

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

**S.A. No. 315 of 2001-02
&
S.A. No. 17 (C) of 2003-04**

(Arising out of orders of the learned ACST, Sambalpur Range,
Sambalpur in Appeal Nos. AA- 94 (SAIII) of 1999-2000 &
AA 10 (SAIIC) of 1999-2000, disposed of on 30.03.2001
and 10.02.2003 respectively)

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

S.A. No. 315 of 2001-02

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

-Versus-

M/s. Mahanadi Coalfields Ltd.,
Ib Valley Area, At/PO- Brajarajnagar,
Dist. Jharsuguda ... Respondent

S.A. No. 17 (C) of 2003-04

M/s. Mahanadi Coalfields Ltd.,
Ib Valley Area, At/PO- Brajarajnagar,
Dist. Jharsuguda ... Appellant

-Versus-

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

For the State : Sri D. Behura, S.C. (CT)
Sri S.K. Pradhan, Addl. SC (CT) &
Sri N.K. Rout, Addl. SC (CT)
For the Dealer : Sri S. Ray, Sr. Advocate &
Sri K.K. Sahoo, Advocate

Date of hearing : 06.02.2024

Date of order : 04.03.2024

O R D E R

The above appeals preferred by the State and Dealer relate to the same period involving common question of facts and law, but under different Acts. Therefore, they are taken up for disposal in this composite order for the sake of convenience.

S.A. No. 315 of 2001-02 :

2. State assails the order dated 30.03.2001 of the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA- 94 (SAIII) of 1999-2000 reducing the demand raised in assessment order of the Sales Tax Officer, Sambalpur III Circle, Jharsuguda (in short, 'Assessing Authority') to the returned figures.

S.A. No. 17 (C) of 2003-04 :

3. Dealer is in appeal against the order dated 10.02.2003 of the First Appellate Authority in F A No. AA 10 (SAIIIC) of 1999-2000 confirming assessment order of the Assessing Authority.

4. Briefly stated, the facts of the cases are that –

M/s. Mahanadi Coalfields Ltd. carries on business in mining and sale of coal. The assessment relates to the year 1998-99. The Assessing Authority raised tax demands of ₹1,00,52,771.00 u/s. 12 (4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') and ₹43,99,057.00 u/r. 12 (5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to the returned figures and allowed the appeal in full under the OST Act whereas confirmed the order of assessment

and dismissed the appeal under the CST Act. Being aggrieved with the orders of the First Appellate Authority, both the State and Dealer prefer these appeals. Hence, these appeals.

The Dealer and State file no cross-objection in these appeals.

5. The learned Standing Counsel (CT) for the State submits that the First Appellate Authority has not made any finding on the point of supply of iron and steel worth of ₹35,00,000.00 in the impugned order. He further submits that the First Appellate Authority arbitrarily deleted the entire demand and erroneously absolved the Dealer from all the tax liability, which is contrary to the provisions of law and fact involved and thus, needs interference in appeal. But, he supports the finding of the First Appellate Authority rendered in appeal preferred by the Dealer under the CST Act.

6. On the contrary, the learned Senior Counsel for the Dealer also submits that the First Appellate Authority has not passed a reasoned order even the Dealer filed voluminous documents containing 388 pages at the first appeal stage under the OST Act. He further submits that the Dealer had filed voluminous documents from Annexures- 1 to 22, but the First Appellate Authority disposed of the appeal without examining the same properly. So, he submits that the order of the First Appellate Authority should not be treated a reasoned order and, therefore, requires interference in appeal.

7. Heard the rival submissions of the parties and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record.

The State assails the order of the First Appellate Authority passed under the OST Act on the following grounds :-

- (i) The First Appellate Authority deleted the entire demand raised by the Assessing Authority arbitrarily;

- (ii) The First Appellate Authority illegally absolved the Dealer from the charges without any reasonable grounds merely on the basis of the documents filed;
- (iii) The First Appellate Authority failed to appreciate the finding of the Assessing Authority passed in case of M/s. Rohit Coal Supply and M/s. Utkal Coal Movers. The First Appellate Authority accepted the explanation of the Dealer that the mention of 'Nagpur' was a clerical mistake in absence of material evidence that the goods had not moved in course of inter-State trade and commerce from the mines head to Nagpur; and
- (iv) The First Appellate Authority has not made any observation on the point of supply of iron and steel worth of ₹35,00,000.00.

