

**BEFORE THE JUDICIAL MEMBER-II:
ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**P r e s e n t: Shri S.K. Rout,
 2nd Judicial Member**

S.A. No. 36(C) of 2020

(Arising out of the order of the learned Addl. Commissioner of
Sales Tax (Appeal), Rourkela,
in 1st. Appeal No. AA 55 (CST) RL-I/2018-19,
disposed of on dtd.31.07.2019)

M/s. Vikram Private Limited,
Bad Tumkela, Bonai,
Dist.- Sundargarh.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. S.C. Agarwal, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

Date of hearing: 11.09.2023 *** Date of order: 09.10.2023

ORDER

The dealer prefers this appeal challenging the order
dtd.31.07.2019 passed by the learned Addl. Commissioner of
Sales Tax (Appeal), Rourkela (hereinafter referred to as,
ACST/first appellate authority) in 1st. Appeal No. AA 55 (CST)
RL-I/2018-19, thereby allowing the appeal in part and
reducing the demand to ₹2,03,773.00 against the assessment
order dtd.14.08.2013 passed by the learned Deputy
Commissioner of Sales Tax, Rourkela I Circle, Uditnagar

(hereinafter referred to as, learned DCST/assessing authority) u/r.12(3) of the Central Sale Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the period 01.01.2008 to 31.03.2011 raising demand of ₹4,77,594.00 including penalty of ₹3,18,396.00.

2. The case at hand is that, the dealer in the instant case M/s. Vikram Private Limited having TIN-21512004514 carries on business in manufacture and sale of sponge iron. The DCST, Rourkela II Circle conducted audit of the business of the appellant under the provisions of Rule 10 of the CST(O) Rules r/w. sec.41 of the OVAT Act and submitted an AVR against the appellant on allegation of non-submission of declaration form 'C' amounting to ₹73,96,245.00 towards sales in course of interstate trade. This apart, the dealer also failed to furnish 'C' form of ₹2,03,896.00 in respect of sale of goods to M/s. Jagadamba Sponge (P) Ltd., Raigarh. It was also found by the audit that the appellant had decreased the output tax in respect of return of goods amounting to ₹2,73,886.00 sold in the course of interstate trade without submission of relevant credit note and receipt of debit note to that effect. On receipt of the AVR, learned assessing authority initiated assessment proceeding against the appellant u/r.12(3) of the CST(O) Rules and raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who allowed the appeal in part and reduced the demand to ₹2,03,773.00.

4. Further, being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the

present second appeal as per the grounds stated in the grounds of appeal.

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

6. During the course of argument, learned counsel for the dealer-appellant contended stating that the first appellate authority is not correct in accepting the return of goods of ₹2,73,886.00 in as much it has been accepted under the principal act and that the levy of interest of ₹44,575.00 is not correct.

7. Per contra, learned Addl. Standing Counsel for the Revenue argued stating that the claim of return of goods of ₹2,73,886.00 is not supported by corroborative documentary evidence like credit note and debit note. The first appellate authority has rightly rejected the grounds as taken by the appellant. The Hon'ble OSTT vide order dtd.23.05.2018 in S.A. No.4(C) of 2017-18 in case of Gupta Trading Co. vrs. The State of Odisha has observed that payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal, cross objection and the orders of the fora below. After have a glance to the order of the learned first appellate authority it becomes evident that the learned assessing authority rejected the suggestion of the audit officials to disallow the decrease of tax in connection with return of goods amounting to ₹2,73,886.00 for non-furnishing of credit note and receipt of debit note for such

transaction. But it was established that the finding of the audit officials regarding levy of differential tax on the sale amount against which the declaration form had not been furnished and accordingly raised an additional tax demand of ₹1,59,198.00 after adjustment of tax paid by the appellant in shape of challan and by way of adjustment out of ITC available under the OVAT Act. Learned first appellate authority rightly revealed no infirmity in the order. As such the demand sustained at ₹1,59,198.00. This apart, learned first appellate authority rightly adjudicated upon the fact that when the additional tax demand so quantified by the learned assessing authority on account of non-furnishing of declaration form 'C' towards interstate sale for which penalty imposed being not sustainable in view of the circular of the CCT(O), Cuttack vide No.42/CT dtd.20.04.2015, the learned first appellate authority rightly deleted the penalty. This apart, learned first appellate authority rightly held that the appellant is to pay interest amounting to ₹44,575.00 for 28 months i.e. from 21.04.2011 to 14.08.2013 (date of assessment) in view of the order dtd.26.05.2018 of the OSTT decided in the case of M/s. Shree Ganesh Rolling Mills Pvt. Ltd. vrs. State of Odisha in S.A. No.79(C) of 2015-16. In view of such, the learned first appellate authority rightly sustained the demand at ₹2,03,773.00 and as such when the matter has already been adjudicated upon by the learned first appellate authority in consonance of the provisions of law, the same needs no interference.

9. In the result, the appeal preferred by the dealer is dismissed and the order of the learned first appellate authority is hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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