

SECOND APPEAL ORDER DISPOSAL STATUS FOR ORDERS RECEIVED IN MAY-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 LOTUS CHROME CHEMICALS (P) LTD., ROURKELA	SUNDARGAR H RANGE	AA.23(RL-II-C) OF 2004-05, DT.15.09.2004 AA.106(RL-II-C) OF 2004-05, DT.20.01.2006, AA.18(RL-II-C) OF 2004-05, DT.30.09.2004 AA.99(RL-II-C) OF 2004-05, DT.20.01.2006	132(C) & 133 (C) OF 2004-05, 23(C) & 24(C) OF 2006-07, DT.21.03.2020	OST	2000-01 & 2001-02	PARTY		The assessment was completed u/s 8(2) of the CST Act with demand for non submission of form C.The dealer filed first appeal before the FAA who confirmed the order due to non submission of "C" form.The dealer filed second appeal on the same grounds.	After considering the facts, the Tribunal confirmed the order of the FAA as the dealer could not submit the required "C" forms. In the result, the appeal was dismissed being devoid of merit.
2	M/S PREM TRADING CO., KEONJHAR	BARBIL CIRCLE	AA-343(KJB)/10-11, DT.08.09.2011	201(VAT) OF 2011-12, 06.02.2020	OVA T	01.04.2005 TO 31.03.2009	STATE	6221115	The assessment was completed u/s 42 of the OVAT Act with demand of Rs. 61,21,115.00 by levying VAT @ 12.5% on Aluminium Nitrate treating it as chemical. The dealer filed first appeal on the grounds that "ammonium nitrate" which is used as a chemical fertilizer and not as an explosive and should be taxed @ 4% in stead of 12.5%. After going through the facts the FAA concluded that "ammonium nitrate" can be used as both fertilizers and explosives but the dealer used it as fertilizers which is falling in sl. no. 30 of part - II of schedule - B and hence is liable to be taxed @ 4%. The state filed second appeal on the grounds that ammonium nitrate is a chemical compound which is used as explosive and therefore taxed @ 12.5%.	After considering the facts, the Tribunal concluded that as per certain "C" declaration forms, the goods in question is sold as explosive to the mines owners and the raising contractors for the purpose of blasting rocks. Therefore ammonium nitrate is exigible to tax @ 12.5% seems to be justified. In the result, appeal preferred by the state is allowed and set aside the FAA order.

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
3	M/S NCCF(I) LTD., BHUBANES WAR	CUTTACK I EAST CIRCLE	AA-634/CUIE/98-99, DT.26.02.2002	641 OF 2002-03, DT.21.05.2020	OST	1995-96	PARTY	Demand reduced from 16,46,176.00 to 9,38,668.00	The assessment was completed u/s 12(4) of the OST Act. with demand of Rs. 16,46,176.00. The dealer filed first appeal against the levy of tax on seedlings pesticides and stationary items purchased from unregistered dealers. The FAA partly allowed the same and reduced the demand to Rs. 9,38,668.00. The dealer filed second appeal on the same grounds.	After considering the facts, the Tribunal concluded that as per entry 36-B of the schedule, sapling is a tax free goods and there is no difference between seedlings and saplings in common term. Hence it should be excluded from tax net. Again the dealer failed to prove the payment of first point tax w.r.t. pesticide purchased from unregistered dealers. The claim of deduction u/s 5(2)(A)(a)(ii) w.r.t. sale of stationary goods, an amount of Rs. 3,08,395.00 stood qualified as deduction from GTO as the same was found to be purchased from registered dealer and the remaining as purchased from unregistered dealers will be exegible to tax at the appropriate rate. In the result, the appeal is partly allowed. Consequently, the AO is directed to recompute the tax liability in the light of the conclusion drawn by the forum.
