

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

S.A. No. 77 (C) of 2016-17

(Arising out of order of the learned Addl. CST (Appeal), North Zone,
Sambalpur in Appeal No. Nil, disposed of on 21.10.2016)

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

M/s. Sarvesh Refractories Ltd.,
Kuarmunda, Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)
Sri N.K. Rout, Addl.SC (CT)

Date of hearing : 26.07.2023 *** Date of order : 31.07.2023

ORDER

Dealer is in appeal against dated 21.10.2016 of the Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA – Nil setting aside the assessment order of the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. Sarvesh Refractories Ltd. carries on business in manufacturing and selling of refractory bricks and monolithic. The assessment period relates to 01.04.2011 to 31.03.2013. The Assessing Authority raised tax, interest and penalty of ₹1,10,74,242.00 u/s. 12(3) of

the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority set aside the assessment for reassessment. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection supporting the order of the First Appellate Authority as just and proper.

3. The learned Counsel for the Dealer submits that the First Appellate Authority went wrong in upholding the sale suppression though accepted the 'C' forms and remanded the matter to the Assessing Authority for due examination and allowance of concessional tax benefit to the Dealer. He further submits that the order of the First Appellate Authority is otherwise bad in law and needs interference in appeal.

4. Per contra, the learned Standing Counsel (CT) for the State submits that the First Appellant Authority has rightly passed a reasoned order which does not call for any interference in appeal.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the assessment order that the Dealer has claimed concessional rate of tax of 2% for sale of goods worth of ₹32,68,06,467.00 for the year 2011-12 and ₹24,98,46,163.00 for the year 2012-13. Against such claim, the Dealer filed original 'C' form for ₹31,17,59,159.00 for year 2011-12 and ₹21,60,09,411.00 for the year 2012-13. The Dealer fails to produce 'C' form for the balance amount for both the periods.

The Assessing Authority further found that the Dealer has disclosed the sale at ₹24,98,46,163.00 in the periodical return for the year 2012-13 against the sale reflected in the books of account at ₹30,34,46,286.00, so the Assessing Authority found that the Dealer had

disclosed less turnover of ₹5,36,00,123.00 as per AVR. The Dealer had filed a statement of sale effected u/s. 3(a) of the CST Act. The Dealer explained that the actual CST sale was ₹31,19,75,775.00 but not ₹30,34,46,386.00 as reported in the AVR. So, the Assessing Authority found that the Dealer failed to produce 'C' form for ₹6,21,29,262.00. Accordingly, the Assessing Authority computed the tax liability along with interest and penalty for the period under assessment.

In first appeal, the Dealer produced 23 nos. of 'C' form for ₹9,48,20,497.00. The First Appellate Authority confirmed the finding of the Assessing Authority regarding less disclosure of sale and remanded the matter to the Assessing Authority examine the 'C' form of the Dealer.

6. On perusal of record, it appears that the Dealer has filed return disclosing the turnover of ₹24,98,46,163.00 for the year 2012-13, but the books of account of the Dealer reflects the turnover of ₹30,34,46,286.00. Admittedly, the Dealer has not filed revised return disclosing such less turnover and deposited the due tax thereon. It is also not in dispute that the Dealer produced the books of account showing the turnover only at the time of assessment initiated basing on AVR. It further reveals from the assessment order that the Dealer has disclosed inter-State sale in the return at ₹24,98,46,163.00 for the period 2012-13, but the books of account reveals such inter-State sale for ₹30,34,46,286.00. Moreover, the statement of sale filed before the Assessing Authority discloses CST sale of ₹31,19,75,775.00. Accordingly, there was differential sale value of ₹6,21,29,621.00 against which the Dealer could not file supporting declaration. Admittedly, the Dealer had filed 'C' form for ₹21,60,09,411.00 in the assessment proceeding and filed 23 nos. of 'C' form for ₹9,48,20,497.00 before the First Appellate Authority, in toto ₹31,08,29,908.00 as against disclosed turnover of ₹31,19,75,775.00.

7. The impugned order of the First Appellate Authority reveals that the First Appellate Authority confirmed the sale suppression, but on the

contrary, remanded the case to the Assessing Authority to verify the 'C' forms for ₹9,48,20,497.00 and to allow the claim of concession on merit. It is well settled in law that 'C' form requires due examination before acceptance of the claim by the Assessing Authority and the Assessing Authority is duty bound to allow the concession, if the forms are in order. Though the First Appellate Authority did not prefer to interfere the finding with regard to the alleged suppression, whereas set aside the assessment order and directed the Assessing Authority to examine all 'C' forms, which appears to be contradictory. The First Appellate Authority already set aside the order of the Assessing Authority and the Dealer has already filed 23 nos. of 'C' form for ₹9,48,20,497.00, so this forum feels it proper to observe here that the Assessing Authority should accept the declaration forms, if found proper, and compute the tax liability, if any, as per law. Hence, it is ordered.

8. Resultantly, the appeal is allowed in part and the impugned order of the First Appellate Authority stands modified to the extent indicated above. The Assessing Authority shall compute the tax liability of the Dealer afresh in accordance with law keeping in view the observations made supra within a period of three months from the date of receipt of this order. Cross-objection is 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/-
(B. Bhoi)
Accounts Member-II**