

BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 1121/2005-06

(From the order of the Id.ACST, Jajpur Range, Jajpur Road, in
Appeal No. AA.108/KJB/2004-05, dtd.19.04.2005,
modifying the assessment order of the Assessing Officer)

P R E S E N T :

Smt. S. Mishra
Chairman

Sri S. Mohanty &
Judicial Member-II

Sri P.C. Pathy
Accounts Member-I

M/s. Kaypee Enterprisers,
At/P.O. Barbil,
Dist. Keonjhar.

... Appellant

-Versus -

State of Orissa, represented by the
Commissioner of Sales Tax,
Orissa, Cuttack.

... Respondent

Appearance :

For the Appellant ... Mr. D.K. Sahoo, Advocate

For the Respondent ... Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

(Assessment Period : 2000-01)

Date of Hearing: 04.07.2018

Date of Order: 05.07.2018

ORDER

The assessee-dealer as appellant has questioned the sustainability of the order passed by the First Appellate Authority/Asst. Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, FAA/ACST) in First Appeal Case No. AA.108/KJB/2004-05 dtd.19.04.2005 in this second appeal.

2. The case in brief giving rise to this present second appeal are : The assessee-dealer was engaged in mining and sale of minerals. For the assessment period 2000-01, it was subjected to regular

assessment u/s.12(4)of the Odisha Sales Tax Act, 1947 (in short, OST Act) vide assessment order dtd.21.07.2002, but in a later period on the strength of objection raised in AG Audit regarding irregular acceptance of declaration in Form-IV, and payment of tax in concessional rate, the Assessing Officer, Assessment Unit, Barbil (in short, AO) initiated re-assessment proceeding u/s.12(8) of the OST Act. During re-assessment it was found that, a dealer called M/s. Sesa Goa Ltd., Barbil who was shown to have purchased goods valued Rs.61,15,018/- and issued Form-IV became registered only w.e.f. 25.07.2000. So the goods sold period prior to the date of registration i.e. from 01.04.2000 to 24.07.2000 was not qualified for concessional rate of tax. Accordingly, the AO imposed full rate of tax @16% on the amount of goods sold by the instant dealer to M/s. Sesa Goa Ltd., which was calculated to Rs.8,43,872/- with surcharge and interest.

3. Being aggrieved with such demand of tax, the assessee had preferred first appeal, whereby and wherein the learned ACST, Jajpur Range, Jajpur Road as FAA found that, though, the purchasing dealer M/s. Sesa Goa Ltd., Barbil became registered w.e.f.25.07.2000 but the Registration Certificate only amended on dt.18.01.2001 to include iron ore and iron ore fines for processing. As a result of that, the FAA held that, for the period between 01.04.2000 to 18.01.2001, the dealer is not entitled for concessional rate of tax against Form-IV on the sale to M/s. Sesa Goa Ltd. Accordingly, after giving due notice u/s.23(2)(a) of the OST Act r/w. Rule 50(3) of the OST Rules and on hearing the dealer, he determined the value of goods at Rs.1,09,06,062/- as not qualified for concessional rate of tax. Then imposing the differential rate of tax i.e. @12%, he calculated

the tax due, surcharge and interest and thereby the demand is accordingly raised/enhanced to Rs.23,99,273/-.

4. When the matters stood thus, the assessee-dealer preferred this appeal with the contentions like : re-opening of assessment u/s.12(8) of the OST Act in the case in hand, on the basis of a mere change of opinion at a subsequent stage by Id.AO, is illegal. It is further contended that, the FAA has illegally enhanced the demand, the assessee-dealer is not responsible for any defect in declaration Form-IV issued by the purchasing dealer. It is also contended that, the FAA has gone wrong in not considering the fact that, the purchasing dealer M/s. Sesa Goa Ltd. has been granted Registration Certificate under OST Act w.e.f.25.07.2000. So on the basis of declaration forms issued by the purchasing dealer the assessee-dealer was qualified to avail the concession in rate of tax.

The appeal is heard without cross objection from the side of the Revenue.

5. The substantial question of law and fact to be determined in this appeal are : (a) Whether the purchasing dealer M/s. Sesa Goa Ltd. was a registered dealer and competent to issue Form-IV (b) If the FAA is erroneous in enhancing the demand of tax with the findings that, the purchasing dealer was not registered and even though became registered in a latter period, still was not authorized to purchase iron ore lumps for manufactured purpose.

