

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX
TRIBUNAL, CUTTACK.**

S.A. No. 34(C) of 2020

(Arising out of the order of the learned
JCST(appeal), Sundargarh Territorial Range,
Rourkela in first appeal case No. AA2 (RL-II-C) of
2016-17 dtd.08.04.2020)

Present: **Shri G.C. Behera, Chairman**
&
Shri B. Bhoi, Accounts Member-II

M/s. Lloyd Insulation (I) Ltd.,
Plot No-N-12, Civil Township,
Rourkela. Appellant.

-Vrs. -

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

For the Appellant : : Mr. B.P. Mohanty, ld. Advocate
For the Respondent : : Mr. D. Behura, ld. S.C.(C.T.)
: Mr. S.K. Pradhan, ld. ASC(C.T)

Date of Hearing : 03.05.2023 * Date of Order : 16.05.2023**

O R D E R

This second appeal is directed against the order dated 08.04.2020 passed by the Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter called Ld.FAA) in First Appeal Case No.AA2(RL-II-C) of 2016-17 in disallowing the claims of concessional rate of tax/ exempted sales and determining the tax at ₹1,48,62,082.00.

2. It is worthwhile to provide a brief fact of the case for better appreciation. The dealer-appellant namely M/s. Lloyd

Insulation (I) Ltd, Plot No.N-12, Civil Township, Rourkela, Sundargarh, TIN-21302002253 carries on business in transfer of property in goods involved in the execution of works contract as defined U/s 2(45)(b) of the OVAT Act. The appellant effects purchases of goods both from outside and inside the State of Odisha. The dealer-appellant was assessed U/r.12(3) of the CST(O) Rules by the Sales Tax Officer, Rourkela-II Circle, Panposh (hereinafter called Ld.STO) for the tax period 01.04.2009 to 31.03.2014 basing on the Tax Audit Report and raised demand to the tune of ₹2,11,09,400.00 including interest of ₹38,06,613.00. The first appeal as preferred by the dealer-appellant before the Ld.FAA was partly allowed and the demand as assessed at assessment was reduced to ₹1,48,62,082.00 which includes interest of ₹28,44,668.00.

3. The dealer-appellant being not satisfied with the order passed in the first appellate stage preferred this appeal endorsing the following grounds of appeal.

(i) that the learned Counsel of the dealer-appellant submits before this forum that the demand as raised at ₹1,48,62,082.00 in the first appeal was due to non submission of declaration forms 'C' and E-I together with disagreement in figures disclosed in the statement and declaration forms produced at the time of assessment and first appellate stage.

(ii) That it is submitted that statutory declaration forms are to be obtained from the purchasing dealers stationed outside the state of Odisha. The dealer-appellant is being subjected to fall a

prey due to non transmission of the declaration forms by the purchasing dealers. Reasonable opportunity has not been advanced at the first appellate stage. The learned Counsel of the dealer-appellant placed reliance on the judgment passed in case of SAIL Vrs. STO, Rourkela-I Circle & Others reported in 94 STC (105 page).

(iii) That it is contended that as per the statement submitted with regard to furnishing of Form 'C' against 6(2) sales (exempted sales), the total sales were disclosed at ₹103,82,11,754.00. Against this, Forms E-I were submitted to the tune of Rs.89,21,39,504.00. In result, an amount of ₹14,60,72,250.00 was not supported with Form E-I. The Ld.FAA has taxed the said amount at full rate of tax instead of @ 2% which is improper and irregular. This apart, there is wrong computation of tax on ₹11,46,12,657.00 at the first appellate stage despite submission of statutory declaration forms.

(iv) That it is also argued that levy of interest of ₹28,44,668.00 on the disputed demand of ₹1,20,17,414.00 is illegal and unwarranted as per the provisions of Rule 8(1) of the CST Rules. Reliance has been placed on the judgment delivered by the Hon'ble Apex Court in case of M/s J.K. Synthetics Limited reported in 94 STC (at page 422).

(v) It is submitted by the learned Counsel of the dealer-appellant that the required declaration Forms in E-I were received subsequent to the order passed by the Ld.FAA. A bunch of the attested copies of the E-I Forms have been submitted by at this

forum on 03.05.2023 for consideration as 'Additional Evidences'.

Cross objection has been filed by the Revenue supporting the order of the ld. FAA.

4. Gone through the averments advanced by the learned Counsel on behalf of the dealer-appellant. So also, the arguments of the learned Counsel representing the Revenue are gone through. Besides, the order of assessment, order of the Ld.FAA and the materials on record are looked into at length. It is not denying a fact that, as we suppose, there was no adequate opportunity advanced to the dealer-appellant to put forth its grievances, to say, to submit the declaration forms at the appellate stage. The learned Counsel on behalf of the dealer-appellant has submitted attested photo copies of the declaration forms E-I before this forum claiming exemption of tax. Since there is no original 'E-I' forms along with relevant books of accounts adduced at this forum, we find no scope to go into details of the genuineness of the claims. We rather repose substantial credence on the contention made by the learned Counsel of the dealer-appellant. We are, therefore, of the view that the dealer-appellant is required to be assessed afresh examining apart from other issues as per law on claims of exemption of tax/concessional rate of tax against declaration in form 'E-I and 'C' that would be produced by the dealer-appellant in original at assessment with advancement of opportunity of being heard.

5. In the result, in the backdrop of the above observations, the appeal filed by the dealer-assessee is allowed in part and the orders of the forums below are hereby set-aside with directions to the

learned assessing authority to reassess the dealer in the light of the observations narrated supra providing the dealer-appellant adequate opportunity of being heard within three months of the receipt of his order unfailingly. The cross objection filed by the Revenue is disposed of accordingly.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

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