

BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

**S.A. No.64(C) of 2015-16, S.A. No.65(C) of 2015-16,
S.A. No.50(C) of 2016-17, S.A. No.51(C) of 2016-17
& S.A No. 54(C) of 2016-17**

(Arising out of the orders of the Id. Addl.
CST(Appeal), South Zone, Brahmapur in Appeal Case
Nos. AA (CST).30/2014-15, AA (CST)31/2014-15
disposed of on 12.06.2015, AA (CST)38/2015-16,
AA(CST) 39 /2015-16 & AA(CST) 42/2015-16
disposed of on 30.07.2016,)

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

M/s. Adani Enterprises Ltd.,
HIG-20, BDA Colony,
Jaydev Vihar, Bhubaneswar. Appellant.

-Vrs -

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.(C.T.)

Date of Hearing : 01.09.2023 * Date of Order: 25.09.2023**

O R D E R

The dealer-company has preferred these five appeals assailing the orders of the Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, 'Id. FAA') passed in the first appeals pertaining to the assessments undertaken under Rule 12(1) of the CST (O) Rules by the Deputy Commissioner of Sales Tax, Bhubaneswar (in short, 'Id. assessing authority'). All these appeals are of resembling conspectus involving common question of facts and law. Hence, these appeals are disposed of in a composite order for the sake of convenience.

2. Provisional assessments under Rule 12(1) (b) of the CST(O) Rules pertaining to the quarters ending June, 2013, September, 2013, December, 2013, March, 2014 and December, 2014 have been passed in case of M/s Adani Enterprises Limited, HIG-20, 1st Floor, BDA Colony Jaydev Bihar, Bhubaneswar raising demand of ₹22,08,148.00, ₹1,16,70,947.00, ₹93,99,448.00, ₹39,48,983.00 and ₹92,58,616.00 respectively on account of non-submission of declaration in Form 'C'. The first appeals in these cases resulted in either confirmation of assessments or part allowance of the appeals. Hence, these second appeals.

3. Mr. P.K. Harichandan, learned Advocate representing the dealer-company submits additional grounds/additional evidences in addition to the original grounds of appeals. The orders of the forums below passed under Section 12(1) of the CST (O) Rules together with the documents as adduced by the learned Advocate and the materials on records are gone through at length. On perusal, it is revealed that the dealer-company entered into an Agreement with the West Bengal Power Development Corporation Limited (In short, WBPDC) for supply of 1.5(One & half) million MT \pm 10% of imported Non Coking Coal to various power plants under WBPDC. The scope of work included making arrangements for transportation of coal to loading port, loading coal on vessels, shipment up to Indian port, unloading at Indian port, stevedoring, handling, in-transit storage, port clearances, placing indents for Railways rakes, rake loading, rail transportation and delivery at various TPS. The price of the imported coal would include all existing taxes and Duties, Custom Duties, Port Charges, Crane Charges, clearing, forwarding, stevedoring handling, insurance etc. The invoice would be raised for coal cost for each rake and would not contain railway freight. Railway freight would be paid at source (loading point) by the

seller (Dealer-company) to the Railways Authorities for every rake. The freight would be reimbursed at actual after necessary deduction for penal overloading charges to the supplier on submission of certified true copy of railway receipt at the corporate office of WBPDCCL.

From the above terms of the contract inked between the Dealer-company and WBPDCCL, it transpires that the railway freight on transportation of coal in rakes was to be borne by WBPDCCL. The dealer-company was to pay the freight to the Railway Authorities at the first instance at loading point and would get the same reimbursed from WBPDCCL on furnishing certified copy of railway receipt.

4. The dealer-company during the course of filing returns for the quarters ending under dispute has filed returns inclusive of the railway freight reimbursed from WBPDCCL inadvertently and has discharged the tax liability depositing CST @2% at concessional rate against declaration in Form 'C'. In consequence, the dealer-company became subjected to payment of extra tax on railway freight. The learned Advocate has submitted sample copies of the invoices to justify reimbursement of railway freight.

