

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

S.A. Nos. 37 & 38 of 2012-13

&

S.A. No. 52(C) of 2012-13

(Arising out of orders of the learned Addl. CST (Appeal), North Zone, Odisha, Sambalpur in First Appeal Nos. AA – 44(SAIII)/01-02/AA-1 (SAIII)/10-11; CSU- 88 (SAIII)/02-03/AA- 65 (SAIII)/12-13 & No. AA 45(SAIIIC)/2002-03, disposed of on 04.08.2012, 02.08.2012 & 03.08.2012 respectively)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

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

... Appellant

-Versus-

M/s. Mahanadi Coalfields Ltd.,
Orient Area, At/PO- Brajarajnagar,
Dist. Jharsuguda

... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri D.K. Das, Advocate

Date of hearing : 17.11.2022 *** Date of order : 24.11.2022

ORDER

State files these three appeals relating to different periods involving common question of facts and law. So, they are heard analogously and disposed of by this composite order for the sake of convenience.

2. S.A. No. 37 of 2012-13 is against the order dated 04.08.2012 of the Addl. Commissioner of Sales Tax (Appeal), North Zone, Odisha, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA – 44(SAIII)/01-02/AA- 1 (SAIII)/10-11 enhancing the refund amount of the

Asst. Commissioner of Sales Tax, Sambalpur-III Circle, Jharsuguda (in short, 'Assessing Authority').

3. S.A. No. 38 of 2012-13 is against the order dated 02.08.2012 of the First Appellate Authority in F A No. CSU- 88 (SAIII)/02-03/AA- 65 (SAIII)/12-13 reducing assessment of the Assessing Authority.

4. S.A. No. 52 (C) of 2012-13 is against the order dated 03.08.2012 of the First Appellate Authority in F.A. No. AA- 45(SAIIC)/ 2002-03 enhancing the refund amount of the Assessing Authority.

5. Briefly stated, the facts of the cases are that –

M/s. Mahanadi Coalfields Ltd. is engaged in mining and trade of coal. The Dealer excavates coal and sells the same in course of intra-State trade as well as inter-State trade and commerce. The assessment periods relate to 2000-01 and 2001-02. The Assessing Authority in assessment allowed refund of ₹1,70,836.00 for the year 2000-01 and raised tax demand of ₹20,00,557.00 for the year 2001-02 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act'). Similarly, the Assessing Authority allowed refund of ₹1,40,253.00 for the year 2000-01 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeals and granted refund amounts to ₹37,42,558.00 for the year 2000-01 and ₹4,52,961.00 for the year 2001-02 under the OST Act and ₹14,43,616.00 for the year 2000-01 under the CST (O) Rules. Being aggrieved with the orders of the First Appellate Authority, the State prefers these appeals. Hence, these appeal.

The Dealer files cross-objections supporting the orders of the First Appellate Authority to be just and proper.

6. The learned Standing Counsel (CT) for the State submits that the orders of the First Appellate Authority are erroneous and bad in law. He further submits that the First Appellate Authority is incorrect in allowing the

credit notes of ₹9,35,63,936.99 in the assessment for the year 2000-01 although the same relates to the assessment years 1998-99 to 1999-2000, which have been finalized, issued and received during the year 2000-01. He also submits that the First Appellate Authority is wrong in allowing the credit notes of ₹1,30,59,181.00 in the assessment for the year 2001-02 although the same relates to the assessment years 1996-97 to 1998-99, which has been finalized, issued and received during the year 2001-02. He further submits that allowing credit notes of ₹3,60,90,409.42 under the CST Act though relates to the assessment years 1998-99 to 1999-2000, which has been finalized, issued and received during the assessment year 2000-01 by the First Appellate Authority is also incorrect. He further submits that the Assessing Authority disallowed the claim of credit notes as the Dealer had not taken into account the amount in the balance sheet or annual account for the relevant years. So, he submits that the orders of the First Appellate Authority may be quashed and that of orders of the Assessing Authority may be restored.

7. Per contra, the learned Counsel for the Dealer vehemently objects the contentions of the learned Standing Counsel (CT) and submits that the First Appellate Authority has correctly passed the orders keeping in view the decision of the Tribunal in S.A. No. 245 of 2007-08 dated 01.06.2012 relating to the Dealer for the year 1998-99. He further submits that the State does not dispute the same and prefers no appeal before the higher forum challenging the aforesaid order. So, he submits that the orders of the First Appellate Authority require no interference in appeal. Dealer files copies of decisions of this Tribunal passed in its appeals bearing S.A. No. 245 of 2007-08, S.A. No. 32(C) & 51 (C) of 2012-13 and S.A. No. 30(C) of 2007-08.

