

SECOND APPEAL ORDER DISPOSAL STATUS FOR ORDERS RECEIVED IN OCTOBER-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 SAMSUNG INDIA ELECTRONICS LTD., BHUBANESWAR	BHUBANESWAR II CIRCLE	AA.354/BH.II/2002-03, DTD.15.09.2004	2411 OF 2004-05, DT.24.09.2020	OST	1999-2000	PARTY	REFUND OF 94155.10	The assessment was completed U/s12(4) of OST Act with demand Rs.7,97,029.00 . The appealate coinformed the order of assessment. The dealer filed 2nd appeal against the rejection of credit notes and trade discount. The Tribunal allowed the credit notes discount as per section 2(h) of the Act and disallowed trade discount in the result the appeal is allowed and the impugned order is setaside .	1.The LAO allowed cash discount /trade discount. 2. Resulted refund of RS.693349.00. 3.The FAA did not allow trade discount on the ground that dealy in filling of revised return. 4. Rest refund of Rs.797022.00 5. OSTT set asid ethe FAA order and preferred the order of assessmnet .
2	M/S ZENITH TECHNO ENGINEERS PVT. LTD., BHUBANESWAR	BHUBANESWAR I CIRCLE	AA.10611111000076, DTD.30.03.2013	127(VAT) OF 2013-14, DTD.24.09.2020	OVAT		STATE	5433213	The assessment was completed u/s 42 of the OVAT Act with demand of Rs. 54,33,213.00.The dealer filed first appeal on the grounds that "multi functional device" and "multi functional printer" should be taxed @ 4% in stead of @ 12.5% and imposition of penalty u/s 42(5) of the Act. is unlawful. The FAA declared the printer exigible to tax @ 4% with a conclusion that such item, falls under entry 69(C) , part - II of schedule - B of the Act but confirmed the penalty. The state filed second appeal against the order of the FAA that MFP is exeigible to tax @ 4% as the goods coming under Part - II of the schedule B in stead of part III.	After going through the facts, the Tribunal concluded that in absence of any clear and specific details being provided by the state, there is no option but to accept the assessment made by the FAA. In the result, the appeal filed by the state is dismissed and disposed of in favour of the dealer.
3	M/S J.K.PAPER LTD., RAYAGADA	KORAPUT RANGE	AA.111/JCST /ASSMT/KO/2010-11, DT.14.11.2011	167(ET) OF 2011-12, DTD.30.09.2020	OET	01.04.2005 TO 31.03.2009	PARTY	278308	The assessment was completed U/s 9© of OET Act with demand of Rs.22,82,127.00 including penalty U/s 9 C (5) of the Act. The FAA confirmed the assessmenrt the dealer challenged against levy of penalty. The OSTT remanded the case back to the LAO for fresh order.	The OSTT remanded the case back to the LAO for fresh order.
4	M/S GENERAL MANAGER, MAHANADI COAL FIELD LTD., TALCHER	DHENKANAL CIRCLE	AA-540,542,543 & 465/ET/2003-04, DTD.20.02.2004	24(ET) OF 2004-05, DT.14.10.2020	OET	1999-2000	PARTY	5599489.1	The assessment was completed u/s 7(4) of the OET Act. The dealer filed second appeal before the Tribunal on the ground of disallowance of the claim of exemption and non-payment of tax should be allowed u/r 3(4) of the Rules.	After going through the facts, the Tribunal concluded that the buying dealer is not liable to pay tax in view of location of its plant in a GP. The claim of the dealer with regard to location of the plant of M/S Nalco deserves verification. In the result, the appeal is allowed and the impugned order is hereby set aside for assessment.

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5	M/S MAA LAXMI STEELS (P) LTD., SUNDARGARH	ROURKELA II CIRCLE	AA 406 (RL II) 2003-04, DTD.31.03.2005 & AA345(RL II)2004-05, DTD.15.04.2005	2270 OF 2005-06 & 412 OF 2005-06, DTD.05.10.2020	OST	2002-03 & 2003-04	PARTY		The assessment was completed u/s 12(4) of the OST Act with demand of Rs. 9,36,942.00 by disallowing set off tax paid on purchase of raw materials and allowing the claim as first point tax goods. The FAA Confirmed the assessment. The dealer challenged the order of the FAA before the Tribunal for disallowing the claim of set off of tax on purchase of raw materials against tax payable on the sale of finished products.	The Tribunal concluded that unless the dealer prove that he has maintained record of utilization of raw materials purchased from inside the state which has suffered OST and raw materials purchased from outside the state for manufacturing of finished products and sold them both inside and outside the state, the AO shall follow the proportionate method as stipulated in note 2(vi) of the Finance Deptt. Notification. In the result, the appeal is allowed and the impugned order is set aside for reassessment.
6	M/S ORES ENTERPRISES (P) LTD., SUNDARGARH	ROURKELA I CIRCLE	AA-153(RL I)/2006-07, DTD.24.04.2007	687 OF 2007-08, DTD.13.10.2020	OST	2003-04	PARTY		The assessment was completed u/s 12 of the OST Act. The dealer filed appeal before the FAA who confirmed the assessment order with a view that the dealer has manufacturing activity and therefore liable to pay tax. The dealer challenged the order of the FAA that it is not a manufacturing unit rather a crusher which crush minerals and ores for commercial production.	After going through the facts, the Tribunal concluded that iron ores being crushed without being subjected to any other processes to make its smaller size, can't be treated as the activity of manufacture as defined in section 2(ddddd) of the Act. Hence the dealer can't be treated as a manufacturer for the purpose of the Act. In the result, the appeal is allowed and the impugned order is set aside for reassessment.
7	M/S JAISWAL PLASTIC TUBES LTD., BALASORE	BALASORE CIRCLE	AA-38/BAC/1998-99, DTD.30.05.2005	82(C) OF 2005-06, DTD.07.10.2020	CST	1995-96	STATE	1513379	The assessment was completed u/s 12(5) of the CST Rules with additional tax demand on the basis of fraud case report that the goods are disposed of as inter-state sales but not branch transfer. The dealer challenged before the FAA who allowed certain claims as branch transfers and reduced the demand accordingly. The state challenged the order of the FAA before the Tribunal for partially confirm the order of assessment.	After going through the facts, the Tribunal concluded that the transactions in question are not inter-state sale, rather branch transfer. In the result, the appeal filed by the state is dismissed and the impugned order is set aside for recomputation of tax liability.