The Dealer also assails the impugned order passed under the CST Act on the followings grounds :-

- (i) The enhancement of inter-State sale to the extent of ₹22,72,324.00 is unwarranted and illegal;
- (ii) The disallowance of the claim of deduction on account of issue of credit notes given to parties is illegal; and
- (iii) The First Appellate Authority wrongly treated the sales to registered dealers as sales to unregistered dealers.

8. In course of hearing of the case, the learned Sr. Counsel for the Dealer has drawn the attention of this Tribunal to the finding of the First Appellate Authority and submits that the Dealer had filed voluminous documents consisting of 388 pages at the first appellate forum, but the First Appellate Authority had not examined in details of the documents and passed the impugned order. The relevant observation of the First Appellate Authority at pages-5 & 6 of the impugned order is extracted herein below for better appreciation of the case :-

“I have carefully gone through the assessment order and the records available at the assessment stage and in the assessment record. Also I have perused the written submission filed by the learned Advocate and the voluminous documents (about 388 pages of documents filed at this forum). The learned Advocate painstakingly with the help of documents has tried to establish his points. My observation is as follows :-

Regarding the appearance of the dealer on 31.12.99 in view of the documents filed at this forum in case of M/s. Rajiv Kumar Patjoshi no material difference is there. I do not think the dealer should be accused of deliberate absence from the assessment proceeding.

Regarding the grade slippage as the grade slippage have been allowed by public sector company and by independent bodies I do not agree with the view of the Assessing officer and no fault can be attributed to the dealer.

The Assessing officer does not appear to be correct in finding fault in the transaction by M/s. Rajiv Kumar Patjoshi and attributing this to the instant dealer without any clinching evidence against the appellant. In view of the documents filed by the learned Advocate I think the Assessing officer has no case.

Regarding the transaction made by Rohit Coal Supply, similarly the Assessing officer could not find any evidence directly involving the instant dealer. Only on mere suspicion the dealer appellant cannot be held to be guilty. Hence in view of the numerous documents filed by the learned Advocate I absolve the appellant dealer from the charges.

Regarding the Utkal Coal Movers also the Assessing officer has only found irregularity in transaction involving M/s. Utkal Coal Movers. There is no evidence to show the appellant dealer to be guilty of any fraudulent activity involving M/s. Utkal coal Movers. In view of the arguments and documents filed by the learned Advocate I do not think the dealer-appellant is guilty of offence in this regard.

From the discussion made in the foregoing paras it will be clear that the Assessing officer has arrived at sweeping regarding the fraudulent activity of the dealer and without getting any documentary evidence directly involving the dealer-appellant he has rejected the books of account and enhanced the turnover by ₹25.00 crores.”

Bare reading of the aforesaid finding of the First Appellate Authority, it is found that the Dealer filed voluminous documents before

him and he had passed the impugned order without examining the same in details. So, we feel that the First Appellate Authority has not passed a reasoned order and thus, it requires a detail examination again. As the documents filed are voluminous, i.e. 388 pages, we feel it just and proper to remit the matter to the Assessing Authority for due examination of the documents in assessing the tax liability of the Dealer.

However, we make it clear that we are not expressing any opinion on merit of the case. So, the Assessing Authority shall not be influenced by this order while completing the remand assessment afresh.

