

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

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

**S.A. No. 46(C) of 2016-17**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Appeal), South Zone, Berhampur,  
in Appeal Case No. AA(CST) 22/2014-15,  
disposed of on dated 05.07.2016)

M/s. Anmol Reources (P) Ltd.,  
Plot No.20, Ashok Nagar,  
Bhubaneswar-751006. ... Appellant

**-Versus-**

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

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

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Date of hearing:31.07.2023 \*\*\* Date of order: 29.08.2023  
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**ORDER**

The dealer has preferred this appeal challenging the order dtd.05.07.2016 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) 22/2014-15, thereby confirming the

order of assessment passed by the learned Deputy Commissioner of Sales Tax, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as, assessing authority/AO) u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957, in short CST(O) Rules for the period 04/08 to 03/10 raising demand of ₹8,00,140.00 including penalty of ₹5,33,426.84 imposed u/r.12(4)(c) of the CST(O) Rules.

2. The case at hand is that, the dealer in the instant case M/s. Anmol Resources (P) Ltd. having TIN-21921120667 deals in trading of iron ore and manganese ore. Pursuant to tax evasion report bearing No.37 dtd.31.08.2010 submitted by the Sales Tax Officer (Vigilance), Bhubaneswar Division, Bhubaneswar with the allegation of suppression of sales for the period 01.04.2008 to 31.03.2010, learned assessing authority initiated proceedings u/r.12(4)(c) of the CST(O) Rules against the dealer-company. The office premises of M/s. Shree Jyoti Resources Pvt. Ltd. operating at Plot No.20, Ashok Nagar, Bhubaneswar was visited by the officers of Sales Tax, Vigilance Wing and officers from Vigilance Department on dtd.20.07.2009 and during course of such visit, it was noticed that two more firms were also operating from the said office premises i.e. M/s. Anmol Resources Pvt. Ltd. bearing TIN-21921120667 and M/s. Axiom Natural Resources Pvt. Ltd. bearing TIN-21401122602. Some files relating to raising of iron ore and some loose documents containing annual audit reports, journal register, purchase bills etc. were recovered from the business premises relating to the above firms and seized for further verification. On preliminary investigation of the business activities of M/s. Anmol Resources Pvt. Ltd. it

was revealed that, it was engaged in trading of iron ore and manganese ore. Iron ore or manganese ore were being purchased mainly from M/s. Arjun Ladha, Barbil having TIN-21201400132. The firm was also engaged in crushing of iron ore lumps into sizes. Such crushing of ore into sizes was being done for M/s. Arjun Laxha, Barbil as well as for its own trade after being purchased from M/s. Arjun Ladha. On the date of visit, the dealer was asked to produce all its books of account for verification with respect to the seized documents and files. Later, books of account was produced for the year 2007-08 which was examined and also the books of account for other periods were also subsequently verified with respect to the seized files and documents. From examination of the seized documents from Sl. No.77 to 80, it was noticed that the dealer had dispatched iron ore to M/s. Haldia Steels from October, 2008 to February, 2009. Seized documents vide Sl. No.77 mentioned sized ore dispatch report by M/s. Kalinga Iron Crusher to M/s. Haldia Steels. Document vide Sl. No.78 reflected the details of dispatch, rate, amount etc. from M/s. Kalinga Iron Crusher and document vide Sl. No.80 mentioned the summary of dispatch of iron and manganese ore to M/s. Haldia Steels and payment received by both M/s. Shree Jyotee Resources (P) Ltd. and M/s. Anmol Resources (P) Ltd. It was stated that M/s. Anmol Resources (P) Ltd. was a sister concern of M/s. Shree Jyotee Resources (P) Ltd. and engaged in trading of sized iron ore. After purchasing ores in lumps, M/s. Anmol Resources (P) Ltd. got it converted to 5 to 18 mm sizes through M/s. Kalinga Iron Crushers for subsequent sale. So the sale of sized iron ore to M/s. Haldia Steels has not reflected in

