

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

FULL BENCH

SI 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 MAHINDRA & MAHINDRA LTD., BHUBANESWAR	BHUBANE SWAR I CIRCLE	AA-153/OET/DCST/ASSMT/BH-I/2011-12, DT.11.02.2014	200(ET) OF 2013-14, DT.05.06.2020	OET	01.08.2006 TO 31.03.2010	PARTY	4028229	The Assessment was completed u/s 9(C) of the OVAT Act with demand of Rs 1,57,12,406.00 including penalty of Rs.80,56,458.00 u/s 9C (5) of the Act and interest of RS.36,27,719.00. The FAA confirmed the order as the dealer declared the admitted tax in the return without depositing it.	After considering the facts, the Tribunal concluded that the dealer had not deliberately evaded tax. Hence imposition of penalty was not justified. In the result, the OSTT confirmed the tax and interest but deleted the penalty. The impugned order is set aside for recomputation of tax liability as per the Tribunal order.
2	M/S RAJATRAJ ENTERPRISES, SUNDARGARH	ROURKE LA I CIRCLE	AA.14(RLIC)/2006-07, DT.26.08.2006	193(C) OF 2006-07, DT.16.06.2020	CST	01.04.2002 TO 31.03.2003	PARTY	3,868,414.00	The Assessment was completed U/s12(4) of OST Act with demnad of Rs38.68,414.00. due to non submission of Form (C). The FAA confirmed the order on the ground that the notification dtd. 16.09.1994 of the Finance Department, Government of Odisha, existed till 13.10.2003, notwithstanding amendment to section 8(5) of the CST Act 1956, introduced vide Finance Act 2002 and assented to 11.05.2002.	After considering the facts, the Tribunal concluded that the contention of the dealer regarding concessional tax without submission of "C" form till 13.10.2003 irrespective of amendment to section 8(5) of the Act vide the Finance Act 2002 is totally untenable and thus liable to be rejected. In the result, the OSTT dismissed the dealer's appeal and confirmed the order of the FAA.
3	M/S ORITRADE(P) LTD., CUTTACK	CUTTACK II CIRCLE	AA.877/CUII/2002-03, DTD.13.02.2004	953 OF 2004-05, DTD.09.06.2020	OST	1999-2000	STATE	REDUCED FROM RS.2,24,26,347/- TO RS.92,80,747/-	The Assessment was completed U/s 12(4) of the OST Act, on exparte with demand of Rs.2,24,26,347.00. After examining the book of Account, the FAA reduced the demand to Rs.92,80,747.00.	3. The OSTT dismissed the state appeal being devoid of merit as the dealer's appeal in S.A. No. 999/2004-05 was remanded to LAO for fresh order and the LAO passed the order on 15.02.2015 afresh raising demand of Rs. 15,45,211.00 for the impugned period.
4	M/S ANANTA AUTOMOBILES PVT. LTD., BHUBANESWAR	BHUBANE SWAR RANGE	AA(VAT)-42/2014-15, DT.30.07.2015	64(VAT) OF 2017-18, DTD.03.06.2020 (Arising out of STREV No. 95/2019)	OVA T	01.04.2011 to 31.03.2013	PARTY	RS.61,63,973/-	The assessment was completed u/s 42 of the OVAT Act. 1. Earlier in S.A. no.64(V) of 2017-18 which was disposed by the OSTT without considering point no.4(sale suppression of spare parts) although the dealer produced document before the OSTT. 2. The dealer filed STREV before the High Court and the HC directed to the Tribunal to reconsider the issue raised by the dealer afresh.	3. The OSTT heard the case both side, remitted back the case to the LAO for deciding part 4 (sale suppression alleged) afresh.(Arising out of STREV No 95/2019)

