BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 55 (C) of 2015-16

(Arising out of order of the learned Addl. CST (Appeal), North Zone, Sambalpur in Appeal No. AA 55 (C)/08-09, disposed of on 30.07.2015)

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

M/s. Mahanadi Coalfields Limited,
IB Valley Coalfields,
At/PO- Brajarajnagar, Dist. Jharsuguda ... Appellant

-Versus-

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

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

Date of hearing : 08.11.2023 *** Date of order : 06.12.2023

O R D E R

Dealer assails the order dated 30.07.2015 of the Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA 55 (C)/08-09 reducing the assessment order of the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. Mahanadi Coalfields Limited extracts coal from its mines and sales the same inside the State as well as in course of inter-State trade

and commerce. The assessment relates to the period 01.04.2006 to 30.06.2006. The Assessing Authority raised tax demand of ₹27,32,474.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') due to non-submission of declaration in Form-C.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹19,94,510.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection.

3. The learned Counsel for the Dealer submits that the First Appellate Authority went wrong in refusing the refund of excess CST collected and paid despite filing of credit notes. He further submits that the orders of the First Appellate Authority and Assessing Authority are otherwise bad in law and the same need interference in appeal.

He relies on the decision of the Hon'ble High Court of Allahabad in the case of ***DCM Limited v. Commissioner of Trade Tax, UP, Lucknow***, reported in **[2000] 117 STC 258 (Allahabad)** and the order of this Tribunal passed in **S.A. No. 245 of 2007-08** decided on 01.06.2012.

4. On the other hand, the learned Standing Counsel (CT) for the State submits that the Dealer fails to show any material regarding refund of excess CST to the customers. So, the First Appellate Authority committed no wrong in disallowing such claim. He further submits that the order of the First Appellate Authority suffers from no infirmity and needs no interference.

5. Heard the rival submissions, gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The Dealer claims that the Assessing Authority and First Appellate Authority fail to appreciate the purpose of issuance of credit notes for refund

of CST to customers. The assessment order reveals that the Dealer produced 'C' form of ₹2,28,03,14,854.00 and allowed the concessional sales tax. The Assessing Authority determined the GTO, NTO and tax liability of the Dealer. In the first appeal, the Dealer produced 'C' form for ₹49,22,255.92, which was accepted. Further, the Dealer claims refund of excess payment of ₹45,30,094.00 out of which ₹40,97,983.00 relates to issue of credit note on account of excess charged CST @ 8% instead of 4%.

The First Appellate Authority found that the Dealer has collected and paid CST of ₹10,24,91,557.00 against tax due of ₹10,04,97,047.36. Thus, he found that the Dealer has excess tax of ₹19,94,510.00 and as such, refused the claim of refund on the ground that the Dealer fails to furnish any document regarding refund of excess tax to the customers from whom he had collected keeping in mind the decision of the Hon'ble Court reported in **90 STC 482**.

6. On scrutiny of the first appeal record (LCR), it reveals that the Dealer had produced a statement showing details of credit notes issued during Q/e. June, 2006 in respect of 14 nos. of customer for ₹45,30,025.65 along with bills. Inspite of such details of credit notes, the First Appellate Authority refused the refund of excess payment. In the case of ***DCM Limited*** cited *supra*, the Hon'ble Allahabad High Court have been pleased to observe as follows :-

> "9. As is evident, from the facts of the present case the dealer has already refunded the amounts to the buyers from whom it had realised the tax. This has been done by issuing credit notes which is a valid method of refund and the factum of which has not been doubted by the authorities below. Therefore, so far as the revisionist is concerned, there is no question of its being unduly enriched if refund is allowed to it. On the other hand, it is the State which would stand unduly enriched if it retains the amounts which it was not legally entitled to retain as tax."

Relying on the aforesaid decision, earlier this Tribunal in **S.A. No. 245 of 2007-08** decided on 01.06.2012 in respect of the instant Dealer for the assessment year 1998-99 has already remanded the matter for due examination for refund of excess payment of tax.

7. In the above circumstances, we are of the considered opinion that the case needs to be remanded to the Assessing Authority for assessment afresh with a direction to examine the credit notes issued by the Dealer with reference to the books of account and allow the refund as per the provisions of law. Hence, it is ordered.

8. Resultantly, the appeal of the Dealer stands allowed and the impugned order of the First Appellate Authority is hereby set aside. Cross-objection is disposed of accordingly.

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