

**BEFORE THE DIVISION BENCH-III:
ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**P r e s e n t: Shri S.K. Rout, & Mr. Jahangir Khan,
2nd Judicial Member Accounts Member-III**

S.A. No. 40(C) of 2022

(Arising out of the order of the learned Addl. Commissioner of
Sales Tax (Appeal), Rourkela,
in 1st Appeal No. AA 78 (CST) RL-II/2018-19,
disposed of on dtd.17.08.2022)

M/s. IFGL Refractories Limited,
Sector B, Kalunga Industrial Estate,
Kalunga, 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. H.V. Jhunjhunwala &
Mr. B.P. Mohanty, Advocate
For the Respondent ... Mr. D. Behura, S.C.

Date of hearing: 16.09.2023 *** Date of order: 12.10.2023

ORDER

The dealer prefers this appeal challenging the order
dtd.17.08.2022 passed by the learned Addl. Commissioner of
Sales Tax (Appeal), Rourkela (hereinafter referred to as,
ACST/first appellate authority) in 1st Appeal No. AA 78 (CST)
RL-II/2018-19, thereby confirming the order of assessment
passed by the learned Joint Commissioner of sales Tax,

Rourkela II Circle, Panposh (hereinafter referred to as, JCST/assessing authority) dtd.18.07.2018 u/r.12(3) of the Central Sales Tax (Orissa) Rules (in short, the CST(O) Rules) for the period from 01.10.2015 to 31.03.2016 raising demand of ₹43,45,155.00 including interest of ₹8,40,998.00.

2. The case at hand is that, the dealer-appellant in the instant case carries on business in manufacture and sale of refractories goods into different forms namely 'castable' and also refractories goods of various shapes like nozzle, silde, gate refractories, ceramic etc. The raw materials utilized in the process of manufacturing are graphite, alumina, bauxite, rasins, zirconia etc. The dealer procured such raw materials both in course of intrastate and interstate trade and commerce. The dealer-company also imports raw materials and capital goods from outside the territory of India. It has effected purchases and sales both from inside and outside the State of Odisha. The dealer also effected export sale and SEZ sale.

3. As per notification No.3810/CT dtd.03.03.2018, the Commissioner of Commercial Taxes, Odisha, Cuttack, the appellant-dealer company selected for assessment under CST Act r/w. Rule 12(3) and u/r.22 of the CST(O) Rules for the period 01.10.2015 to 31.03.2016. Pursuant to notice issued to the dealer, it submitted 'C' forms, 'E-I' forms, 'I' forms and 'H' forms. But the dealer-company failed to submit some 'H' forms and 'C' forms in absence of such. In absence of such, learned assessing authority completed assessment and raised the demand as mentioned above.

4. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the tax demand.

5. 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.

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

7. During course of argument, learned Counsel for the dealer-appellant vehemently contended stating that confirmation of the order of the learned assessing authority by the first appellate authority is arbitrary, unwarranted. There being no allegation that the penultimate sale by the appellant being deemed to be to in the course of such export, no tax could have been imposed under the Sales Tax Act, 1956. The learned first appellate authority ignoring the fact that when form 'H' is generated online by the exporter in view of the applicable provisions of the Central Sales Tax Act and applicable Rules, the same amounts to furnishing of the form 'H' to the prescribed authority in electronic mode and sufficient compliance to Rule 12(10) of the CST (R&T) Rules, 1957 as the purpose of furnishing the form to the prescribed authority is to make him aware of the fact of export which in any case is fulfilled with the prescribed authority itself issues such form upon being satisfied of the exports having been made. The learned ACST/first appellate authority failed to appreciate that illegal refusal of the exporter in parting with the form H generated online from TINXSYS cannot be the only

ground for refusing to treat the penultimate sale by the appellant as export sale and thus not liable for Central Sales Tax under the CST Act.