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5	M/S TRUPTI AUTOMATIVES, CUTTACK	CUTTACK II RANGE	AA.CUII-103/11-12, DTD.02.03.2012	4(VAT) OF 2012-13, DT.02.06.2020	OVA T	01.01.2009 TO 30.06.2010	PARTY		The assessment was completed u/s 42(2) of the OVAT Act. 1. Earlier in S.A. no.64(V) of 2017-18 which was disposed by the OSTT without considering point no.4(sale suppression of spare parts).	In course of hearing, the Tribunal appearing for the appellant filed a memo seeking permission to withdraw the appeal on the grounds that pursuant to the remand order of the FAA, the LAO has completed the reassessment by allowing refund. The Tribunal raised no objection w.r.t. the withdrawal of appeal even though CO has been filed in this case. In result, the appeal is dismissed as withdrawn.
6	M/S LARSEN & TOUBRO LTD., SAMBALPUR	SAMBALPUR RANGE	AA.119(SA.I) OF 1998-99, DTD.29.06.2002	1333 OF 2002-03, DT.27.05.2020	OST	1995-96	STATE	1719848	The Assessment was completed U/s12(4) of OST Act with refund of Rs35.36.993.00.The dealer is a works contractor. The LAO disallowed deduction of Rs.40,92,732.00 against the claim of higher charges of plant and machinery and levied tax accordingly. The over head expenses amounting Rs.28,66,413.00 claimed by the dealer was not allowed by the ACTO and levied tax.	At appellate forum, the FAA deleted levied tax at higher charges of plant and machinery as higher charges are not coming under transfer of right to use. Out of Rs. 28,66,413.00, Rs. 17,19,848.00 was allowed as relating to work sight expenses. 4.The state filed second appeal challenging the order of the FAA which was dismissed by the OSTT having no valid ground.
7	M/S NIRAJ CEMENT STRUCTURE (P) LTD. JALESWAR	BALASORE CIRCLE		S.A. NO. 219(ET)/ 2005-06 DT. 10.06.2020	ET	31.12.2001 TO 28.02.2002 AND 2001-02 Dt. 10.06.2020	STATE	2,333,631.73	The assessment was completed u/s 10(3) and 7(4) of the ET Act. 1. The LAO treated excavation and road roller as motor vehicles and levied ET @ 12% which resulted demand of Rs. 23,33,631.73. 2. The FAA treated the excavator and road roller as machinery and levied ET @ 2% as per entry - 9 of part - II of the schedule.	The OSTT observed that M.V. Act was amended w.e.f. 01.06.2004. Hence Amended Act will not apply to assessment period. Here, the appeal is set aside and remitted back to the FAA to re-decide the issue.

DIVISION & SINGLE BENCH

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1	M/S GANESH AGENCIES, ANGUL	ANGUL CIRCLE	AA/103/VAT/AL/2013-14, T.30.07.2016	242(V) OF 2016-17, DT.11.06.2020	OVA T	01.04.2011 TO 31.03.2013	PARTY	REDUCED THE DEMAND TO RS.7,89,213/- FROM	The assessment was completed u/s 42 of the OVAT Act with demand of Rs. 7,97,100.00 on the basis of AVR report. The dealer filed second appeal before the FAA who reduced the demand to Rs. 7,89,213.00. Being further	After considering the facts, the Tribunal concluded that the audit team applying average rate of profit @ 5.14% on the purchase suppression came to Rs. 2,78,850.00 during the audit assessment period without actual detection of goods which was not
2	M/S KALINGA JUTE PRODUCTIONS PVT. LTD., DHENKANAL	CUTTACK II RANGE	CU-II-DI-6/2006-07,DT.10.11.2017	43(V)/2018, DTD.05.06.2020	OVA T	01.04.2005 TO 31.12.2005	PARTY	1044347	The assessment was completed u/s 42 of the OVAT Act with demand of Rs. 10,44,347.00 including tax of Rs. 3,48,115.82 and penalty of Rs.6,96,231.64 u/s 42(5) of the Act. on the basis of AVR. The dealer preferred first appeal	After considering the facts, the Tribunal concluded that purchase suppression of Rs. 64,45,816.00 has duly been reflected by the dealer in the returns. Thus non- consideration of the suppression by the LAO and the FAA is arbitrary and unjust and
3	M/S CHANDI CRANES PVT. LTD., JAJPUR	ANGUL RANGE	106211521000014 DT.30.06.2017	292(V)/2017-18, DTD.29.05.2020	OVA T	26.05.2012 TO 31.03.2014	PARTY	6537639	The assessment was completed U/s 42 of OVAT Act with tax and penalty of Rs.65,37,639.00 on account of transfer of right to use crane as per the AVR report . The FAA confirmed the assessment order	The OSTT dismissed the dealer's appeal and affirmed the order of the FAA. In the result, the appeal is accepted in favour of the state.
4	M/S CHANDI CRANES PVT. LTD., JAJPUR	ANGUL RANGE	108211521000015, DT.31.08.2017	9(ET)/2018, DTD.29.05.2020	OET	26.05.2012 TO 31.03.2014	PARTY	459891	The assessment was completed U/s 9(c) of the OET Act with tax and penalty of Rs.4,59,891.00 as per the AVR report . The FAA passed the order on exparte and enhanced the demand to Rs 21 74 670 00	The OSTT set aside the appeal order and remitted the case back to the LAO for fresh order . In the result the appeal is disposed in favour of the dealer .