documents bearing Sl. No.77 & 78 relates to M/s. Anmol Resources (P) Ltd. It was noticed from document in Sl. No.78 showing dispatch of details of iron ore to M/s. Haldia Steels that M/s. Anmol Resources (P) Ltd. had dispatched 11484.490 MT from Nov' 2008 to Feb'2009 amounting to ₹1,72,22,235.00 on which it had collected CST @ 2% amounting to ₹3,44,444.70. This apart, it was also noticed that M/s. Anmol Resources (P) Ltd. had charged ₹27,41,947.00 in cash over and above the taxable sales which appeared to the vigilance officials that the taxable sales to M/s. Haldia Steels had been under priced. The difference of the actual sales and under invoiced sales had been charged separately to be paid in cash. It is also seen that the rate per MT of ore had been underrated by a price ranging from ₹200/- to ₹300/-. So, the amount of ₹27,41,947.00 claimed by the dealer in cash from M/s.Haldia Steels was the suppressed sale price over and above the disclosed sale price of the materials supplied to M/s. Haldia Steels. From examination of the sales register of M/s. Anmol Resources (P) Ltd. during the period 2008-09, it was noticed that the dealer had dispatched 11236.470 MT of iron ore from November'2008 to February'2009. But the dealer had not shown the sale of 245.020 MT of iron ore to M/s. Haldia Steels in its sales account and as such the value of such suppressed sales @ ₹18,00/- per MT calculated to ₹4,41,036.00. In this way all total a demand of ₹8,00,140.00 was raised against the dealer.

3. Against such tax demand, the dealer-appellant 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 is filed in this case by the State-respondent.

6. During course of argument, learned Counsel for the dealer-company submitted one original 'C' declaration form bearing No.1062089 for a sum of ₹1,09,91,520.00 with a prayer to accept the same as additional evidence. Per contra, learned Standing Counsel for the Revenue vehemently contended stating that such additional evidence should not be accepted being completely new with the intention to avoid payment of due tax and also cited the decision decided in the case of State of Orissa vs. Lakhoo Varjang 1960 SCC OnLine Ori 110: (1961)12 STC 162.

7. Heard the contentions and submissions of both the parties in this regard. Prior to adjudication of the matter, it should be made clear that the additional evidence adduced by the dealer-company is to be accepted on the principle of natural justice and as such the decision relied upon by the State-respondent is not befitting in the instant case in view of its peculiar facts and circumstances.

8. Perused the grounds of appeal vis-a-vis other materials available on record including the orders of fora below. The order of the learned first appellate authority makes it clear that during the time of hearing of the first appeal, the dealer-company could not be able to furnish the books of account along with the supporting documentary evidences to refute the allegations mentioned in the assessment order. So, in absence of supporting documentary evidences, learned first appellate authority rightly confirmed the assessment order. But now fact remains that during the stage of hearing of this second appeal, the dealer-company has submitted one 'C' declaration form for a sum of ₹1,09,91,520.00 as the same was not available with the dealer-company during the time of hearing of the first appeal. If this being so, the same should be considered for the ends of justice. In view of such, we are of the unanimous view to remand the matter to the learned assessing authority for recomputation of tax giving due consideration to the 'C' declaration form submitted by the dealer-company before this forum.

9. In the result, the appeal preferred by the dealer is partly allowed and the orders of the fora below are hereby set aside. The case is remitted back to the learned assessing authority for recomputation of tax within a period of three months of receipt of this order giving due consideration to the 'C' declaration form submitted by the dealer-company before this forum. The dealer-company is instructed to submit the original 'C' declaration form bearing No.1062089 for a sum of ₹1,09,91,520.00 before the assessing authority during the time

of recomputation of tax. Cross objection is disposed of accordingly.

Dictated & corrected by me

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(G.C. Behera)  
Chairman

I agree,

Sd/-  
(B. Bhoi)  
Accounts Member-II