

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

**S.A. No. 66(C) of 2015-16**

(Arising out of the order of the learned JCCT, Jajpur Range,  
Jajpur Road, in First Appeal case No. AA-425 KJB(C) 2013-14  
disposed of on 18.02.2015)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri B.Bhoi,  
Chairman. Judicial Member-II Accounts Member-II.**

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

... Appellant.

**- V e r s u s -**

M/s.Bimaldeep Minerals (P) Ltd.,  
Bileipada, Joda, Keonjhar.

... Respondent.

For the Appellant  
For the Respondent

... Mr.D.Behura, SC.  
... Mr.P.K.Harichandan, Advocate.

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Date of hearing: **05.01.2023**

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Date of Order: **31.01.2023**  
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**ORDER**

State prefers this appeal challenging the order dated 18.02.2015 passed by the learned Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road ( in short, DCST/FAA) in first appeal case No.AA.425 KJB (C) 2013-14, thereby allowing the appeal in part against the order of assessment passed by the learned Sales Tax Officer, Barbil Circle, Keonjhar ( in short STO/AO) on dated 29.06.2013 under Section 12(3) of the CST (O) Rules for the tax period from 01.04.2008 to 31.03.2012 raising a demand of Rs.14,71,300.00.

2. The case at hand is that the dealer assessee M/s.Bimaldeep Minerals (P) Ltd., bearing TIN-21071400155 is a crusher unit wherein the iron or lumps are usually crushed into sized iron ore and iron ore fines. It (dealer company) purchases raw materials from within the State of Odisha and also purchases spare

and other consumable goods both from within and outside the State of Odisha. Pursuant to the receipt of the audit visit report, the learned STO initiated assessment proceedings under Rule 12(3) of the CST (O) Rules by issuing the statutory notice in Form VAT-306. The dealer assessee appeared with the books of accounts and the learned STO confronted the discrepancies to the dealer assessee and thereafter the gross turnover and net taxable turnover were determined by the learned STO at Rs.28,85,69,391.00 and Rs.28,27,49,017.00 respectively. Tax @2% on Rs.25,45,96,475.00 calculated to Rs.50,91,930.00 and tax @4% on Rs.2,81,52,612.00 calculated at Rs.11,26,104.00. Total CST output comes to Rs.62,18,034.00. A sum of Rs.57,27,601.00 was adjusted towards input tax credit for which the output tax net of input tax credit was determined at Rs.4,90,433.00. No tax was paid by the dealer assessee before furnishing the returns for which the learned STO assessed the tax amounting to Rs.4,90,433.00. An amount of Rs.9,80,867.00 was also imposed as penalty under Rule 12(3) (g) of the CST (O) Rules. So in toto, tax and penalty together calculated to Rs.14,71,300.00.

3. Against such tax demand, the dealer preferred first appeal before the learned DCST, Jajpur Range, Jajpur Road who allowed the appeal in part and reduced the demand to Rs.1,87,180.00.

4. Being dis-satisfied with the order of the first appellate authority, State has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection is filed in this case by the dealer respondent.

6. During course of argument, learned Standing counsel for the revenue contended that 'H' form which was accepted was not in conformity with the provision of law. That 'H' form was filed for Rs.22,71,390.00 and exemption was allowed under Section 5(3) of the CST Act. But it was allowed without verifying the agreement of the

foreign buyers. So, the allowance of exemption of Rs.22,78,551.00 is erroneous, illegal and not as per the provisions of law.

7. Per contra, learned counsel for the dealer assessee argued that the first appellate authority has rightly allowed the claim of penultimate sale in course of export under Section 5(3) of the CST Act amounting to Rs.22,78,551.00 and against form 'H'. Further contention on behalf of the dealer assessee is that the imposition of penalty for non-submission of declaration forms is contrary to the circular dated 20.04.2015 issued by the Commissioner of Sales Tax, Odisha, Cuttack.

8. To support such claim, dealer assessee has relied upon the decision of the Hon'ble Court of Odisha decided in the case of M/s.General Traders, Berhampur... Petitioner Vrs. State of Odisha represented through Commissioner of Commercial Taxes, Cuttack... Opp. Party (STREV No.64 of 2017 decided on 08.01.2022) and order of Single Bench of this Tribunal passed on dated 26.04.2019 in S.A.No.18(C) of 2018. From the rival contentions of the parties, now it is to be adjudicated upon whether the allowance of Rs.22,78,551.00 under Section 5(3) of the CST Act is erroneous, illegal and not as per the provisions of law. Secondly, whether imposition of penalty for non-submission of declaration forms is contrary to the circular dated 20.04.2015 issued by the Commissioner of Sales Tax, Odisha, Cuttack. On perusal of the case record, it becomes clear that the dealer assessee has submitted declaration form 'H' but on the other hand, the say of the revenue is that the agreement in between the exporter and the foreign buyers are not produced for which the dealer is not entitled for exemption. Rule 12(10) (a) of the CST (O) Rules provides for filing of form-H to be filed for claim of deduction/exemption to be granted for penultimate sale effected by a dealer in course of export. In the instant case, the dealer has fulfilled the requirement of law by filing of form-H. So when the dealer has filed statutory 'H forms issued by the competent authority duly signed by