Findings :

6. In the case in hand, the facts admitted are, the appellant-dealer had sold iron ore and lumps to M/s. Sesa Goa Ltd., Barbil. The AO found that, though the purchasing dealer M/s. Sesa Goa Ltd. had issued declaration Form-IV qualifying the assessee-dealer for concession in rate of tax but M/s. Sesa Goa Ltd. became registered

under the OST Act only w.e.f. 25.07.2000. In that event, the goods purchased by M/s. Sesa Goa Ltd. prior to 25.07.2000 i.e. covered under the assessment period in question are not qualified for concessional rate of tax @4%. In consequence thereof, the AO levied full rate of tax with surcharge and interest on the value of goods sold by the dealer to M/s. Sesa Goa Ltd. during the period 01.04.2000 to 24.07.2000. In the appeal the FAA found that, M/s. Sesa Goa Ltd. was granted Registration Certificate u/s.9(A) of the OST Act w.e.f.25.07.2000 but as per Sl.No.3 of the said Registration Certificate iron ore has not been specified in the list of goods for use in processing. It is only by way of amendment of the Registration Certificate w.e.f.18.01.2001, the goods like 'iron ore lump' was entered 'for use in manufacturing and processing'. So treating the Registration Certificate of the purchasing dealer was not explicit about the iron ore lumps for manufacturing purpose, after giving opportunity of being heard to the dealer the FAA enhanced the tax liability. He levied differential rate of tax @12% on the goods sold during 25.07.2000 to 17.01.2001. As a result, the tax due became enhanced from Rs.8,43,872/- assessed by the AO to Rs.23,99,273/-.

7. Learned Counsel for the dealer furnished the Xerox copy of the Registration Certificate of the purchasing dealer M/s. Sesa Goa Ltd. and argued that, the Registration Certificate issued by the STO, Assessment Unit, Barbil w.e.f.25.07.2000 did not reflect the iron ore as raw material in the manufacturing/processing of goods initially and it was an accidental omission due to inadvertence. When the said defect came to the notice of M/s. Sesa Goa Ltd., it had filed an application for amendment. Said amendment application was allowed and it was allowed w.e.f.18.01.2001 instead of 25.07.2000. However, in the revision before the Commissioner of Commercial Tax, Odisha,

the matter finally came to rest with the order of the Commissioner that the amendment in Registration Certificate became effective from 25.07.2000. As a result of that, the Col.3 of the Registration Certificate is to be read and treated as iron ore and lump used as raw materials for manufacturing and processing.

It is apt to mention here that, the order of the Commissioner for amendment w.e.f.25.07.2000 was passed on 08.08.2000. By then the impugned order was already passed. Such being the development in the matter of Registration Certificate by the order of the Commissioner passed on dtd.08.04.2008 in the Revision Case No. Jajpur-27 of 2005-06, here it can safely be said that, the impugned order passed on 14.05.2004 suffers from no illegality. So it is held that, at the inception the grounds in appeal had no legs to stand. However, during pendency of the appeal before this Tribunal, the Registration Certificate of the purchasing dealer M/s. Sesa Goa Ltd. finally amended and the amendment in Registration Certificate has got retrospective effectiveness from 25.07.2000. In consequence thereof the entitlement of concession in rate of tax as against sale to M/s. Sesa Goa Ltd. relegated back to the date 25.07.2000. This Tribunal being the highest fact finding authority is under obligation as per Rule 61 of the OST Rules to take fresh evidence. It is not disputed that, the evidence like amended Registration Certificate was not under the possession of the dealer on or before the passing of the impugned order. So there was no scope in the hands of the dealer to file this amended Registration Certificate before the FAA. In that event, because this is a development in the interim, this Tribunal is bound under law to take consideration of these documents for ends of justice and for effective adjudication of the dispute. Once the amended Registration Certificate is accepted, then in consequence

thereof, the irresistible conclusion is, the purchases by the assessee-dealer and issue of declaration in Form-IV are qualified for concessional rate of tax to be paid by the assessee-dealer. It is noteworthy to mention here that, it is not the case of the Revenue that, the declaration form produced by the assessee-dealer are defective in any respect other than the defect in Registration Certificate of purchasing dealer. Once that defect is removed, then the assessee-dealer should be qualified for concession in rate of tax for the sale of goods to M/s. Sesa Goa Ltd. effective from 25.07.2000. In ultimate analysis, we are of the view that, in the facts and circumstances mentioned above, the impugned order cannot withstand both in law and fact, hence reversed. Accordingly, it is ordered.

The appeal by the dealer is allowed on contest. The dealer is entitled to pay tax in concessional rate as against the declaration in Form-IV issued for the goods sold to M/s. Sesa Goa Ltd. w.e.f. 25.07.2000. The impugned order by FAA is set-aside and resultantly, the order of Assessing Officer is restored hereby.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Smt. S. Mishra)
Chairman

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I

