

SECOND APPEAL ORDER DISPOSAL STATUS FOR ORDERS RECEIVED IN SEPTEMBER-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.575-KJB(C)/14-15 DT.30.01.2016, A A.574-KJB(OVAT)/14-15, DT.30.01.2016 & AA.576-KJB(ET)/14-15, DT.30.01.2016	2(C) OF 2016-17, 148(VAT) OF 2016-17 & 7(ET) OF 2016-17, DT.20.08.2020	CST VAT & ET	01.04.2009 TO 31.03.2012	STATE	Demand of Rs 146090 was set aside	The assessment was completed under VAT, CST and ET Act. with demand of Rs 146090.00 which was set aside by the FAA . The state filed second appeal on the grounds of inter-state trade, export and stock transfer without 'C', 'F' and 'H' declaration forms and irregular penultimate sale u/s 5(3) of CST Act.	The findings of the Tribunal - (1) purchase of iron ore against 'H' form was sold otherwise not in course of export. (2) The moisture loss occasioned and not withstanding the credit loss at 542409 MT, has to be freshly calculated. (3) The taxable event of entry tax on the entry of scheduled goods into the local area which was completely lost sight by the FAA. (4) Interest should be levied in failing to submit declaration forms which is a statutory compliance and thus can't be dispensed with. In the result, the appeal was partly allowed and the impugned orders are hereby set aside with a direction to the AA to consider the assessments afresh keeping in view the finding and observation of the Tribunal within a period of three months.
2	M/S J.K.PAPER LIMITED, RAYAGADA	KORAPUT - II CIRCLE	AAC(KOII)33/2006-07, DT.31.07.2007	93(C) OF 2007-08, DT.01.09.2020	CST	01.04.2006 TO 30.06.2006	STATE	EXTRA DEMAND OF RS.10,33,58,532/- REDUCED TO THE REFUND OF RS.4,20,386/-	The assessment was completed u/r - 12(4) of the CST Rules with demand of Rs 10,33,58,532.00. The dealer filed first appeal before the FAA who reduced the demand by refunding Rs 4,20,386.00 after considering the revised returns and the declaration forms submitted by the dealer during the appeal period. The state filed second appeal on the grounds of accepting revised returns after assessment and calculating tax on the figure of the declaration forms, not representing in the original returns.	Due to failure to furnish H,F,C declaration forms, LAO raised demand of Rs. 10,33,58,532.00. 1. At appellate forum, wanting declaration forms furnished. 2. Hence FAA allowed refund of Rs. 4,20,386.00. 3. Second appeal filed by the state was dismissed. In the result, the appeal was dismissed having become redundant in the meantime.
3	M/S PATNAIK MINERALS PVT. LTD., KEONJHAR	KEONJHAR CIRCLE	AA.31/KJC/06-07, DT.05.10.2006	1(C)/2007-08, DT.01.09.2020	CST	2003-04	PARTY	Reduced the demand of Rs 25,51,384/- to Rs 634675/-	The assessment was completed under 12(5) of the CST Rules with demand of Rs 25,51,364 which was reduced to Rs 6,34,675.00 by the FAA. The dealer filed second appeal on the grounds that he was not given further opportunity to return the defective 'H' form for necessary rectification after pointing the same and for furnishing purchase order as well as bill of lading in respect of export sale effected through Casby Logistic Pvt. Ltd.	In the result, the appeal was allowed and the order is set aside with a direction to give the dealer an opportunity to submit the required 'H' form and recompute the tax liability within a period of three months.
4	M/S KALINGA ENGINEERS LTD., JAGATSINGHPUR	JAGATSINGHPUR CIRCLE	AA-OVAT/47/CUIIJ/2011-12, AA-OET/CUIIJ/01/2012-13, DT.19.02.2016	48(VAT) OF 2016-17, 26(ET) OF 2016-17, DT.11.09.2020	VAT & ET	01.04.2005 TO 31.03.2009	PARTY	2682397	The dealer filed second appeal on the grounds of disallowance of hired charges against gross receipt, disallowance of ITC adjustment and challenging the imposition of tax @ 2% w.r.t a crane which is not a scheduled goods, under the OET Act.	In the result, the appeal is partly allowed. The impugned orders are hereby set aside. Consequently, The AA is directed to examine the issues on ITC and exigibility of tax vis-vis the machinery equipment(crane) by providing an opportunity of hearing to the dealer assessee and to complete the assessment preferably within a period of three months from the date of receipt of the present order.

