

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 639 of 2003-04

(Arising out of order of the learned ACST, Sundargarh Range,
Rourkela in Appeal No. AA 439 (RLI) 02-03,
disposed of on 31.03.2003)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-I

M/s. Steel Authority of India Ltd.,
Rourkela Steel Plant & Fertilizer Plant,
Rourkela ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the Appellant : Sri K. Rath, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 21.12.2023 *** Date of order : 20.01.2024

ORDER

Dealer in second round assails the order dated 31.03.2003 of the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AA 439 (RLI) 02-03 confirming the assessment order of the Sales Tax Officer, Rourkela I Circle, Uditnagar (in short, 'Assessing Authority').

2. Briefly stated, the facts of the case are that –

M/s. Steel Authority of India Ltd. carries on business in iron & steel products and chemical fertilizer both inside and outside the State. The assessment relates to the year 1980-81. The Dealer was originally assessed by the Assessing Authority raising extra demand of ₹3,18,251.00 u/s. 12 (4)

of the Odisha Sales Tax Act, 1947 (in short, 'OST Act'). In appeal, the First Appellate Authority confirmed the order of assessment. The impugned order of the First Appellate Authority was challenged in S.A. Nos. 1541-1542 of 1986-87 and this Tribunal vide order dated 30.08.1993 remanded the matter to the Assessing Authority for reassessment with certain observations.

As per the direction of this Tribunal, the Assessing Authority took up reassessment proceeding u/s. 12(8) of the OST Act. Accordingly, he computed the tax liability and raised the demand of ₹3,85,754.00 vide order dated 18.07.2002. Dealer once again preferred first appeal against such order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the reassessment order. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer submits that the Assessing Authority initiated 12(8) proceeding instead of remand assessment, which is not sustainable in law. He further submits that the Assessing Authority should have deleted the sales turnover of scrap and unserviceable materials and completed the remand assessment in conformity with the directions of this Tribunal. He further contends that the finding of this Tribunal is binding until the same is reversed or it's operation is stayed by a higher forum. So, he submits that the orders of the First Appellate Authority and Assessing Authority are required to be interfered in appeal.

He relies on the decision of the Hon'ble Court in case of *Jayanarayan Kedarnath and Another v. Sales Tax Officer, Cuttack I West Circle*, reported in [1988] 68 STC 25 (Orissa).

4. On the contrary, the learned Standing Counsel (CT) for the State submits that the Hon'ble Court have already settled the issue on taxability of scrap and old unserviceable materials. He further submits that the Dealer has already acknowledged the same in the brief history of events. He further submits that the Assessing Authority has not passed any order u/s. 12(8) of

the OST Act rather it is a remand assessment as per the directions of the Tribunal. He also contends that the whole order should be read to record a finding if the Assessing Authority has passed any order u/s. 12(8) of the OST Act. He further argues that wrong quoting the section in the remand assessment cannot vitiate the proceeding in toto. He avers that the Assessing Authority has already accepted 115 nos. of declaration form besides complying with the other directions. So, he submits that the order of the First Appellate Authority confirming the order of assessment is in conformity with the order of this Tribunal passed in S.A. Nos. 1541-1542 of 1986-87.

He relies on the decision of the Hon'ble Court in case of *State of Orissa v. Steel Authority of India Ltd.*, reported in [2011] 44 VST 50 (Orissa).

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. Before this forum, the Dealer has challenged the impugned order of the First Appellate Authority on the following grounds :-

- (i) The Assessing Authority did not delete the sales turnover of scrap and unserviceable material from the GTO and TTO of the Dealer; and
- (ii) The Assessing Authority is duty bound to comply the order of the second appellate authority unless & until the same is either reversed or its operation is stayed by the higher fora.

During the course of hearing of the case, learned Counsel for the Dealer also raised the contention that the Assessing Authority cannot initiate a proceeding u/s. 12(8) of the OST Act in case of remand assessment relying on the decision in case of *Jayanarayan Kedarnath and Another* cited supra.