5 To reinforce his stand, the learned Advocate of the dealer-company finds it worthy to place a copy of the first appeal order bearing Appeal Case No. AA(CST)09/DCST BH II/2014-15 passed for the quarter ending March,2013 of the instant dealer-company wherein the Id.FAA has allowed exclusion of the railway freight from being a part of the turnover of the dealer-company. All the second appeals now on card are of the same fate involving the identical question of facts. The interstate transactions evolved thereunder took place as a result of contract with WBPDCCL to supply imported coal. But the railway freight got reimbursed from WBPDCCL has been included in the turnover causing extra tax

burden upon the dealer-company. For, WBPDCCL has not paid CST on railway freight. This is the pertinent issue for consideration in the second appeals lying before this forum.

6. As to the question of admissibility of additional evidences being raised for the first time before the Tribunal as protested by the State, the learned Advocate of the dealer-company places reliance on the decision of the Hon'ble High Court of Odisha in case of **Babulal Chhapolia Vs. State of Orissa** reported in (1963) 14 STC 880 which has been upheld by the **Hon'ble Apex Court** reported in STC-1966-18-17. Reliance has also been made in the decision of the Hon'ble Apex Court in case of **National Thermal Power Co Limited Vs. Commissioner of Income Tax** reported in (1997) 7 SCC 489. The substantial essence embedded in the decisions of the Hon'ble Courts referred to above is that the Tribunal is endowed with discretionary authority to consider additional grounds/evidences though not raised earlier. The contention of the State is, therefore, not acceptable.

7. The argument of the dealer-company as to reducing GTO by exclusion of railway freight against which, WBPDCCL is said to have not paid CST is convincing. But, detail verification is of prime concern before allowing such reduction in GTO. Details of CST collected from WBPDCCL and whether CST paid on freight or not and the quantum of railway freight reimbursed is required to be verified in the real earnest. Moreover, the dealer-company is required to file revised returns for the tax periods under appeal supported with required 'C' Forms in original for availing concessional rate.

8. **S.A. No.64(C) of 2015-16**

Provisional assessment under Rule 12(1) of the CST (O) Rules pertaining to the quarter ending June, 2013 (01.04.2013 to 30.06.2013) has been resorted to due to non-submission of 'C'

Form. The GTO returned at ₹13,22,97,305.00 in the instant case is inclusive of the railway freight involving an amount of ₹1,19,89,072.00 reimbursed from WBPDCCL that was paid by the dealer assessee to the Railways Authorities as per the terms of contract. WBPDCCL has not paid CST on railway freight. Accordingly, the GTO is sought to be reduced to the extent of railway freight added therein. Declaration in Form 'C' for an amount of ₹5,86,92,324.00 has been verified as accepted at assessment. Xerox copy of 'C' Form worth ₹6,30,85,010.00 has been submitted at this forum. The assessing authority is directed to reassess the dealer-company allowing reduction in GTO as observed above on detail verification. Further, the Xerox copy of the 'C' Form submitted at this forum may be accepted on verification of the original 'C' Form as may be submitted by the dealer-company. Upon exercise of the above formalities as per law by the learned assessing authority, any amount found refundable may be paid to the dealer-company as per the provision of law.

9. **S.A. No.65(C) of 2015-16**

Provisional assessment under Rule 12(1) of the CST (O) Rules pertaining to the quarter ending September, 2013 (01.07.2013 to 30.09.2013) has been completed disallowing concessional rate in certain cases for want of furnishing of original 'C' Forms. The GTO returned therein is at ₹168,28,08,096.00 which includes ₹20,58,83,395.00 (subject to verification) towards railway freight. After exclusion of the railway freight, the GTO reduced to ₹147,69,24,701.00. An amount of ₹126,07,80,301.00 has been allowed as concessional rate upon furnishing of 'C' Form at assessment. Xerox copies of 'C' Form worth ₹15,02,79,824.80 submitted at the first appeal were reserved for verification by the learned assessing authority. The learned assessing authority is directed to look into the above observation especially on claim as

to admissibility of the railway freight in the present case. Further, the Xerox copies of 'C' Forms as submitted at this forum may be taken into consideration on furnishing of the original 'C' Forms by the dealer-company. Any amount found refundable on reassessment may be paid to the dealer-company as per the provision of law.