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5	M/S G.K.PULSES MANUFACTURING PVT. LTD., CUTTACK	CUTTACK I CENTRAL CIRCLE	107121512000058, DT.31.03.2016	7(C) OF 2016-17, DT.15.09.2020	OVAT	01.04.2012 TO 31.03.2014	PARTY	189792	The assessment was completed under OVAT ACT. with demand of Rs.1,89,792.00. The dealer filed first appeal which was partly allowed by the FAA as per non-submission of declaration forms 'C' and 'F' and penalty was deleted. The dealer filed second appeal on the grounds of non-compliance of Rule 10 of the CST Rules due to delay in preparation and submission of audit visit report.	In the result, the appeal is dismissed with a direction of levying interest on account of non-compliance of statutory forms. The impugned order is hereby modified and as a consequence, the AA is to recompute the tax liability for the assessment period within a period of three months.
6	M/S G.K.PULSES MANUFACTURING PVT. LTD., CUTTACK	CUTTACK I CENTRAL CIRCLE	106121512000059, DT.29.02.2016	42(VAT) OF 2016-17 & 60(VAT) OF 2016-17, DT.15.09.2020	OVAT	01.04.2012 TO 31.03.2014	BOTH	189792	The assessment was completed u/s 42 of the OVAT Act with tax and penalty. The dealer filed first appeal on the grounds that section 41(4) of the act was not duly complied with and therefore the proceeding under sub-section (1) is invalid. The FAA reduced the penalty to one time. The state filed second appeal on the grounds that the imposition of penalty reduced to one time from twice the amount of tax as liable u/s 42(5) of the act is illegal.	After going through the facts, the Tribunal concluded that such reduction in quantum of penalty applying the amendment act could not have been resorted to as such change of law can't have a retrospective effect. In the result, the appeal is partly allowed where as S.A. no. 60(VAT) of 2016-17 is dismissed as a logical sequitur. The order of the FAA is hereby confirmed. The LAO is directed to re-examine the facts and circumstances of the case within a period of three months.
7	M/S GENERAL MANAGER, MAHANADI COAL FIELDS LTD., ANGUL	ANGUL CIRCLE	AA/04/ET/2009-10, DT.16.10.2012	147(ET) OF 2012-13, DT.22.09.2020	OET	2004-05	PARTY		The assessment was completed under OET Act in which the dealer did not pay any entry tax on purchase of certain items which are chemicals. The dealer filed first appeal on the grounds that the items are explosives, not chemicals. The FAA confirmed the order of assessment. The dealer filed second appeal on the same ground.	In the result, the appeal is allowed. The order of assessment is hereby set aside.

