

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 54 (C) of 2019

(Arising out of order of the learned Addl. CST, Angul Range,
Angul in Appeal No. 107211821000031,
disposed of on 28.03.2019)

Present: **Shri G.C. Behera, Chairman**

M/s. Binod Traders,
At/PO- Bagedia, Angul ... Appellant

-Versus-

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

For the Appellant : Sri Mukesh Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 25.04.2023 *** Date of order : 06.05.2023

ORDER

Dealer assails the order dated 28.03.2019 of the Addl. Commissioner of Sales Tax, Angul Range, Angul (hereinafter called as 'First Appellate Authority') in F A No. 107211821000031 enhancing the tax demand raised in assessment order of the Sales Tax Officer, Angul Circle, Angul (in short, 'Assessing Authority').

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

M/s. Binod Traders is engaged in manufacture and sale of beedi. The Dealer purchases tobacco, paper & paper board, carton & boxes from outside the State for its business. The assessment u/r. 12(1) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') relates to the

period 01.04.2013 to 31.03.2014. In course of assessment, the Dealer failed to submit original declarations in Form-C for ₹82,72,744.00 towards the claim of concessional rate of tax. So, the Assessing Authority levied tax @10% and raised demand of ₹6,97,382.00 after adjustment of ₹1,29,892.00 towards tax paid by the Dealer.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. In appeal, the Dealer did not appear and produce any declaration in Form-C for the said transactions. So, the First Appellate Authority upheld levy of tax in absence of 'C' form and also imposed interest of ₹3,58,456.00 u/r. 8 of the CST (O) Rules on the differential amount of tax due, thereby enhanced the tax demand to ₹10,55,838.00 *ex parte*. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, the appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority to be just and proper in the facts and circumstances of the case.

3. The learned Counsel for the Dealer submits that levy of tax by the forum below for want of original declaration forms is illegal and violative of principles of natural justice. The Dealer was not provided sufficient opportunity to furnish the same and the order was passed arbitrarily and illegally. He further submits that without issuing notice as per law levy of interest of ₹3,58,456.00 by the First Appellate Authority for non-furnishing of declaration forms is illegal and bad in law. In course of hearing, learned Counsel for the Dealer files photo copies of 4 nos. of 'C' form for ₹79,78,172.00 along with petition for acceptance of the same with an undertaking to file the originals thereof before the Assessing Authority. Supporting the contentions, he relies on the decisions of the Hon'ble Court in case of *Sahu Trading Co. v. State of Orissa*, [1983] 54 STC 122

(Orissa), and the Hon'ble Apex Court in case of *State of Orissa v. Hyderabad Asbestos Cement Production Ltd.*, [1994] 94 STC 410 (SC).

4. On the contrary, learned Standing Counsel (CT) for the State vehemently objects the contentions of the Dealer and submits that the forums below had allowed sufficient opportunity to furnish the declarations in form 'C', but the Dealer did not avail the same. So, the First Appellate Authority rightly levied tax and interest for the amount due to non-submission of declaration forms in original. He further submits that the Dealer did not file 'C' declaration forms in original before this forum for which he is not entitled to any concessional benefit. Rather, the Dealer is dragging the case to avoid the due payment of tax to the State exchequer. So, he submits that the impugned order does not suffer from infirmity and the same requires no interference in appeal. He relies on the decision of the Hon'ble Apex Court in case of *Royal Boot House v. State of J&K and others*, [1984] 56 STC 212 (SC) and the decision of Hon'ble Allahabad High Court in case of *CCT v. Control Switch Gear Co. Ltd.*, [2011] 10 VST 18 (All.).

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. It transpires from the first appellate order that the Dealer had filed xerox copies of 4 'C' forms for which the First Appellate Authority did not accept the same. Before this forum, the Dealer is unable to file the original declarations in Form-C, but he undertakes to file the original statutory forms before the Assessing Authority to claim concessional benefit, or else the Dealer is not entitled to any concessional benefit. Basing on such submission, this Tribunal feels it proper to allow an opportunity to the Dealer to furnish 'C' forms in original before the Assessing Authority without fail. I reiterate here that if the Dealer unable to produce the original statutory forms before the Assessing Authority, the Dealer shall not take the

benefit of this order and as such, the order of assessment will stand. So, for the interest of justice, the matter is remanded back to the Assessing Authority for consideration of the statutory forms to be filed in original by the Dealer as per law.

6. As regards levy of interest for non-submission of statutory forms, it is observed that this Tribunal will not express any opinion at this stage as the matter has been remanded to the Assessing Authority for consideration of the statutory forms filed before this forum. However, the Assessing Authority will consider the levy of interest as per the statutory provision. Hence, it is ordered.

7. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for due verification of 'C' forms in original to be produced by the Dealer and acceptance of the same, if found to be proper and computation of tax liability afresh as per law within a period of three months from the date of receipt of this order. If the Dealer fails to produce the original declarations in Form-C as per his undertaking, then the Dealer shall not derive the fruit of this order and accordingly, the order of assessment will stand. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

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(G.C. Behera)
Chairman**