

**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. 24 (C) of 2015-16

(Arising out of order of the learned Addl. Commissioner of
Sales Tax (Appeal), South Zone, Berhampur,
in Appeal Case No. AA(CST).07/2011-12,
disposed of on dated 26.03.2015)

M/s. Orissa Mining Corporation Ltd.,
At:- OMC House, Unit-II,
Bhubaneswar, Dist.- Khurda. ... Appellant

-Versus-

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

For the Appellant : Mr. J. Mohanty, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C.

Date of hearing: 24.07.2023 *** Date of order: 23.08.2023

ORDER

The dealer prefers this appeal challenging the order dtd.26.03.2015 passed by the learned Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter referred to as, ACST/first appellate authority) in Appeal Case No. AA(CST).07/2011-12, thereby confirming the order of assessment passed by the learned Deputy Commissioner of Sales Tax, Bhubaneswar II Circle, Bhubaneswar (hereinafter

referred to as, DCST/assessing authority) u/r.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, CST(O) Rules) for the period 2005-06 raising demand of ₹12,58,789.00 including penalty of ₹7,55,273.00 imposed u/r.12(8) of the CST(O) Rules.

2. The case at hand is that, the appellant in the instant case M/s. Orissa Mining Corporation Ltd. bearing TIN-21761104653 being a State Government undertaking is exclusively engaged in raising/extraction of mineral ore i.e. iron ore, manganese ore, chrome ore and lime stone. It effects intrastate sales, interstate sales and export sales. The assessment u/r.12(4) of the CST(O) Rules was completed on 31.03.2009 determining the GTO and NTO at ₹354,56,06,734.59 and ₹91,14,45,924.59 resulting extra demand of ₹23,09,546.00. Pursuant to Tax Evasion Report No.9 dtd.31.10.2009 with the allegation of suppression of sales amounting to ₹50,35,155.00 during the period 2005-06 under the CST Act, assessment proceeding was initiated against the appellant-company u/r.10 of the CST(O) Rules and the demand as mentioned above was raised.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the demand.

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. Cross objection in this case is filed by the State-respondent.

6. During course of argument, learned Counsel for the dealer-company vehemently contended stating that the orders of forums below are highly illegal and arbitrary. This apart, learned Counsel for the dealer argued that the alleged suppression of ₹50,35,155.00 held to be transportation of chrome and iron to outside the State of Odisha in course of interstate trade and commerce had no basis and the evasion report collected as well as action taken u/r.10 of the CST(O) Rules holding sale suppression without reflecting the books of account are totally wrong and there was no confrontation of the evasion report. So the order is to be quashed. Per contra, learned Addl. Standing Counsel for the Revenue argued that there is no merit in the second appeal filed by the dealer as the same is not sustainable in the eyes of law and that the learned assessing authority and first appellate authority have rightly completed assessment and that the order of the first appellate authority appears to be a speaking order as the dealer failed to provide documentary evidence to substantiate its claim.

7. Heard the contentions and submissions of both the parties in this regard. Perused the orders of the fora below vis-a-vis the materials available on record wherefrom it reveals that the impugned demand is raised due to excess transactions of goods against the bill/invoice to outside the State as detected and reported by the STO, Enforcement Range, Bhubaneswar. The order of the first appellate authority makes it clear that during the time of hearing of the first appeal, some documents including the Government way bills were produced on behalf of the dealer-company which were verified and it was detected that in some way bills the quantity

and amount had been overwritten basing on which the vehicle had been passed through the border checkgate of Sales Tax Department.

In view of such scenario, learned first appellate authority was convinced that there was excess transaction against the bill. This apart, learned first appellate authority came to the conclusion that the way bills were manipulated in course of transportation of goods to outside the State and due to such excess transaction, there was loss of Government revenue. Apart from this, it is clear from the order of the learned first appellate authority that the dealer-appellant failed to produce the relevant documentary evidence of tax invoices in support of the sales effected to outside the State parties as reflected on the disputed way bills during the time of hearing of first appeal. So, when the dealer-corporation could not be able to adduce evidence in support of transactions effected, learned first appellate authority has rightly confirmed the demand. But now fact remains that during the time of hearing of this second appeal, the dealer-corporation has filed some way bills to support its claim. If that is so, the same are to be considered otherwise there will be violation of natural justice. In view of the present scenario, we are of the unanimous view that the claim of the appellant-corporation deserves a merited acceptance. Hence order.

8. In the result, the appeal preferred by the dealer-appellant is party allowed and the orders of the fora below are hereby set aside. The case is remitted back to the learned assessing authority for reassessment giving due consideration to the way bills submitted by the dealer-appellant before this

forum within a period of three months of receipt of this order. The dealer-appellant is instructed to submit the original way bills before the assessing authority during the time of assessment and in case of any default on the part of the dealer-appellant, the assessing authority will proceed as per the provisions of law. Cross objection is disposed of accordingly.

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