

**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. 104(C) of 2014-15

(Arising out of order of the learned Joint Commissioner of
Sales Tax, Cuttack II Range, Cuttack,
in First Appeal Case No. AA/CUCII/20/2008-09,
disposed of on dated 20.12.2014)

M/s. Pashupati Ispat (P) Ltd.,
Plot No.1, Phase-II,
New Industrial Estate,
Jagatpur-754021, Cuttack. ... Appellant

-Versus-

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

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

Date of hearing:08.06.2023 *** Date of order: 30.06.2023

ORDER

This appeal is preferred by the dealer challenging the order dtd.20.12.2014 passed by the learned Joint Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter referred to as, JCST/first appellate authority)

in First Appeal Case No. AA/CUCII/20/2008-09, thereby allowing the appeal by remanding back the case to the Sales Tax Officer for reassessment against the order of assessment passed u/r.10 of the Central Sales Tax (Orissa) Rules, 1957, in short CST(O) Rules by the Sales Tax Officer, Cuttack II Circle, Cuttack (hereinafter referred to as, STO/AO) on dtd.03.12.2008.

2. The case at hand is that, the appellant M/s. Pashupati Ispat Pvt. Ltd. having Registration No.CUCII-1028 deals in manufacturing and sale of S.G.C.I. casting and steel plate flanges both in course of intrastate and interstate trade and commerce. An extra demand of ₹18,33,675.00 was raised due to assessment done u/r.10 of the CST(O) Rules for the year 2004-05 at the instance of the AG. Audit.

3. Against such demand, the dealer-appellant preferred first appeal before the learned first appellate authority who remanded back the case to the STO for reassessment.

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. No cross objection is filed in this case by the State-respondent.

6. During course of argument, learned Counsel for the appellant vehemently contended that once the declarations in form 'C' were accepted in the original assessment, the said declarations in form 'C' cannot be disallowed in reassessment by the self-same officer which amounts to "mere change of opinion" and as such the order of reassessment dtd.03.12.2008 is not maintainable and liable to be annulled. To support such claim, learned Counsel for the dealer has relied upon the decisions decided in the case of **Sri Jagannath Promoters & Builders vs. Deputy Commissioner of Income Tax & Ors. W.P.(C) No.14603 of 2014** of the Hon'ble High Court of Orissa and the case of **Commissioner of Income Tax Delhi vs. Kelvinator of India Limited (2010) 2 SCC 723**. Per contra, learned Standing Counsel for the Revenue argued stating that the order passed by the forums below are genuine and inconsonance with the provisions of law.

7. Heard the contentions and submissions of both the parties in this regard. On perusal of the case record, it reveals that for the period 2003-04 the order of assessment dtd.28.02.2007 was passed by the Sales Tax Officer, Cuttack II Circle, Cuttack u/r.12(5) of the CST(O) Rules, 1957 by accepting declarations in form 'C' to the

tune of ₹4,30,11,653.00 towards interstate sales against declaration in form 'C'. Later on, at the instance of the A.G. Audit, the Sales Tax Officer, Cuttack II Circle, Cuttack reopened the assessment u/r.10 of the CST(O) Rules and the said declarations in form 'C' were disallowed vide order of reassessment dtd.03.12.2008. After have a glance to the decisions relied upon on behalf of the appellant in the case of Sri Jagannath Promoters & Builders vs. Deputy Commissioner of Income Tax & Ors. (supra), the Hon'ble Court came to hold by relying upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Delhi vs. Kelvinator of India Limited (supra) that there has to be some new material to justify the reopening of assessment. It cannot be based on mere change of opinion on the basis of the same materials and thus the Hon'ble High Court on the basis of the said reasons, quashed the notices and all proceedings. So when the 'C' forms were accepted by the Sales Tax Officer that cannot be disputed by the self-same officer in reassessment proceedings on a mere change of opinion on the basis of the same materials. The appellant has also relied upon of the decisions of Hon'ble High Court of Orissa in the case of ***The Indure Ltd. vrs. Commissioner of Sales Tax and Ors.***, reported in **(2006) 148 STC 61 (Orissa)** and ***Birsa Minerex vrs. Sales Tax Officer & Anr. (W.P.(C) No.21222 of 2015)*** where the Hon'ble High Court quashed the notice of reassessment by holding that

the reassessment proceeding was blindly initiated on audit objection by the Sales Tax Officer without any application of mind.

8. On perusal of LCR, it reveals that the assessing authority has recorded the reason for reopening the assessment on dtd.01.11.2008. The same is reproduced herein below for better appreciation.

“Seen the M/N and gone through the paras of A.G. objection and it is reasons to believe that there was under assessment of tax in the original assessment order. Hence, issue notice to the dealer u/s.10 of the C.S.T.(O) rules, 1957 fixing date to 3/12/08.”

The order of reopening of assessment is merely on the basis of audit objection and the assessing authority has not applied his mind independently to issue notice to the dealer for reassessment.

9. In view of the above analysis and the decisions relied upon on behalf of the appellant, we are of the unanimous view to say that the impugned order of reassessment and the first appeal order are not maintainable and liable to be quashed in the interest of justice.

10. In the result, the appeal preferred by the dealer is allowed. The impugned order of reassessment and the order of the first appellate authority being not

maintainable are quashed and consequently the order of reassessment is annulled.

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