

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 39(C)/2019**

(Arising out of order of the ld. JCST (Appeal), Territorial
Range, Cuttack-II, Cuttack, in First Appeal Case No.
AA/80/CST/BH-II/2018-19, disposed of on dtd.31.01.2019)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. MMTC Limited,
7th Floor, Alok Bharati Complex,
Saheed Nagar, Bhubaneswar. Appellant

-Versus-

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

For the Appellant : Mr. S.R. Panigrahi, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.01.2015 to 31.03.2016)

Date of Hearing: 23.03.2021 *** Date of Order: 23.03.2021

ORDER

The facts and circumstances of this case and the two orders of the learned lower fora below culminated to this second appeal.

2. Facts of this case can be briefly stated thus:-

The dealer appellant M/s. MMTC Ltd., is a public limited company which is engaged in trading of bandage, calcined, cellulose and its chemical derivatives, chemical fertilizers, chromium ores, coal, coal tar, coke, iron ores etc on whole-sale and retail basis. Pursuant to the order of the CCT(O), Cuttack the Assessing Officer initiated assessment proceeding under

rule 12(3) of CST(O) Rules, 1957 and served the notice for assessment of tax. In response to the said notice, the authorized person of the dealer-company appeared and furnished declaration form 'C' to substantiate the claim of concession. Hence the Assessing Officer completed the assessment basing on the information available in VATIS and documents submitted by the dealer-company. On perusal of the periodical returns filed by the instant dealer for the impugned period, the Assessing Officer noticed that the dealer has effected inter-State sales on concessional rate of tax against declaration form 'C' amounting to Rs.3,53,59,385/- with collection of CST @2% amounting to Rs.7,07,188.00 u/s. 8(1) of CST Act, 1956. At the time of assessment the dealer could be able to produce original declaration form 'C' of Rs.1,08,22,600.00 towards concession claimed in the returns which were verified and accepted by the Assessing Officer. But the dealer could not produce the balance declaration form 'C' of Rs.2,45,36,785.00 which is disallowed and taxed @5% as per OVAT rate. The assessing officer completed the assessment and levied tax and interest amounting to Rs.9,48,103.00 due to non-submission of statutory declaration form 'C' in support of the claim for concession.

3. Being aggrieved with the order of assessment the dealer preferred first appeal before the Id. First appellate authority/ Joint Commissioner of Sales Tax (Appeal), Territorial Range Cuttack-II, Cuttack, who in turn, dismissed the appeal filed by the dealer and confirmed the order passed

by the ld. Assessing Officer for which the demand in dispute remanded as it is.

4. Being further aggrieved with the order of the ld. FAA the dealer knocked the door of the this Tribunal by way of filing this second appeal with the contention that the order passed by the ld. FAA is illegal, arbitrary and in contravention of provisions of law and hence needs to be quashed.

5. State-respondent has filed cross objection in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He has vehemently argued that the order of the ld. FAA appears to be unjust and improper. There is non-application of independent mind by the FAA. The ld. FAA formed an opinion that generation/non-submission of the declaration form 'C' by the dealer-appellant due to technical fault in the Commercial Tax web portal of the Jharkhand Government is not forming part of provision of law, hence found unacceptable, hence this is not only illegal but also contrary to the principle of natural justice. The ld. Advocate for the dealer has filed one petition for additional evidence. Copy of the petition was served to the ld. Additional Standing Counsel (C.T.). The petition was heard from both the sides and the petition was allowed. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the ld. FAA.

7. On the other hand during the course of hearing the learned Addl. Standing Counsel, Mr. Pradhan for the State argued that the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-

appellant was given sufficient opportunities to produce documentary evidences in favour of his stand taken in the grounds of appeal for disposal by the learned FAA, but the dealer failed to produce the same. Hence his plea is not acceptable. The order of the ld. FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. So he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the ld. Advocate, Mr. S.R. Panigrahi appearing on behalf of the dealer and ld. Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, the impugned orders of appeal and assessment, cross objection filed by the State-respondent and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analyzing the points raised in this appeal. I am of the considered opinion that the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the ld. FAA is hereby set-aside. The matter is remanded back to the ld. Assessing officer and he is to consider the additional evidence filed by the dealer after verifying the genuineness of the documents thoroughly and accordingly re-compute the tax liability of the dealer after

giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S. Mishra)
2nd Judicial Member

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