10. **S.A. No.50 (C) of 2016-17**

Provisional assessment under Rule 12(1) of the CST (O) Rules pertaining to the quarter ending December, 2013 (01.10.2013 to 31.12.2013) has been resorted to due to non-submission of 'C' Form. The GTO returned at ₹334,51,39,007.00 in the instant case is inclusive of the railway freight involving an amount of ₹32,93,70,485.00 reimbursed from WBPDCCL that was paid by the dealer assessee to the Railways Authorities as per the terms of contract. WBPDCCL has not paid CST on railway freight. Accordingly, the GTO is sought to be reduced to the extent of railway freight added therein. Declaration in Form 'C' for an amount of ₹296,62,33,107.00 has been verified as accepted at assessment. The assessing authority is directed to reassess the dealer-company allowing reduction in GTO as observed above on detail verification. Upon exercise of the above formalities as per law by the learned assessing authority, any amount found refundable may be paid to the dealer-company as per the provision of law.

11. **S.A. No.51(C) of 2016-17**

Provisional assessment under Rule 12(1) of the CST (O) Rules pertaining to the quarter ending March, 2014 (01.04.2014 to 31.03.2014) has been completed disallowing concessional rate in certain cases for want of furnishing of original 'C' Forms. The GTO returned at ₹409,65,22,463.00 in the instant case is inclusive of the railway freight involving an amount of

₹12,73,30,187.00 reimbursed from WBPDCCL that was paid by the dealer assessee to the Railways Authorities as per the terms of contract. WBPDCCL has not paid CST on railway freight. Accordingly, the GTO is sought to be reduced to the extent of railway freight added therein. Declaration in Form 'C' for an amount of ₹388,45,65,718.00 has been verified as accepted at assessment. The assessing authority is directed to reassess the dealer-company allowing reduction in GTO as observed above on detail verification. Upon exercise of the above formalities as per law by the learned assessing authority, any amount found refundable may be paid to the dealer-company as per the provision of law.

12. **S.A No. 54(C) of 2016-17**

Provisional assessment under Rule 12(1) of the CST (O) Rules pertaining to the quarter ending December, 2014 (01.10.2014 to 31.12.2014) has been completed disallowing concessional rate in certain cases for want of furnishing of original 'C' Forms. The GTO has been returned at ₹243,24,24,044.00 against which, 'C' Form for an amount of ₹207,61,08,909.00 is learnt to have been furnished at assessment. Original 'C' Form for an amount of ₹24,02,62,622.00 could be furnished at the first appellate stage leaving ₹6,83,57,925.00 not supported with 'C' Form. The ld.FAA is justified in causing demand of ₹20,50,738.00. We find no reason to interfere in this case. The first appeal order in the instant case is confirmed.

13. In view of the above elaborate discussion, we opine that the dealer-company is entitled to avail reduction in GTO for the turnover on railway freight said to have been included in the GTOs returned subject to verification of the same by the learned assessing authority on production of the detailed relevant accounts/ books of account by the dealer-company.

14. It is hereby ordered as under:-

The appeals filed by the dealer-company are allowed partly. The orders of the ld.FAA are set aside except Appeal Case No. AA(CST)42/2015-16 which is confirmed. Other four impugned cases are remanded to the learned assessing authority to reassess the dealer-company in the light of the observations detailed supra allowing reasonable opportunity of being heard to the dealer-company within four months from the date of receipt of this order. Any amount found refundable on reassessment may be paid to the dealer-company as per provision of law. Cross objections are accordingly disposed off.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-I**

I agree,

**Sd/-
(G.C. Behera)
Chairman**

I agree,

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