In the above cited case, Hon'ble Court have been pleased to observe as follows :-

- “(i) Escapement of turnover could not be predicted before assessment was completed. The notice issued by the assessing

officer under section 12(8) of the Orissa Sales Tax Act was not valid. Keeping the assessment proceedings incomplete, the assessing officer had no jurisdiction to resort to the powers conferred on him under section 12(8) of the Act.

(ii) The revenue could not be permitted to have recourse to unwarranted and illegal procedure as a subterfuge to overcome the difficulty of limitation.”

6. Under such circumstances, we are to examine whether the Assessing Authority has completed the reassessment in compliance to the order passed by this Tribunal in S.A.Nos.1541 - 1542 of 1986-87.

The record transpires that this Tribunal had modified the order of the First Appellate Authority with the following observations :

- i) Canteen sales are taxable and hence no interference is called for with the findings of the Sales Tax Officer on this score.
- ii) Turnover of sales of old unserviceable materials was deleted from the GTO of the appellant and plea of the Dealer on that account was allowed.
- iii) The Sales Tax Officer included stowing charges, excise duty as other charges. The plea of the Dealer on this score was not allowed.
- iv) The deduction on credit notes for an amount of ₹80,610.13 was liable to be excluded from the GTO and as such, the plea of the Dealer for deduction towards credit notes was allowed.
- v) The Sales Tax Officer was to verify the 115 numbers of ‘C’ forms. Further, two ‘C’ forms amounting to ₹17,341.77 covering more than one bill and two quarters could not be rectified by the appellant. This Tribunal had observed that the Sales Tax Officer may allow one bill each pertaining to one quarter and allow concessional rate of tax to that extent only. Only one declaration form relating to Mishra & Partner for a value of ₹13,940/- is not available on record. There is no scope for rectification or otherwise with regard to this claim, in case the appellant can produce the

duplicate counterfoil forms available with Mishra & Partner after due verification in case the same is admissible, concessional rate of tax may be allowed.

The order of this Tribunal transpires that the issue of canteen sale and stowing charges, excise duty as other charges were upheld. Further, issue on disposal of scrap materials and deduction of credit notes were allowed by deleting the turnovers. The aforesaid issues have already been reached to its finality. The matter was only remanded to examine and allow two 'C' forms and to verify the rest 115 nos. of 'C' forms and allow concessional rate of tax as per law in the reassessment.

7. Before delving into the issue, it is pertinent to quote the relevant portion of the order passed by this Tribunal in S.A.Nos.1541 and 1542 of 1986-87 as under :-

“6. ... There are 117 'C' forms which were made available to the appellant for rectification. The appellant get rectified 115 'C' forms relating to 11 parties. These 115 'C' forms are required to be verified by the Sales Tax Officer now and allow concessional rate of tax as per the law. Two 'C' forms amounting to ₹17,341.77/- covering more than one bill, and two quarters could not be rectified by the appellant. These two 'C' forms no doubt are defective, but the validity of declaration form need not be questioned. Hence, the learned Sales Tax Officer may allow one bill each pertaining to one quarter and allow concessional rate of tax to that extent only. Only one declaration form relating to Mishra & Partner for a value of ₹13,940/- is not available on record. There is no scope for rectification or otherwise. With regard to this claim, in case the appellant can produce the duplicate counterfoil forms available with Mishra & Partner after due verification in case the same is admissible, concessional rate of tax may be allowed by the Sales Tax Officer. This being the position the matter is remanded back to the learned Sales Tax Officer. The orders of the ACST stands modified to that extent.”

8. Now, we are only to examine whether the reassessment has been completed by the Assessing Authority in conformity with the direction of this Tribunal passed in S.A. Nos. 1541-1542 of 1986-87.

In remand assessment, the Assessing Authority completed the remand assessment on 18.07.2002. The remand assessment order transpires, though the Assessing Authority completed the remand assessment invoking the provision u/s. 12(8) of the OST Act, but in fact the record reveals that the Assessing Authority has complied with only the directions of this Tribunal passed in S.A. Nos. 1541-1542 of 1986-87 in the operative part of order of the remand assessment. He has not dealt with any other materials relating to escapement or under assessment in such remand assessment. So, mere mentioning provision of Section 12(8) of the OST Act in remand assessment, will not vitiate the whole proceeding.