4	M/S NCCF(I) LTD., BHUBANES WAR	CUTTACK I EAST CIRCLE	AA-36(C)/CUIE/98-99, DT.25.02.2002	36(C)OF 2002-03, DT.21.05.2020	CST	1995-96	PARTY		The assessment was completed u/r 12(4) of the CST Rules, 1957 with demand. The dealer filed first appeal against levy of tax on inter-state trade as the goods were not entered in to the state of Odisha and claim of exemption on the certified seeds which falls under entry of 35-F of the schedule under OST Act. The FAA confirmed the order after considering the nature of trade and claim of exemption with respect to certified seeds. The dealer filed second appeal on the same grounds.	After considering the facts, the Tribunal concluded that the exemption was denied on the grounds that the dealer failed to produce "C" and "E-1" declaration forms. Regarding certified seeds, there is certain conditions that the certified seeds which exclude vegetable seeds should be sold in sealed bags or containers to have listed in Entry 35-F of the schedule but there is no evidence regarding nature of despatch of certified seeds. Hence the decision of the FAA regarding nature of trade and certified seeds is absolutely just and proper. In the result, the appeal filed by the dealer is dismissed and order of the FAA is confirmed.

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
5	M/S SKOL BREWERIES LTD., PARADEEP	JAGAT SINGH PUR CIRCLE	AA.304/ET/CUIIJ/03-04, DT.29.12.2004	259(ET) OF 2004-05, DT.28.02.2020	OET	2000-2001	PARTY	REDUCING EXTRA TAX TO RS.9,85,015/- FROM RS.10,53,071/-	The assessment was completed u/s 7(4) of the OET Act with demand of Rs. 10,53,071.00 due to non - inclusion of collection of sales tax in determining turnover. The dealer filed first appeal before the FAA who reduced the demand to Rs. 9,85,015.00 by excluding the excise duty from the sale price. The dealer filed second appeal on the grounds that the marketing expenses should be deducted from the sale price to determine TTO.	The appeal was disposed of exparte. After considering the facts, the Tribunal concluded that there is no provision under OET Act to allow any such deduction from the sale value of finished products for determining GTO and TTO. In the result, the appeal is dismissed and the order of the FAA is confirmed.
6	M/S NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITED, TALCHER	ANGUL CIRCLE	AA/06/DL/2008-09 AND AA/AL/17/2008-09 DT. 08.04.2010	105 OF 2010-11 & 106 OF 2010-11, DT.28.02.2020	OST	2003-04 & 2004-05	STATE	REDUCING THE ASSESSMENT BY REFUNDING RS.2,45,588/- & RS.2,37,622/- AGAINST THE EXTRA TAX DEMAND OF RS.24,91,618/- & RS.29,73,953/- RESPECTIVELY	The assessment was completed u/s 12(4) of the OST Act for the period 2003-04 and 2004-05 with demand of Rs. 24,91,619.00 and Rs. 29,73,953.00 respectively. The dealer filed first appeal against less deduction allowed towards labour and service charges. The FAA allowed refund of Rs. 2,45,588.00 and Rs. 2,37,622.00 for 2003-04 and 2004-05 respectively by allowing 82% deduction towards labour and service charges after considering the facts that the works executed is purely labour oriented and NTPC supplied raw materials free of cost to the dealer for execution of works and there is no estimated value of such materials has been brought on record. The revenue filed second appeal against excess allowance of labour and service charges violating Rule -4(B) of the OST Rules.	After considering the facts, the Tribunal concluded that the dealer failed to produce evidence in support of the expenses incurred towards labour and service charges for which it is applicable under Rule 4-B of the OST Act. Hence the matter needs to be remitted back to the AO for reassessment with a direction to apply the provisions u/r 4-B. In the result, the OSTT allowed the state's appeal and remanded the case to LAO for fresh assessment as per Rule 4(B) of OST Rules.
7	M/S MAHENDRA TRADERS, BERHAMPUR	GANJAM I CIRCLE	AA-252/2001-02, DT.28.02.2002	310 OF 2002-03, DT.19.03.2020	OST	1999-2000	PARTY	2,702,392.00	The assessment was completed u/s 12(4) of the OST Act with demand of Rs. 27,02,392.00. The dealer filed first appeal on the grounds that he was not given opportunity to confront the fraud case report. The FAA set aside the order on the grounds that the assessment can't be done on the basis of fraud case report. The dealer filed second appeal before the Tribunal on the same ground.	After considering the facts, the Tribunal concluded that in absence of sufficient materials, assessment can't be completed by applying own judgement to determine GTO and TTO. In the result, the appeal is dismissed and the order of the FAA is confirmed.

