

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

S.A. No. 16 (C) of 2010-11

(Arising out of order of the learned JCST, Balasore Range,
Balasore in Appeal No. AA 11/BAC/ 2007-08,
disposed of on 07.12.2009)

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

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

... Appellant

-Versus-

M/s. Balasore Alloys Ltd.,
Balgopalpur, Balasore

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl. SC (CT)
For the Respondent : Sri K. Kurmy, Advocate

Date of hearing : 13.03.2024 *** Date of order : 18.03.2024

ORDER

State assails the order dated 07.12.2009 of the Joint Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'First Appellate Authority') in F A No. AA 11/BAC/ 2007-08 reducing the assessment order of the Sales Tax Officer, Balasore Circle, Balasore (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. M/s. Balasore Alloys Ltd. is a Medium Scale Industry and engaged in manufacturing and sale of silica manganese, ferro chrome, charge chrome and ferro manganese as ferro alloys products. The assessment relates to the year 2004-05. The Assessing Authority raised the

demand of ₹94,11,866.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the demand to ₹25,561.00 and allowed the appeal in part. Being further aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files no cross-objection.

3. The learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority is erroneous and contrary to the provisions of law and fact involved. He further submits that the incentive of DEPB licence accrued from the export sale transaction of goods relating to Odisha. So, he submits that the finding of the First Appellate Authority excluding the sale price of DEPB licence from the turnover of the Dealer is erroneous and, therefore, requires interference in appeal.

4. On the contrary, the learned Counsel for the Dealer submits that the sale of DEPB licence is akin to sale transaction of goods. He further submits that the sale transaction of DEPB licence took place at Kolkata and the same is transferrable. So, he submits that the State of Odisha cannot claim any tax on the said transaction which took place outside the State. Therefore, he submits that the impugned order of the First Appellate Authority needs no interference in appeal as the same is reasoned one.

5. 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.

In the present appeal, the State has taken the sole ground that the finding of the First Appellate Authority excluding the sale price of DEPB licence from the turnover of the Dealer is erroneous.

The assessment order reveals that the Assessing Authority has added an amount of ₹7,11,08,376.00 to the GTO towards the DEPB sale and

levied tax under the CST Act @ 12% as unspecified goods. The First Appellate Authority excluded the said sale turnover of DEPB licence with a finding that the sales were completed at Kolkata and does not fall under the definition of 'sale' as provided u/s. 2(g) of the OST Act.

The order of assessment reveals that the Head Office of the Company has sold DEPB (Duty Entitlement Pass Book) licence of ₹7,11,08,376.00. The DEPB is an export incentive scheme provided in Import & Export Policy.

It is not in dispute that the goods were moved to Kolkata branch from the Dealer's Unit on the basis of branch transfer. The DEPB licence was sold at Kolkata. The State claims tax with a plea that it is an export sale and the incentive has accrued from the export sale. It is also not in dispute that the DEPB licence is akin to goods and is transferrable. The transaction of the aforesaid goods took place at Kolkata is not in dispute. So, the CST cannot be levied for the sale of goods which took place at Kolkata. As such, we do not find any illegality in the impugned order of the First Appellate Authority. Hence, it is ordered.

6. Resultantly, the appeal of the State stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed.

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**