As no order u/s. 12(8) of the OST Act has been passed by the Assessing Authority, but complied with the directions of this Tribunal in the remand assessment, it cannot be said that the Assessing Authority has initiated proceeding u/s. 12(8) of the OST Act while completing the remand assessment. Thus, the remand assessment will not be vitiated in law. Under such circumstances, the decision relied on by the Dealer is not applicable to the present facts and circumstances of the case.

9. As regards issue No. (i), i.e. non-deletion of the sales turnover of scrap and unserviceable material from the GTO and TTO, the Assessing Authority deleted the turnover of brass scrap and turnover of ₹80,610.13 towards credit notes in compliance to the order of this Tribunal.

As regards issue No. (ii), i.e. compliance of the order of the second appellate authority by the Assessing Authority unless & until the same is either reversed or its operation stayed by the higher forum.

The Assessing Authority has already deleted the turnover of scrap and unserviceable materials from the TTO in compliance to the direction of this Tribunal. Learned Standing Counsel (CT) apprised us that the Hon'ble Court were pleased to observe in Tax Revision Case No. 162 of 2001 in case of *Steel Authority of India Ltd.* cited supra that the sale of scrap materials and old unserviceable materials is liable to tax and answered in negative

against the present Dealer. The relevant observation of the Hon'ble Court is quoted below for better appreciation :-

“17. In the present case, manufacturing and selling of iron, steel products, chemical fertilizers, etc., are the main business activities of the petitioner. It is a registered dealer both under the OST Act and CST Acts and it regularly pays tax on sale of these goods. It is an ongoing big business concern and sporadic/occasional sale of scrap materials and old unserviceable materials is obvious. It cannot be said that such transaction is not in connection with, or incidental or ancillary to the main business in terms of section 2(b)(ii) of the OST Act. Therefore, the sale of scrap materials and old unserviceable materials is liable to tax.”

The order of this Tribunal reveals that the deletion of sale turnover of scrap and unserviceable materials was on the ground of presumptions and surmises. No actual facts and figures are available to quantify the turnover. So, at this stage, we feel it proper to remit the matter back to the Assessing Authority for re-examination as per law taking into consideration the actual fact and figures of the sale turnover of scrap and unserviceable materials.

10. Record further reveals that this Tribunal has observed that 115 nos. of Form-C (*Dealer in the grounds of appeal made it clear that Form-C as mentioned in the Tribunal's order is meant Form-XXXIV*) are required to be verified by the Assessing Authority and to allow the benefit. The Assessing Authority has already examined the said declaration forms and accepted the same as valid.

This Tribunal had also made an observation that the declaration forms for ₹17,341.77 covering more than one bill and two quarters are through defective, but the validity need not be questioned. It was further observed that the Assessing Authority may allow one bill each pertaining to one quarter and to allow the benefit thereunder.

The assessment order reveals that the Assessing Authority observed that the Dealer failed to rectify the defects noticed in case of M/s. C.K. Steel Traders and M/s. Shankar Steel & Metal Industries for ₹9,771.87 and ₹7,569.90 respectively and considered under TTO. The Assessing

Authority has not complied with the order of this Tribunal in its proper perspective.

This Tribunal had further observed that in case the Dealer furnishes the duplicate counterfoil form for ₹13,940.00 relating to M/s. Mishra & Partners, the same may be examined and to allow the benefit if admissible. The assessment order reveals that the Dealer fails to furnish the declaration form on this score and as such, the Dealer is not entitled to any relief.

11. So, for the foregoing discussions, it is found that the Assessing Authority has already accepted 115 nos. of declaration form in conformity with the direction of this Tribunal, but failed to comply the direction of this Tribunal in respect of declaration form for an amount of ₹17,341.77. We have already opined that the sale turnover of scrap and unserviceable materials are to be levied tax subject to its proper quantification as per law.

12. Resultantly, the appeal is allowed in part to the extent of declaration form for ₹17,341.77 and the impugned order of the First Appellate Authority stands modified to that extent. The Assessing Authority shall recompute the tax liability as per law keeping in view our observations above within a period of three months from the date of receipt of this order.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-I**