8. Per contra, learned Standing Counsel for the Revenue stating that the dealer-appellant failed to submit the original form 'H' relating to export sale u/s.5(3) of the CST Act and other supporting documents such as purchase order, bill of lading, invoice copy etc. amounting to ₹7,00,83,154.00 for the material period at the time of assessment. At the time of appeal also the dealer failed to submit the original 'H' forms of ₹7,00,83,154.00. This apart, learned Standing Counsel also argued stating that penultimate sale is subject to the conditions like the sale is for purpose of complying with agreement of order in relation to export. The final exporter should be in possession of the export order from the foreign buyer and should take delivery of the goods from the suppliers making penultimate sale solely for execution of such export order. In the instant case the dealer-company failed to submit the copy of export order received from the foreign buyer.

9. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the orders of the fora below, grounds of appeal and the cross objection. After have a glance to the order of the learned first appellate authority, it reveals that the dealer-company has effected penultimate sale to M/s. Lindsey International Pvt. Ltd. bearing No.19420745003 relating to export u/s.5(3) of the CST Act and other supporting documents such as purchase order, bill of lading, invoice copy etc. amounting to ₹7,00,83,154.00 for the material period. So,

in view of such the learned assessing authority disallowed the export sale as claimed by the dealer-company u/s.5(3) of the CST Act and taxed the appropriate rate i.e. @ 5%. This apart, it also becomes clear that during the course of hearing of the first appeal, shipping bill, invoice copy were submitted by the dealer-company to prove that sale of goods effected u/s.5(3) of the CST Act had actually been exported out of India. But the dealer-company failed to submit the original 'H' forms of ₹7,00,83,154.00. However, the dealer-company had submitted the printout copy of 'H' forms details obtained from Tax Information Exchange System in course of hearing of appeal. On this score let us have a glance to the language of sec.5(4) of the CST Act provides that the provisions of sub-sec.(3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filed and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority. This apart, Rule 12(10) of the CST(O) Rules provides that the declarations referred to in sub-sec.(4) of sec.5 shall be in form 'H' and shall be furnished to the prescribed authority up to the time of assessment by the 1st assessing authority. So, one thing becomes clear that in the instant case the dealer-company has failed to submit the original 'H' forms duly signed by the issuing dealer i.e. exporter in support of export sale. On the other hand, law is well settled that exemption to penultimate sale is subject to the conditions like the sale is for the purpose of complying with agreement or order in relation to export and such sale is made after the agreement or order in relation to

export. The final exporter should be in possession of the export order from the foreign buyer and should take delivery of the goods from the suppliers making penultimate sale solely for execution of such export order. But in the instant case the dealer-company failed to submit the copy of export order received from the foreign buyer. So, the requirement of the provision u/s.5(3) of the CST Act is required to be fully complied with in consonance to Rule 6(D) of the CST(O) Rules. So, in this case when the dealer failed to support its claim of concessional tax, imposition of interest is automatic. So, both the fora below have rightly adjudicated upon the issue in consonance with the provisions of law. But now fact remains that during the stage hearing of this second appeal, the dealer-company has submitted certain declaration 'H' forms and supporting documents. If that is so, those documents must be taken into consideration otherwise there will be violation of principle of natural justice. So, in view of such to our considered view the matter is to be remanded to the learned assessing authority for computation of tax afresh giving due consideration to the declaration form 'H' and other documents submitted by the dealer-company before this Tribunal.

10. In the result, the appeal preferred by the dealer is partly allowed and the orders of the fora below are hereby set aside. The case is remitted back to the learned assessing authority for recomputation of tax giving due consideration to the declaration form 'H' and other documents submitted by the dealer-company before this forum within a period of three months of receipt of this order giving the dealer-appellant an

opportunity of being heard. The dealer-appellant is also instructed to submit the original 'H' forms and other documents before the learned assessing authority during the time of reassessment. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(Jahangir Khan)
Accounts Member-III