

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

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

S.A. No. 38 (C) of 2016-17

(Arising out of order of the learned Addl. Commissioner of
Sales Tax, Odisha, Cuttack,
in Appeal Case No. Jajpu-AA-09/2008-09,
disposed of on dated 09.02.2016)

M/s. KJS Allhuwalia,
At/P.O.- Barbil,
Keonjhar. ... Appellant

-Versus-

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

For the Appellant : Mr. P.K. Harichandan, Advocate
For the Respondent : Mr. D. Behura, S.C. &
Mr. S.K. Pradhan, A.S.C.

Date of hearing: 06.06.2023 *** Date of order: 30.06.2023

ORDER

The dealer has preferred this appeal challenging the order dtd.09.02.2016 passed by the learned Addl. Commissioner of Sales Tax, Odisha, Cuttack (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. Jajpu-AA-09/2008-09, thereby confirming the demand against assessment order dtd.26.04.2008 passed by the learned Asst. Commissioner of Sales Tax (now JCST), Jajpur

Range, Jajpur Road (hereinafter referred to as, JCST/assessing authority) passed u/r.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, CST(O) Rules) relating to the period from 01.04.2005 to 31.03.2006 raising an extra tax demand of ₹1,50,52,251.00.

2. The case at hand is that, the dealer in the instant case M/s. KJS Allhuwalia being a mine owner is engaged in raising of ore from mines. After crushing the same in their own crusher, the size iron ore are sold both inside and outside the State of Odisha but the fines are sold exclusively in course of export. Pursuant to the notice issued u/r.12(5) of the CST(O) Rules, the dealer produced books of account for examination. After examination of books of account, the learned assessing authority raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned Addl. Commissioner of Sales Tax, Odisha, Cuttack/first appellate authority who confirmed the demand.

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 course of argument, learned Counsel for the dealer-appellant vehemently contended stating that the determination of GTO and NTO at ₹21,49,48,142.00 and ₹10,74,78,125.00 by the learned Addl. Commissioner of Sales Tax is arbitrary, excessive and bad in law. In spite of filing of

two nos. of 'H' forms in original bearing No.X/0461975 and O1C071774 issued by Exfin Shipping (I) Ltd. and SK Sarawagi & Co. (P) Ltd. in course of assessment proceeding, the first appellate authority disallowed the same on the allegation that the appellant did not submit one available declaration form in original to avail exemption of tax towards claim of sale in course of export which is arbitrary, excessive and bad in law. In course of assessment proceeding and appeal hearing, the appellant produced all the relevant documents in support of export sale of 21633 MT, 10434 MT and 5077.140 MT of iron ore fines to Exfin Shipping (I) Ltd. u/s.5(3) of the CST Act against form 'H' No.X/0461975. But the assessing authority as well as the first appellate authority without appreciating and verifying the relevant documents, disallowed the said transactions which is bad in law. The disallowance of transaction u/s.5(3) of the CST Act with Exfin Shipping (I) Ltd./ SK Sarawagi & Co. (P) Ltd. by the learned first appellate authority in spite of filing the form 'H' on the allegation of non-submission of relevant copy of the bill of lading, copy of contract, export clearance etc. for verification clearly violates sec.5(4) of the CST Act r/w. Rule 12(10)(a) of the CST (R&T) Rules. The last contention raised on behalf of the dealer-assessee is that in spite of submission of the original copies of the 'H' form in course of assessment proceeding in support of the transaction u/s.5(3) of the CST Act, learned assessing authority as well as the first appellate authority should not have insisted for other documents to allow the transactions which is against the statute.

7. Per contra, learned Standing Counsel for the Revenue argued that the first appellate authority has rightly disposed of the appeal basing on the statutory provisions under the Act and Rules. The learned first appellate authority as well as the learned assessing authority determined the GTO and TTO after due examination of the books of account.

8. Heard the contentions and submissions of both the parties in this regard. Perused the case record vis-a-vis the grounds of appeal and the orders of the fora below, wherefrom it reveals that while passing the order, learned assessing authority disallowed the claims of 'C' and 'H' forms on the following reasons-

(i) Due to typographical error, export sale of ₹6,34,643.00 vide invoice No.KJSA/10F/ESIL/05-06/03 dtd.31.08.2005 was considered at ₹6,34,64,300.00. Accordingly, alleged that the dealer produced the 'H' form of ₹8,19,22,043.00, whereas the actual value as per statement stands at ₹14,47,51,700.00.

(ii) The dealer could not be able to produce the documents like copy of the contract, bill of lading, export clearance in support of penultimate sale against form 'H'.

9. The learned Addl. Commissioner of Sales Tax/first appellate authority passed order on dtd.09.02.2016 and corrigendum order on dtd.22.02.2016, wherein he allowed the appeal in part and re-determined the GTO and NTO at ₹21,49,48,142.00 and ₹10,74,78,125.00 respectively and recomputed the demanded tax at ₹87,69,785.00. It becomes

clear that during course of hearing of the first appeal, the dealer could not be able to file the corrected 'C' form bearing No.Z0278040 amounting to ₹72,72,714.00 issued by M/s. Monnet Ispat & Energy Ltd., Raigarh, Chhatisgarh for which there was demand of tax on that score. On perusal of the case record, it reveals that in spite of filing of two nos. of 'H' forms in original bearing X/0461975 and O1C071774 issued by Exfin Shipping (I) Ltd. and SK Sarawagi & Co. (P) Ltd. during course of assessment proceeding, the first appellate authority disallowed the same which is the cause of embarrassment for the dealer-assessee. The language of Sec.5(4) of the CST Act r/w. Rule 12(10)(a) of the CST(R&T) Rules entail that when the 'H' forms are filed by the penultimate sale obtaining from exporter, on that event other documents relating to sales are not required. For better appreciation, relevant provisions are quoted below for reference:

“Sec.5. When is a sale or purchase of goods said to take place in the course of import or export.—

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

- (4) The provisions of sub-section (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 filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.”

