 was deposited only after the warranty sales of March 2013 was finalised but the amount was not reflected through revised return. The dealer filed second appeal against the imposition of penalty.	After considering the facts, the Tribunal concluded that there is no need to impose penalty without considering the conduct of the dealer and the voluntary disclosure without revised return. In the result, the impugned order is hereby set aside to the extent of imposition of penalty and directed to the LAO for recomputation of tax liability.
8	M/S ORES ENTERPRISE S PVT LTD. ROURKELA	ROURKELA CIRCLE		S.A.NO.158(V)/2005-06	OVA T	*****	PARTY	3772925	The assessment was completed u/s 12 (5) of the CST Act. 1. The LAA raised demand of Rs. 99,42,733.00 due to failure to furnish declaration forms. 2. The FAA reduced the demand to Rs,37,72,925.00. as some wanting documents are produced .	3. The dealer filed 2nd appeal which was dismissed by the OSTT as no further declaration forms could be produced by the dealer .

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9	M/S JEAMON INDIA LTD, BHADRAK	BHADRAK CIRCLE		S.A. NO-390/2002-03 DT .18-06-2020	OST	*****	PARTY	209923	1.The assessment was completed U/s 12 (4) of the OST Act with demand of Rs. 2,09,923.00 by allowing labour and service charges @32 %. 2. The FAA dismissed the appeal as the dealer claimed labour and service charges70%. 3. The dealer filled 2nd appeal. 4. The state objected the issued and raised points that labour and sservice charges should be allowed as per Rule 4 (B) of the OST Rules.	5. Hence, OSTT set aside the order to LAO for recomputation.
10	M/S B. S. ENTERPRISE S & Co (PROJECT) LTD. BALASORE	BALASORE CIRCLE		S.A. NO. 221(C) /2005-06 Dt. 19.06.2020	CST	2001-02	STATE		The assessment was completed u/s 7 of the CST Act. 1. The LAO levied E.T. @ 12% on excavator treating it as motor vehicle. 2. The FAA annulled the assessment.	3. The OSTT allowed the state appeal and set aside to the FAA for examination and re-determination.
11	M/S B. S. ENTERPRISE S & Co (PROJECT) LTD. BALASORE	BALASORE CIRCLE		S.A. NO. 224(ET) /2005-06 Dt. 19.06.2020	OET	2002-03	STATE		The assessment was completed u/s 7 of the OET Act. 1. The LAO levied E.T. @ 2% on Excavator as per assessment. 2. The FAA confirmed the assessment order.	3. The appeal filed by the state is dismissed.
12	ORES ENTERPRISE S(P) LTD. KOIRA	SUNDARG ARH RANGE		S.A. NO. 351(ET)/ 2005-06 Dt. 10.07.2020	OET	2003-04	PARTY		1. The LAO treated crushing of iron ore lumps and conversion of iron ore size/ fines as manufacturing and levied ET on its sales which resulted demand of Rs. 10,24,190.00. 2. The FAA confirmed the assessment order.	1. The OSTT held that crushing of iron ore lumps to size iron ores/ fines is not manufacturing activity. 2. ET is not leviable on sales.
13	M/S MANGALAM TIMBER PRODUCTS LIMITED, BHUBANESWAR	BHUBANE SWAR II CIRCLE		S.A. NO. 283(ET)/2004-05 Dt. 24.06.2020	OET	2000-01	PARTY		1. The LAO levied ET on industrial chemicals, Base paper, Machinery and spare parts and Raw materials. 2. Total due amounting Rs. 8,10,883.00. 3. The FAA upheld it.	The OSTT held that (a) Till 01.05.2004, industrial chamental was not schedule goods. (b) Base paper is not schedule goods. (c) Machinery and spare parts was not scheduled goods till 23.07.2000. (d) VAT is located in specified area, for not liable to ET on raw materials. Hence the case is set aside to AA for fresh Computation.

DIVISION & SINGLE BENCH

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1	M/S KALINGA JUTE PRODUCTS (P) LTD	CUTTACK II RANGE	CU-II-AA-DL-43/2004-05, DT.29.07.2017	27 OF 2017-18, DT.30.06.2020	OST	2002-03	PARTY	REDUCED TO RS.2,16,460/- FROM RS.2,20,430/-	1. The LAO raised demand of Rs. 2,20,430.00. 2. The FAA reduced the demand to Rs. 2,16,400.00.	1. The OSTT held that both Lao and FAA have committed error in allotting set off. 2. The appeal is set aside to LAA for fresh order.
2	M/S MANGTURAM RATANLAL, ANGUL	ANGUL RANGE	CU-II-AA-DL-39/03-04, DT.05.08.2017.	78(C) /2017-18, DT.30.06.2020	CST	2002-03	PARTY	38323	1. The LAO disallowed 6(2) sale claimed by the dealer which resulted demand of Rs. 38,323.00. 2. The FAA reduced the demand to Rs. 27,628.00 due to submission of "C" forms.	1. On second appeal filed by the dealer, the OSTT set aside the case to LAO for fresh consideration.