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
8	M/S EAST COAST BREWERIES & DISTILLERIE S LTD., PARADEEP	JAGATSINGH PUR CIRCLE	AA-798/CUIIJ/02-03 & AA.305/CUIIJ/03-04, DT.29.12.2004	2686 OF 2004-05 & 2687 OF 2004-05, DT.28.02.2020	OST	1999-2000 & 2000-2001	PARTY	RS.1,15,71,020/- & RS.1,42,61,988/-	The assessment was completed u/s 12(4) of the OST Act for the period 1999-2000 and 2000-01 with demand of Rs. 1,15,71,020.00 and Rs. 1,42,61,988.00 respectively due to disallowance of trade discount and marketing expenses and non-inclusion of excise duty. The dealer filed first appeal against the disallowance of trade discount and marketing expenses and non-inclusion of excise duty for the year 2000-01. The FAA confirmed the assessment for the year 1999-2000 and reduced the demand to 1,29,57,582.00 by recalculating the actual amount of excise duty which was estimated at higher side. The dealer filed second appeal on the grounds of non-allowance of trade discount and marketing expenses.	The appeal was disposed of exparte. After considering the facts, the Tribunal concluded that the dealer failed to produce any documentary evidence including credit notes in support of cash discount and there is no such deduction regarding marketing expenses is allowable under the provision of OST Act. from the sale price. The OSTT dismissed the dealers appeal on the grounds that there is no merit of the case.

DIVISION & SINGLE 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 the Tribunal
1	M/S NAGAREEKA HYDROCARBONS (P)LTD., SAMBALPUR	SAMBALPUR I CIRCLE	AA-72/SAI/VAT /2016-17, DT.24.06.2017	263(V) OF 2017-18, DT.11.03.2020	OVAT	01.04.2011 TO 31.03.2014	PARTY	REDUCED FROM RS.18,49,762/- TO RS.17,25,630/-	The assessment was completed u/s 43 of the OVAT Act. with the demand of Rs. 18,49,762.00 on the basis of fraud case report. The FAA upheld the sale suppression but reduced the demand to Rs. 17,25,630.00 due to mistake in calculation committed by the LAO. The dealer further filed second appeal against the sale suppression determined by the AO.	After considering the facts, the Tribunal concluded that as per the decision of various High courts including Orissa High Court, freight charges couldn't be added to the sale price of goods in determining TTO. Hence the order of the AO is not justified. In the result, the appeal is allowed and the impugned order is set aside for reassessment.
2	M/S CUTTACK PLY HOUSE, CUTTACK	CUTTACK I EAST CIRCLE	108121512000086 , DT.17.09.2016	214(ET) OF 2016-17, DT.21.03.2020	OET	01.04.2013 TO 31.03.2014	PARTY	228561	The assessment was completed exparte u/s 9(C) of the OET Act. with the demand of Rs. 2,28,561.00. The dealer filed first appeal before the FAA who disposed the appeal exparte by confirming the assessment order as the dealer did not appear before him. The dealer filed second appeal against the sale suppression determined by the AO.	After considering the facts the Tribunal concluded that the dealer was not given sufficient opportunity of hearing to clarify. The assessment was not done on the basis of the AVR. Hence the order is liable to be set aside. In the result, the case was remitted back to the AO for reassessment.

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
3	M/S CUTTACK PLY HOUSE, CUTTACK	CUTTACK I EAST CIRCLE	106121512000085, DT.17.09.2016	411(VAT) OF 2016-17, DT.21.03.2020	OVA T	01.04.2013 TO 31.03.2014	PARTY	594917	The assessment was completed on exparte u/s 42 of the OVAT Act. with demand of Rs. 5,94,917.00.in which the dealer was found availing excess ITC & less payment of tax. The dealer filed first appeal before the FAA who decided the case on exparte & confirmed the order of AO. The dealer filed second appeal against the demand raised on account of inadmissible ITC.	After considering the facts the forum concluded that the demand on account of inadmissible ITC is justified as the selling dealer had issued credit note against the purchase to reduce the output tax. Again the mis-match of ITC regarding non-payment of output tax by the selling dealer is not justified. In the result, the appeal is partly allowed and the order is set aside for fresh assessment within a period of four months.