8. Having heard the rival submissions and on careful scrutiny of the materials available on record, only one dispute raises by the State that the First Appellate Authority allowed the credit notes and enhanced the refund

to the Dealer. In the assessment year 2000-01 under the OST Act, the Assessing Authority disallowed credit notes of ₹9,35,63,936.00 which relates to the years 1998-99 and 1999-2000 to 2000-01 on the ground that the Dealer-Company has not reflected the same in the balance sheet for the year 2000-01. The Dealer had issued the credit notes to Rourkela Steel Plant.

Similarly, in the assessment year 2001-02 under the OST Act, the Assessing Authority disallowed credit notes of ₹1,30,59,181.00 which relates to the previous years from 1996-97 to 1998-99 on the ground that the said credit notes belong to previous years and the same has not been accounted for in the balance sheet of the current year. The Dealer had issued the credit notes to Rourkela Steel Plant.

Likewise, in the assessment year 2000-01 under the CST Act, the Assessing Authority disallowed credit notes of ₹3,60,90,409.42 which relates to previous years 1997-98, 1998-99 and 1999-2000 on the same ground that the said credit notes belong to previous years and the same has not been accounted for in the balance sheet for the year 2000-01. The Dealer had issued the credit notes to different parties outside the State.

9. The Dealer relies on the decisions of this Tribunal in S.A. No. 245 of 2007-08 passed on dated 01.06.2012, S.A. No. 30(C) of 2007-08 passed on dated 10.12.2013 and S.A. Nos. 32(C) & 51(C) of 2012-13 passed on dated 27.05.2014, which relates to the other assessment years of the instant Dealer. The Full Bench of this Tribunal have considered the grounds taken for the necessity of issuance of credit notes. The buyers use to send the sample to the laboratory for analysis. If the analysis reports are below the particular grade for which the bills have been raised, they lodged their claims in respect of the grade slippage for quality difference. The Dealer also gets the same analyzed chemically at their laboratories. If it tallies with the analysis report of the buyer, the Dealer agrees to give credit in respect of the grade slippage. If the analysis report of the laboratory of the Dealer

differs substantially with the report of the buyer, the matter is referred to an arbitrator for analysis and the report of the arbitrator shall be considered to be final. The process is lengthy, so under such circumstances, the Dealer has to obtain sanction for issue of credit notes with the permission of the authority of the Dealer. It is a long run process. So, it is not practically possible to issue credit notes to the buyers during the same financial year of the transaction. After finalization of the report, the Dealer submits revised return before the completion of assessment of any particular year or even subsequent thereto before the Appellate Authority thereby claiming deduction from the TTO to the extent of credit notes issued to the customers. The order of the First Appellate Authority shows that the deduction of value of credit notes on account of grade slippage are noting but re-fixation of the price of the coal as per actual grade of coal based on joint sampling results because the ultimate consideration is net realizable price of coal as per useful heating value of coal because consumer enjoys its right return for money. The order of the First Appellate Authority shows that genuineness of the credit notes and the factum of issuance of credit notes are not the subject matter of challenge because the transactions are made by the Dealer with another Public Sector undertaking of Government of India.

10. The order of the First Appellate Authority shows that there are no provision of OST Act and Rules to claim refund/adjustment of tax paid in excess of amount for the aforesaid reason. In the case of *DCM Limited v. Commissioner of Trade Tax, U.P., Lucknow*, reported in [2000] 117 STC 258 (Allahabad), Hon'ble Allahabad High Court have been pleased to observe as follows :-

“10. ... As already stated, this Court has taken a view that in the absence of the prescribed procedure the dealer who had refunded the amounts to its customers could claim a refund. Though this view may be open to challenge because the absence of procedure did not mean that the person who was not legally liable to pay any amounts could do it and claim a refund from the Government, or that through the right

was created the absence of procedure barred the enforcement thereof..”

The same view has been reiterated by the Hon’ble Madras High Court in case of *Bhojraj Textile Mills Ltd. v. State of Tamil Nadu*, reported in [1990] 79 STC 82 (Madras). The same view has been reiterated by the Division Bench of this Tribunal S.A. No. 30(C) of 2007-08 passed on dated 10.12.2013 and Full Bench of this Tribunal in S.A. Nos. 32(C) & 51(C) of 2012-13 passed on dated 27.05.2014. It appears that the State has not challenged the same in any higher forum till date. The First Appellate Authority relying on the principles laid down above, allowed the disputed credit notes and thereby allowing appropriate refund to the Dealer for the periods under assessment. Under such facts and circumstance of the case, we do not find any illegality or impropriety in the orders of the First Appellate Authority to call for any interference in appeal. Hence, it is ordered.

11. Resultantly, the appeals are dismissed being devoid of any merit and the orders of the First Appellate Authority are hereby confirmed. Cross-objections are 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/-
(M. Harichandan)
Accounts Member-I**