

**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**  
**&**  
**Mr. Jahangir Khan, Accounts Member-III**

**S.A. No. 43(C) of 2012-13**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Central Zone), Odisha, Cuttack,  
in Appeal No. AA.JR-182/11-12,  
disposed of on dated 11.09.2012)

M/s. Narbheram Vishram &  
Khatau Narbheram & Co.,  
At:- Barbil, Keonjhar. ... Appellant

**-Versus-**

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

**S.A. No. 61(C) of 2012-13**

(Arising out of order of the learned Addl. Commissioner of  
Sales Tax (Central Zone), Odisha, Cuttack,  
in Appeal No. AA.JR-182/11-12,  
disposed of on dated 11.09.2012)

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

**-Versus-**

M/s. Narbheram Vishram &  
Khatau Narbheram & Co.,  
At:- Barbil, Keonjhar. ... Respondent

For the Dealer : Mr. P.K. Jena, Advocate  
For the State : Mr. D. Behura, S.C.

-----  
Date of hearing: 25.09.2023 \*\*\* Date of order: 17.10.2023  
-----

**ORDER**

Both these appeals are disposed of by this composite order as the same involve common question of fact and law in between the same parties and for the same assessment period.

S.A. No.43(C) of 2012-13 is preferred by the dealer, whereas S.A. No.61(C) of 2012-13 is preferred by the State. In both these appeals challenge is the order dtd.11.09.2012 passed by the learned Addl. Commissioner of Sales Tax (Central Zone), Odisha, Cuttack (hereinafter referred to as, ACST/first appellate authority) in Appeal No. AA.JR-182/11-12, thereby allowing the appeal in part and reducing the tax demand to ₹29,14,764.00 against the order of the learned Deputy Commissioner of Sales Tax, Barbil Circle, Barbil (hereinafter referred to as, DCST/assessing authority) passed u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957, in short CST(O) Rules raising tax demand of ₹2,62,68,040.00 and penalty of ₹5,25,36,080.00 u/r.12(3)(g) of the CST(O) Rules in toto ₹7,88,04,120.00 for the tax period 01.04.2007 to 31.03.2010.

2. The case at hand is that, the dealer-assessee in the instant case is a partnership firm and carries on business of mining. The dealer-assessee is registered under the OVAT and CST Act bearing TIN-21861402388. The dealer used to sale iron ore and iron ore fines inside the State, outside the State and also export iron ore fines to other countries. Pursuant to audit visit report, learned assessing authority initiated assessment proceeding u/r.12(3) of the CST(O) Rules and raised the demand as mentioned above.

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

the appeal in part and reduced the tax demand to ₹29,14,764.00 instead of ₹7,88,04,120.00 as raised by the learned assessing authority.

4. Being dissatisfied with the order of the learned first appellate authority, both the dealer and the State have preferred the present second appeals as per the grounds stated in their grounds of appeal.

5. The dealer-assessee being the respondent in the appeal preferred by the State has filed the cross objection, whereas the State has not filed any cross objection in the appeal preferred by the dealer.

6. During course of argument, learned Standing Counsel for the Revenue contended stating that appeal order of learned first appellate authority is erroneous, arbitrary and bad in law. This apart, learned Standing Counsel argued stating that the deficiency pointed out by the learned assessing authority in the assessment order have not been fully submitted by the dealer along with 'H' forms at the first appeal stage and in most of the cases the purchase order of E1 is wanting. So, the learned first appellate authority has acted arbitrarily in deleting the penalty imposed by the learned assessing authority.

7. On the other hand, learned Counsel for the dealer-assessee contended stating that the forums below wrongly and illegally disallowed the penultimate sale u/s.5(3) of the CST Act for an amount of ₹5,56,02,475.00 without affording opportunity to furnish the declaration form 'H' and taxed the same which is arbitrary, excessive and bad in law. The forums below should have allowed further opportunity for filing

supporting documents for claiming exemption of tax towards exempted sale u/s.5(3) of the CST Act and should not have taxed on ₹96,91,354.00 @ 4%. The forums below should have allowed further opportunity for furnishing of 'C' declaration form amounting to ₹9,77,25,677.00 and should not have taxed the same @ 4%. The forums below wrongly and illegally disallowed the claim of export sales supported by 'H' declaration form bearing No.OIR-537833 amounting to ₹50,49,955.00 effected to M/s. Sara International Ltd. in absence of supporting documents i.e. foreign buyer purchase orders which is arbitrary, excessive and bad in law in view of the ratio of the decision rendered by the Hon'ble Madras High Court in the case of **V. Win Garments vrs. Addl. Deputy Commercial Tax Officer [2011] 42 VST 330 (Mad.)**. The forums below ought to have given credit of excess tax paid amounting to ₹1,33,140.00 in the return for the tax period 01.03.2007 to 31.03.2007 which has been duly verified and taken into consideration by the audit team and mentioned in the audit visit report.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-a-vis the grounds of appeal, cross objection and the orders of the fora below. After have a glance to the case record, it becomes evident that the dealer-assessee has been assessed u/r.12(3) of the CST(O) Rules for the tax period 01.04.2007 to 31.03.2010 and the demand has been raised on the following grounds:-