4	M/S TARA TARINI GRANITES, GANJAM	GANJAM II CIRCLE	AAC-01/2013-14, DT.03.12.2016	87(C) OF 2016-17, DT.07.03.2020	CST	09.04.2008 TO 31.03.2011	STATE	REDUCED FROM RS.15,513/- TO RS.5,171/-	The assessment was completed u/r 12(3) of the CST Rules with demand of Rs. 15,513.00 for non-submission of form-C against inter-state sale which was challenged by the dealer apellant before FAA who reduced the demand to Rs. 5,171.00 by deleting the penalty.Being aggrieved the Revenue preferred SA against the deletion of penalty by the FAA.	After considering the facts, the Tribunal concluded that the dealer failed to submit the required "C" form for which he is liable to pay tax on it with interest from the date of filing return as per section 24(3) of the CST act. The FAA deleted penalty but failed to impose interest on it. Hence the matter is remanded back to AO to levy interest on tax instead of penalty.
5	M/S PARAMANA NDA NAIK, BALANGIR	BALANGIR RANGE	AA-05(BPI) OF 2014-15, DT.25.09.2014	246(V)/2014-15, DT.17.03.2020	OVAT	01.04.2011 TO 31.03.2013	PARTY	43189	The assessment was completed u/s 42 of the OVAT Act. with demand of Rs.43,189.00 on the grounds of sales suppression which was confirmed by FAA. The dealer filed second appeal before the Tribunal against the penalty imposed u/s 42(5) of the Act.The SA was disposed on exparte basis.	After considering the facts the Tribunal concluded that the main cause of delay in filing original return is non-performance of statutory obligation by the authority. Since it is the mandate of the statute, there is no way to exonerate the dealer. Hence penalty should be deleted. In the result, the order is set aside for fresh assessment.
6	M/S NATRAJ ENGINEERING WORKS, RAYAGADA	RAYAGADA CIRCLE	AAV(RGD)10/17-18, DT.23.09.2017	332 (V) OF 2017-18, DT.21.03.2020	OVA T	01.04.2012 TO 23.02.2015	STATE	REDUCED THE DEMAND TO RETURN FIGURE(RS.5,35,624/-) FROM RS.13,28,185/-	The assessment was completed u/s 43 of the OVAT Act. with demand of Rs.13,28,185.00. The dealer filed first appeal before the FAA who reduced the demand to the return figure at Rs. 35,624.00. The state filed second appeal before the Tribunal against the order of the FAA.	After considering the facts, the Tribunal concluded that there was mistake in calculation on part of the AO which was rectified by the FAA that the closing stock should have been taken into consideration by the AO while estimating the profit margin. In the result, the appeal filed by the state was dismissed and the order of the FAA is confirmed.

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
7	M/S SHIV SHAKTI RICE MILL PVT. LTD., SAMBALPUR	SAMBALPUR II CIRCLE	AA.04/SAII/VAT/2017-18, DT.21.08.2017	302(V) OF 2017-18, DT.21.03.2020	OVA T	01.04.2014 TO 30.09.2015	STATE	REDUCED THE DEMAND FROM RS.2,37,075/- TO RS.22,104/-	The assessment was completed u/s 42 of the OVAT Act. with demand of Rs. 2,37,075.00 for excess stock detected on the basis of AVR. Being aggrieved, the dealer filed first appeal before the FAA who reduced the demand to Rs. 22,104.00. Being aggrieved the Revenue filed SA before the Tribunal against the order of the FAA.	After considering the facts, the Tribunal concluded that suppression could not be established on presumption.Hence appeal filed by Revenue is dismissed.
8	M/S SAHIL POHA INDUSTRIES, SAMBALPUR	SAMBALPUR I CIRCLE	AA 718/SAI/VAT/2014-15, DT.02.05.2017	176(V) OF 2017-18, DT.21.03.2020	OVAT	01.04.2012 TO 03.05.2013	STATE	REDUCED THE DEMAND FROM RS.4,02,938/- TO RS.13,800/-	The assessment was completed u/s 42 of the OVAT Act. with demand of Rs. 4,02,938.00 on the basis of vigilance report for sales suppression. Being aggrieved, the dealer filed first appeal before the FAA who reduced the demand to Rs.13800. Being dissatisfied, the Revenue filed SA before the Tribunal against the order of the FAA on reduction of demand.	After considering the facts, the Tribunal concluded that the FAA had taken dual stand for determining sale suppression. Hence the order of the FAA is set aside by restoring the order of AA.