Rule 12(10)(a) of the CST (R&T) Rules-

“The declaration 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 first assessing authority.”

10. In the instant case the appellant has filed the statutory ‘H’ forms issued by the respective competent authorities. The assessment order reveals that the ‘H’ form bearing No.X/0461975 relates to sale of 10434.00 MT of fines and 5077.140 MT of dumps. But, the dealer-appellant had sold 21633 MT of iron ore fines to the same exporter to the tune of ₹14,47,51,700.00, whereas it produced the ‘H’ form for ₹8,19,22,043.00. Similarly, the bill of lading in respect of sale is for 21633 MT of iron ore fines with notifying address as Tangshan Fuyi Raw Materials Co. Ltd., whereas the copy of contracts executed reveals the address as Meteoric Resources PTE Ltd., Hongkong. The Assessing Authority further found that the dealer-appellant fails to produce the bill of lading in respect of sale of 10434.00 MT of iron ore fines. The bill of lading No.1 dated 30.07.2005 reveals sale of iron ore in bulk amount of 50800 MT and the same has no relevancy to the said transaction. Similarly, the dealer-appellant has not

produced the bill of lading, copy of contract, export clearance in respect of the sale of dumps of 5077.140 MT. So, the Assessing Authority disallowed the 37144.140 MT of iron ore fines and dumps amounting to ₹14,47,51,700.00 and computed tax @ 10% in absence of 'C' declaration form.

The assessment order further reveals that the dealer-appellant has sold 3000 MT of iron ore fines to M/s. SK Swawagi & Co. Pvt. Ltd. to the tune of ₹15,75,000.00, but the appellant failed to produce the copy of bill of lading, copy of contract, export clearance etc. for verification. So, the assessing authority disallowed the claim of such sale and levied tax @ 10% in absence of 'C' form.

The impugned order of the first appellate authority reveals that the dealer-appellant fails to produce the declaration form in original to claim and avail concessional rate of tax and exemption towards the claim of sale in course of export. So, he did not consider the claim of exemption also for failure of compliance of statutory mandate of CST Act and CST(O) Rules.

In the case of ***State of Karnataka v. Azad Coach Builders Pvt. Ltd. & Anr.***, reported in ***(2010) 9 SCC 524***, the Constitution Bench of the Hon'ble Apex Court of India were pleased to lay down the principles in respect of entitlement to claim exemption u/s.5(3) of the CST Act. Hon'ble Apex Court were further pleased to observe that the phrase 'shall in course of export' comprises in itself three essentials, (i) there must be a sale; (ii) that goods must actually be exported; and (iii) the sale must be a part and parcel of the export. Hon'ble Apex Court were further observed that the test to be applied is,

whether there is an inseverable link between the local sale or purchase between the parties in extricably linked with the export of the goods, then a claim u/s.5(3) for exemption from State sales is justified. The burden is entirely on the assessee to establish the link of transaction relating to sale or purchase of goods and to establish that the penultimate sale is inextricably connected with the export of goods by the exporter to the foreign buyer.

In the present case, the dealer-appellant has produced 'H' form in respect of sale of 10434 MT of iron ore fines and 5077.140 MT of dumps against the actual sale of 21633 MT of iron ore fines to the same exporter. The 'H' form was for ₹8,19,22,043.00 against the total value shown at ₹14,47,51,700.00. The bill of lading in respect of sale of 21633 MT of iron ore fines relates to the notifying address as Tangshan Fuyi Raw Materials Co. Ltd., whereas the copy of contracts executed reveals the address as Meteoric Resources PTE Ltd., Hongkong. The dealer-appellant fails to produce the bill of lading in respect of sale of 10434 MT of iron ore fines. The bill of lading bearing No.1 dated 30.06.2005 relates to sale of iron ore in bulk amount of 50800 MT and same has no relevancy to the said transaction. Similarly, the dealer-appellant have sold 5077.140 MT of dumps in course of export sale against which the appellant fails to produce the copy of contract, bill of lading and export clearance. The above factual aspect leads to rejection of exempted sale of export.

The learned Counsel for the dealer-appellant relied the decision of the Hon'ble High Court of Orissa in the case of ***M/s. General Traders v. State of Odisha*** in **STREV No.64 of**

2017 dated 08.12.2022. In that case, Hon'ble High Court have been pleased to observe in Para-6.17 that the certificate of export in Form 'H' was in order and free from defect, so the Hon'ble Court were pleased to observe that the petitioner in cited case has discharged its burden and the authority could very well ascertain 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 sale. So, the Hon'ble Court were pleased to observe that there being no adverse finding of any sort in this regard, mere non-production of agreement entered into between the Indian Exporter and foreign buyer would not invalidate the claim of export sale for exemption u/s.5(3) of the CST Act.

In the case at hand, the 'H' form is defective and is not in order. The bill of lading and Form 'H' varies in terms of address, quantity and value. So, the bill of lading and Form 'H' have no relevancy to said transaction. The dealer-appellant has not discharged its burden in respect of sale of 5077.140 MT of dumps and sale of 3000.00 MT of iron ore by filing copy of contract, bill of lading and export clearance. Therefore, the decision relied on by the dealer-appellant does not squarely application to its case.

In view of the facts discussed above, the first appellate authority rightly confirmed disallowance of 5(3) sale by the assessing authority and the same does not call for any interference in appeal. Hence, it is ordered.

11. In the result, the appeal preferred by the dealer is dismissed and the order of the first appellate authority passed on dtd.09.02.2016 in Appeal Case No. Jajpu-AA-09/2008-09 is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II