i. Failed to furnish 'C' Forms	₹22,45,81,216.00	
ii.		
Taxed @ 1% on ₹12,58,02,222.00		₹12,58,022.00
Taxed @ 2% on ₹ 9,87,78,994.00		₹19,75,580.00

iii. Failed to furnish 'H' Forms	₹5,65,01,102.00 taxed @ 4%	₹22,60,044.00
iv. Rejection of 'H' Form due to want of documents	₹58,55,42,312.00 taxed @ 4%	<u>₹2,34,21,692.00</u>
		₹2,89,15,338.00
Less Tax Paid at the time of provisional assessment adjusted		₹ 27,64,979.00
		<u>₹2,61,50,359.00</u>
	Tax demanded:	₹2,62,68,040.00
v. Penalty levied U/r.12(3)(g) of the CST (Orissa) Rules, 1957		<u>₹5,25,36,080.00</u>
	Total Tax & Penalty	<u>₹7,88,04,120.00</u>

**As per the Assessing Officer Total tax & penalty ₹7,88,04,120.00**

With regard to disallowance of penultimate sale u/s.5(3) of the CST Act for an amount of ₹5,56,02,475.00, the sole cause was wanting of 'H' declaration forms for the said amount. But, now during course of hearing of this second appeal, the dealer has filed the 'H' declaration forms for an amount of ₹1,41,79,896.00 along with a statement and supporting documents leaving a balance of ₹4,14,22,579.00. So, when such 'H' declaration form along with other documents have already been submitted by the dealer-assessee before this forum, the same should be taken into consideration, otherwise there will be violation of the principle of natural justice.

9. With regard to the contention of the dealer-assessee to afford further opportunity to furnish 'C' declaration form amounting to ₹9,77,25,677.00, the same holds not good as earlier sufficient opportunities have already been afforded to the dealer-assessee for submission of the same.

10. With regard to the claim of exemption of tax towards exempted sale u/s.5(3) of the CST Act and disallowing the claim of export sales supported by 'H' declaration form bearing No.OIR-537833 amounting to ₹50,49,955.00 effected to M/s. Sara International Ltd. in absence of supporting documents i.e. foreign buyer purchase orders, it should be made clear that

the filing of declaration form 'H' is mandatory vide notification No.469(E) dtd.14.07.2005, neither the statute nor the rules or the contents of Certificate of Export in Form 'H' requires the penultimate selling dealer to furnish "*the agreement copies or sale contract or purchase order of the foreign buyer with the Indian Exporter*" which is held by the Hon'ble High Court of Orissa while deciding the case of M/s. General Traders, Berhampur vs. State of Odisha in STREV No.64 of 2017 reported in 2023(I)-CUT-321. In view of such, the 'H' declaration form No.01R-537833 submitted by the dealer-assessee should have been allowed.

11. With regard to imposition of penalty as stated by the learned Standing Counsel for the State, the same holds not good and genuine as the circular dtd.20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha, Cuttack clearly entails that penalty will not attract under clause (g) of Rule 12(3) of the CST(O) Rules for non-filing of declaration forms. So, deletion of penalty by the learned first appellate authority in the instant case is not at all arbitrary. So, the State plea on penalty cannot be sustained.

12. With regard to interest charged for the non-submission of declaration forms, it is made clear that the dealer is liable to pay interest in view of the principle laid down in the case of **Royal Boot House Vrs. State of Jammu and Kashmir (1984) 56 STC-212 (SC)** and **Indodan Industries Ltd. Vrs. State of U.P.** In the case of **Royal Boot House** (supra), it is held as follows:-

*“ Whether the tax payable on the basis of a quarterly return is not paid before expiry of the last date for filing such return under the Jammu*

*and Kashmir General Sales Tax Act, 1962, it is not necessary to issue any notice on demand, but on the default being committed, the dealer becomes liable to pay interest under Section 8(2) of the Act on the amount of such tax from the last date for filing the quarterly return prescribed under the Act.”*

Likewise, in the case of **Indodan Industries Ltd. Vrs. State of U.P.**, it is held that

*“the interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the department has lost the revenue during interregnum period and that the assessee enjoys that amount during the said period and in order to recover the lost revenue, the levy of interest is contemplated. On the other hand, Rule 8 of CST (O) Rules provides for levy of interest if a registered dealer fails without sufficient cause to pay the amount of tax due as per the return furnished by it”.*

So, when the dealer has failed to support its claim of concessional tax, imposition of interest is automatic. This is by operation of law and not by decision of any authority.

13. But right now the dealer has furnished the ‘H’ form bearing No.01R 550967 for ₹1,41,79,896.00 before this forum during the hearing of this second appeal which should be taken into consideration otherwise there will be the violation of principle of natural justice. In view of such, we are of the unanimous view to remand the matter to the learned assessing authority for recalculation of tax interfering with the impugned order to the extent indicated hereinabove.

14. In the result, the appeal preferred by the dealer is partly allowed, whereas the appeal preferred by the State is dismissed. The orders of the fora below are hereby set aside. The case is remitted back to the learned assessing authority for recomputation of tax in the light of the observation made above within a period of three months of receipt of this order giving the dealer-assessee an opportunity of being heard. The dealer is also instructed to furnish the original 'H' form before the learned assessing authority along with other required documents such as bill of lading etc. during the time of reassessment. 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/-  
(Jahangir Khan)  
Accounts Member-III