9	M/S PUSPANJAL I AGARBATI CO., BARGARH	BARGARH CIRCLE	AA.62/BGH/ET/12-13, DT.12.06.2013	178(ET) OF 2013-14, DT.21.3.2020	OET	01.04.2007 TO 30.11.2011	STATE	REDUCED THE DEMAND TO RETURN FIGURE FROM RS.22,452/-	The assessment was completed u/s 9(C) of the OET Act with demand of Rs. 22,452.00. The dealer filed first appeal against the demand raised by the AO u/s 2(j) of the OET Act before the FAA who reduced the demand to the return figure.The revenue filed second appeal before the Tribunal against the deletion of demand.	After considering the facts, the Tribunal concluded that as per the provisions contained in sec- 2(j) of the OET Act, purchase value is the value of the scheduled goods as ascertained from the original invoice or bill and includes insurance charges, excise duties, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods. Hence the Ld FAA has not acted in accordance with the provision of law. In the result, the order of the FAA is set aside and the order of the AO is hereby restored.
10	M/S BIJAY MARBLES, KEONJHAR	KEONJHAR CIRCLE	AA-596 KJ 2015-16(OVAT), DT.24.09.2015	276(V) OF 2015-16, DT.07.03.2020	OVA T	01.04.2012 TO 31.03.2014	STATE	REDUCED THE DEMAND FROM RS.62,386/- TO RS.29,032/-	The assessment was completed u/s 42 of the OVAT Act. with demand of Rs. 62,386.00 due to difference in stock discrepancy as per CA' report. The dealer filed first appeal before the FAA who reduced the demand to Rs. 29,032.00 by considering the fact that the differential amount of Rs. 6000.00 is due to the wrong entry of CA. Being aggrieved, the Revenue filed second appeal against the reduction of demand.	After considering the facts, the Tribunal concluded that if there was purchase suppression, the differential amount could not have matched with the input tax paid by the dealer and the state had not aduced any other evidence in support of stock discrepancy. Hence the order of the FAA is hereby confirmed. In the result, the appeal filed by the Revenue is dismissed.

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
11	M/S BASUDEV AGARWALL A, KEONJHAR	KEONJHAR CIRCLE	AA-180-KJ-07-08, DT.12.02.2008	331 OF 2008-09, DT.18.03.2020	OST	2003-2004	PARTY	REDUCING THE ADDITIONAL TAX DEMAND TO RS.1,13,994/- FROM RS.2,21,115/-	The assessment was completed U/s 12(4) of the OST act with extra demand of Rs. 2,21,115.00 by determining the sale price of iron at Rs. 1000.00 per MT against the dealer disclosed sale price of Rs. 174.50 per MT for some cases and Rs. 977.00 in other cases. The dealer filed first appeal against the claim of under-invoicing of sale value before the FAA who reduced the demand to Rs. 1,13,994.00 after determining the sale price of iron ore at Rs. 600.00 per MT. The dealer filed SA against the charges of under - invoicing. The appeal was disposed of exparte.	After considering the facts, the Tribunal concluded that the Ld. AO had not categorically mentioned any thing regarding size of the iron ore to justify the enhancement. On the other hand, the FAA had reduced the estimated sale price to Rs. 600.00 per mt. without any reason. Hence the appeal is hereby set aside. The matter is remitted back to the AO for reassessment.
12	M/S BASUDEV AGARWALL A, KEONJHAR	KEONJHAR CIRCLE	AA-181-KJ-07-08, DT.12.02.2008	118(ET) OF 2008-09, DT.18.03.2020	OET	2003-2004	PARTY	REDUCING THE TAX DEMAND TO RS.36,993/- FROM RS.66,344/-	The assessment was completed under OET act with extra demand of Rs.66,344.00. Being aggrieved, the dealer filed first appeal against the enhancement of GTO before the FAA who reduced the demand to Rs. 36,993.00 .Being further aggrieved the dealer filed SA on the grounds that the determination of sales price by the AO is baseless.	The appeal was disposed of exparte. The Tribunal concluded that on the basis of assessments being common under both the Acts, GTO determined under OET Act should not be higher than the GTO under OST Act. Hence the orders of the FAA and AO are hereby set aside. The matter is remitted back to the AO for reassessment.