9. As regards the appeal of the Dealer under the CST Act, the order of assessment reveals that the Dealer was effecting sale of 'F' grade coal both inside and outside the State. The Dealer has disclosed its inter-State of coal against 'C' form under 4% taxable group. The Dealer has also effected inter-State sale to unregistered dealers of outside the State, which was taxed @8%. The Dealer has collected CST to the tune of ₹14,05,08,949.00. The claimed deduction of ₹95,58,094.00 due to wrong billing. The Dealer was asked to produce the original bills and credit bills which were issued to the customer. The Dealer failed to produce the same. So, the Assessing Authority disallowed the claim of credit notes in absence of documents. Record further reveals that the Assessing Authority observed that the coal consignment lifted by M/s. Utkal Coal Movers were transactions u/s. 3(a) of the CST Act, but treated the same intra-State sales. So, the Assessing Authority included an amount of ₹22,72,324.00 to the turnover returned. The Assessing Authority levied tax at the appropriate rate in absence of 'C' form. Accordingly, the Assessing Authority determined the tax liability of the Dealer at ₹43,99,057.00 under the CST Act. The First Appellate Authority confirmed the assessment.

It is worthwhile to observe that Annexure-19 at page- 375 of the document relates to Road Delivery Order vide No. 03169 dated 07.11.1998 was issued in favour of M/s. Utkal Coal Movers, Lambtibahal, Brajarajnagar

for 400 MT of coal, which was valid from 08.11.1998 to 07.12.1998. The documents further reveal that total 18 trips of truck loads were lifted on 27.11.1998 out of which 85.680 MT of coal relates to M/s. Utkal Coal Movers in 6 trips of truck loads. Road Delivery Order No. 03169 is in favour of M/s. Utkal Coal Movers, Lambtibahal, Brajarajnagar, which finds support the plea of the Dealer that the destination was meant for M/s. Utkal Coal Movers, Lambtibahal, Brajarajnagar instead of M/s. Utkal Coal Movers, Nagpur. The Assessing Authority had verified Transit Pass No. 34 of Book No. 11024 for 12.630 MT of coal with corresponding Gate Pass No. 126379, wherein 'Nagpur' has been mentioned. He also verified the Transit Pass No. 14 of Book No. 14457 for 9.500 MT of coal with corresponding Gate Pass No. 126069 for the destination 'Lambtibahal'. In fact, the truck load of goods were issued in favour of M/s. Utkal Coal Movers, Lambtibahal on the strength of Road Delivery Order vide No. 03169 dated 07.11.1998. Though the Assessing Authority verified the abovesaid two Transit Passes, in one of which mentions the destination as 'Nagpur' and in other it mentions the destination as 'Lambtibahal'. The same could be further cross verified from other materials and the Dealer should have been allowed opportunity to explain the impugned transaction while arriving as CST sale. So, at this stage, we feel it proper to remit the matter to the Assessing Authority for assessment afresh by allowing the Dealer due opportunity to prove that the entry 'Nagpur' is an error in writing. If the Dealer fails to substantiate the stand, the Assessing Authority shall complete the assessment as per law.

10. It transpires from the impugned order of the First Appellate Authority that the Assessing Authority asked the Dealer to produce the copies of original and revised sale bills along with respective credit notes issued to different parties, but the Dealer failed to produce the same before the Assessing Authority. The impugned order further reveals that at the appellate stage also, the Dealer failed to produce relevant documents for

consideration of his claim. Dealer claims that he had filed voluminous documents before the First Appellate Authority as per Annexures- 1 to 22, which is contrary to the finding of the First Appellate Authority. The First Appellate Authority could have examined those Annexures filed before him and recorded the finding on that score. So, we also feel it proper to remit the matter to the Assessing Authority for de novo assessment after allowing due opportunity of being heard to the Dealer. The Dealer is at liberty to furnish all the relevant documents before the Assessing Authority to substantiate its claim as per law.

11. Resultantly, the appeals at the instance of State and Dealer are allowed. The impugned orders of the First Appellate Authority are hereby set aside and the matters are remanded to the Assessing Authority for assessments afresh as per law keeping in view the observations made supra within a period of four months from the date of receipt of this order. The Dealer is required to adduce all the relevant materials before the Assessing Authority to substantiate his claim.

We want to make it clear that we have not expressed any opinion on merit of the case while remitting the matters to the Assessing Authority. The Assessing Authority shall do well and proceed to make assessments afresh as per law without being influenced by the order of this Tribunal.

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-I**