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8	M/S NATIONAL ALUMINIUM COMPANY LTD., KORAPUT	KORAPUT - I CIRCLE	AA(KOI)292 AND 316 OF 2001-02, DTD.30.11.2002	2231 & 2232 OF 2002-03, DTD.22.09.2020	OST	1998-99 AND 1999-2000	PARTY	5200879	The assessment was completed u/s 12(4) of the OST Act with additional tax demand which was challenged by the dealer before the FAA who reduced the demand. Being desatisfied with the order, the dealer filed second appeal before the Tribunal on the grounds given below. (i) Disallowance of concessional rate of tax @ 4% on purchase of goods on the strength of declaration form- IV as per entry 48 of the list under the Act on the basis of the goods which are not directly used in manufacturing or mining. (ii) The liability fixed on the sale of foods through a canteen run by the dealer for the welfare of his employees. (iii) The claim of exemption on the sale of Alumina Hydrate to the small scale industrial units against form - ID which was rejected without any basis. After examining the facts, the Tribunal decided that the dealer is eligible to pay the concessional rate of tax. The AA is required to freshly examine the matter in order to determine the sale turnover of the appellant's canteen keeping in view of the settled law on the subject. In the last case, the Tribunal had no interference to disturb the finding of the authority. In the result, the appeals are allowed in part and the impugned orders are hereby set aside with a direction to re-examine and freshly compute the tax liability according to	LAO raised demand of Rs. 41,77,189.00 for 1998-99 and Rs. ** for 1999-2000. Reasons :- (a) Some declaration form - IV was rejected. (b) Declaration Form - 1D was rejected. (c) Canteen sale was estimated at 1and1/2 times of purchase value. (1) FAA already accepted some form - IV and balance was revised with differential tax. 2. Canteen sale upheld. 3. Rejection of 1D forms was upheld. Findings of OSTT :- 1. Form IV should be accepted by the AO as goods used in manufacturing process. 2.Rejection of Form - IV upheld. 3. Contract sale to be determined as per B/A and remanded the case to LAO for fresh order.
9	M/S CMM INFRA PROJECT LTD., BHUBANESWAR	BHUBANE SWAR I CIRCLE	AA- 10622152200016 6/OVAT/BH-I, DTD.30.12.2015	389(VAT) OF 2015-16, DT.15.09.2020	OVAT	01.07.2011 TO 30.03.2014	STATE	Refund of Rs 33,71,741.00	The assessment was completed u/s - 42 of the VAT Act with additional tax demand.The dealer filed first appeal before the FAA who allowed the appeal in part by refunding Rs 33,71,741.00 after adustment of TDS. The state filed second appeal on the grounds of contravention of Sec - 8(3)(b) of the CST Act., deduction availed against the purchase of materials used for works contract without submission of utilization certificate and deduction of 30% is allowed toward labour and service charges in stead of 20% on the same as per Rule 6(e) of the OVAT Rules. A CO is filed by the dealer justifying the order and questioning disallowance of ITC to the tune of Rs 1,14,683.00 . In the result, the appal is dismissed and the CO is allowed. As a consequence, the AA is directed to recompute the tax liability in the light of observations of the Tribunal within a period of three months from the date of the receipt of the present order.	The LAO allowed labour & service @ 30% in case of building construction work. 2. The LAO disallowed ITC of Rs. 1,14,688.00 as the seller of the order had not filed return. 3. Resulted refund of Rs. 33,71,741.00. 4. The FAA confirmed the assessment order. 5. L&S @ 30%/Sl.3(a) of Appendix/Building. 6. Disallowance of ITC due to non filing of return by selling dealer. Disposal nd appeal ground of the state - 1. L & S should have been 20% as per sl. no. 23 of Appendix. 2. Counter appeal- ITC should not have been disallowed due to non-filing of return of the selling dealer. 3. The OSTT dismissed the state appeal. 4. ITC was confirmed and LAO was directed for re-computation.

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10	M/S CENTURY PLYBOARDS INDIA LTD., BHUBANESWAR	BHUBANE SWAR II CIRCLE	AA(VAT)-20/2014-15, DT.16.07.2015	227(VAT) OF 2015-16, 259(VAT) OF 2015-16, DT.15.09.2020	OVAT	2014-15	BOTH	8272115.8	The dealer filed second appeal vide S.A. No. 227(VAT) of 2015-16 on the grounds that GTO & TTO of the dealer have not been properly determined, the books of account and other documents were not duly considered. Additional demand of tax and penalty were raised are bad in law. Trade discounts were disallowed by the AA but partly allowed by the FAA. The state filed second appeal vide S.A. NO.259(VAT) OF 2015-16 on the grounds that the Act allows deduction on trade discount and cash discount at the time of or before delivery of goods but the authorities have not complied the statutory mandate before allowing trade or cash discount and the trade policy of the dealer should have been examined.	The Tribunal considered that in the interest of justice, an opportunity should be provided to the dealer to justify its claim of such discounts as trade discounts being a part of trade practices. In the result, S.A. No. 227(VAT) of 2015-16 is allowed and S.A. No.259(VAT) of 2015-16 stands dismissed. The order of the FAA is hereby set aside. Consequently, the AA is to consider the admissible discounts as claimed by the dealer w.r.t. the assessment period by providing due opportunity of hearing to it and to recompute the tax liability preferably within a period of three months.