the exporter certifying the fact of export of goods providing with other details thereafter for which the appellate authority should not insist the dealer to furnish purchase orders to grant exemption under Section 5(3) of the CST Act. In this case, the dealer has complied with the terms of law as provided under the CST Act and Rules by filing of Form-H in accordance to Section 5(4) of the CST Act for which the exemption claimed is rightly allowed by the learned first appellate authority. This aspect is quite clear from the observation of the Hon'ble Court decided in the case of M/s.General Traders, Berhampur --- Petitioner Vrs. State of Odisha represented through Commissioner of Commercial Taxes, Cuttack... Opp party STREV No.64 of 2017 decided on dated 08.12.2022 wherein the Hon'ble Court has held that:-

*“this Court is of the considered opinion that the petitioner has discharged its burden in the instant case and the authorities could very well have ascertained from the details mentioned in the Certificate of Export in Form-H supported by bill of lading and purchase order whether the agreement/purchase order preceded the procurement of goods by the Indian Exporter from the petitioner penultimate seller. There being no adverse finding of any sort in this regard, this court is, therefore, comes to conclusion that mere non-production of agreement entered into between the Indian Exporter and the Foreign buyer would not invalidate the claim of the petitioner penultimate seller for exemption under Section 5(3) of the CST Act....”*

*“....Disallowance of claim of the petitioner under Section 5(3) of the CST Act has been made by the assessing authority and confirmed by the appellate authority and the Odisha Sales Tax Tribunal was on account of non-production of copy of agreement between the Indian Exporter and the Foreign buyer. In view of the discussions made supra, there is no scope for this Court left but to overrule the view expressed by the authorities. Therefore, this Court is inclined to set aside the order dated 18.05.2017 passed by the learned Odisha Sales Tax Tribunal in S.A.No.58(C) of 2015-16.”*

So in view of the verdict of the Hon'ble Court, learned first appellate authority has rightly allowed exemption under Section 5(3) of the CST Act for Rs.22,78,551.00 and as such the contention of the State appellant deserves no merited acceptance.

9. Now, coming to the contention of the dealer respondent relating to imposition of penalty for non-submission of declaration Form, let us have a glance to Circular No.42/III/(I) 38/09/CT dated 20.04.2015, Office of the Commissioner of Commercial Taxes, Odisha, Cuttack for non levy of mandatory penalty on audit assessment under Central Sales Tax Act, Hon'ble Court has held while deciding the case of M/s.General Traders, Berhampur.. the petitioner Vrs. State of Odisha represented through Commissioner of Commercial Taxes, Cuttack... Opp. Party (Supra) as follows:

*“ in view of the aforesaid circular issued by the Commissioner of Commercial Taxes instructing not to enforce penalty under Rule 12(3)(g) of the CST (O) Rules. First appellate authority was justified in deleting penalty as imposed by the Assessing Authority for non-filing of declaration forms....”*

So it becomes quite clear that imposition of penalty for non-submission of declaration forms is contrary to the Circular dated 20.04.2015 issued by the Commissioner of Sales Tax, Odisha, Cuttack.

10. In view of the above verdict of the Hon'ble court, we are of the view that the learned first appellate authority has rightly allowed exemption of Rs.22,78,551.00 under Section 5(3) of the CST Act basing on declaration form-H. But on the other hand, we disagree with regard to the imposition of penalty under Rule 12(3)(g) of the CST (O) Rules which is contrary to the circular dated 20.04.2015 issued by the Commissioner of Sales Tax, Odisha, Cuttack.

11. In the result, the appeal preferred by the State is dismissed on contest. The order of the First Appellate Authority to the extent of exemption against declaration Form-H is confirmed but set aside to the extent of imposition of penalty under Rule 12(3)(g) of the CST (O) Rules. Re-computation of tax liability, if any, be completed accordingly. Cross objection is disposed of accordingly.

Dictated and Corrected by me,

Sd/-

**(Shri S.K.Rout)**  
**Judicial Member-II**

**I agree,**

Sd/-

**(Shri S.K.Rout)**  
**Judicial Member-II**

Sd/-

**(Shri G.C.Behera)**  
**Chairman**

**I agree,**

Sd/-

**(Shri B.Bhoi)**  
**Accounts Member-II**