11	M/S ORTEL COMMUNICATION LTD., BHUBANESWAR	BHUBANE SWAR II CIRCLE	AA.56/BH-II/2005-06, 10.08.2007	1182 OF 2007-08, DT.01.09.2020	OST		STATE		The assessment was completed under the OST Act with additional tax on purchase of telecom equipment from outside the state. The FAA excluded it from the taxable turnover as the same was utilized and consumed by the dealer. The state filed second appeal on the grounds that the telecom equipment were purchased at a concessional rate of tax for the purpose of resale and referring to the RC.In the result, the appeal was dismissed in absence of any evidence of sale. As a logical sequitur, the impugned order of the FAA is hereby confirmed.	1. The dealer deals in RCMS,TV Cable, communication during 2002-03. 2. Cable T.V goods were purchased from inside and outside the state and used for self. 3. LAO levied OST on purchase value of such goods presuming R.C. was granted for sale of goods. 4. Demand of Rs. 11,90,398.00. 5. FAA held that there is no proof of sale/re-sale by the dealer, rather used for self. 6. Hence demand reached to Nil. 7. The OSTT confirmed the FAA order.
12	M/S MANGALAM TIMBER PRODUCTS LTD., BHUBANESWAR	BHUBANE SWAR RANGE	AA-57/VAT/ACST /ASSESSMENT/PUR/2008-09, DT.31.12.2009	221 (VAT) OF 2009-10, DT.25.08.2020	OVAT	01.04.2005 TO 31.03.2007	PARTY	51687220	The assessment was completed u/s 42(4) of the OVAT Act. with demand and penalty u/s 42(5) of the Act. The dealer filed first appeal before the FAA on the grounds that there is a minor discrepancy w.r.t. the stock which is quite negligible and it must not be treated as sale suppression. The tax liability on fire wood @ 4% has been assessed at 12.5% by claiming that the same is not covered under the industrial inputs. The appeal was allowed in part with a direction for fresh examination w.r.t. determination of taxable turnover.The dealer filed second appeal before the Tribunal on the grounds that the imposition of penalty is questioned when there is no mens rea.	1. The LAO raised demand of Rs. 17,19,969.00 including interest of Rs. 5,73,323.00 and penalty of Rs.11,46,646.00. 2. The FAA set aside the order of the LAO for higher rate of interest. 3. The OSTT upheld the finding of the FAA. In the result, the appeal stands partly allowed. The impugned order is hereby set aside with a direction to remit back the matter to the AA for determination of the conduct of the appellant dealer to discharge the statutory obligations by ascertaining the conduct whether to be bonafide or not for the purpose of imposing penalty or otherwise in terms of sec-42(5) of the Act within a period of three months.
13	JAISSWAL PLASTIC TUBES LTD. BALASORE	BALASORE CIRCLE		S.A. NO.115/2007-08 Dt. 01.09.2020	OST	2002-03	PARTY	1,320,000	The assessment was completed u/s 12(8) of the OST Act with demand of tax and penalty at Rs. 13,20,000.00. The FAA confirmed the assessment order.	1. The OSTT held that alleged suppression has not been established. 2. Hence remanded the case to LAO for fresh order after establishing suppression.

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14	JITENDRA BISWAL PURI	PURI CIRCLE		S.A. NO.189(V)/2014-15 Dt. 01.09.2020	VAT	01.04.2008 TO 31.08.2012	STATE	1192560	The assessment was completed u/s 42 of the OVAT Act with refund of Rs. 11,92,560.00. The dealer is a works contractor. LAO allowed labour and service charges as per Rule - 6 of Appendix. The FAA allowed refund of Rs. 16,97,860.00.	5. The OSTT dismissed the state appeal on the ground that no any illegality in FA order.