BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.
S.A. No. 176 of 2007-08

(Arising out of the order of the learned ACST, Jajpur Range, Jajpur Road, in First Appeal case No. AA-332/CUIII/05-06 disposed of on 31.01.2007)

P r e s e n t: Shri G.C.Behera, Chairman. Sri. S.K.Rout Judicial Member-II & Shri M.Harichandan, Accounts Member-I.

M/s.Sukinda Chromite Mines,
Kalarangiatta, Sukinda, Jajpur. ... Appellant.

- V e r s u s –

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

For the Appellant ... None.
For the Respondent ... Mr.M.L.Agarwal, SC

Date of hearing: **31.10.2022** * * * Date of Order:**15.11.2022**

O R D E R

Challenge in this appeal is the order dated 31.01.2007 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Jajpur Range, Jajpur Road (in short, ACST/FAA) in first appeal case No.AA.332/CUIII/2005-06, thereby allowing the appeal in part and reducing the assessment to Rs.8,63,307.00 against the order of assessment passed by the learned Sales Tax Officer, Jajpur Circle, Jajpur Road (in short, STO/AO) under Section 12(4) of the OST Act for the period 2003-04 raisinig demand of Rs.9,48,843.00.

2. The case in short is that the dealer company carries on business in mining and sale of chrome ore and pyroxenite both in course of interstate and intrastate trade along with export. During course of assessment, the learned assessing officer examined the books of accounts as well as the statement of opening stock and closing

stock and found that the dealer appellant has shown the opening stock of HSD as on 01.04.2003 was 23,787 Ltrs for Rs.3,80,117.00. The appellant has effected purchase of HSD of 11,62,953 ltrs. for Rs.2,01,07,465.00 from BPC Ltd. against Form IV during the material period. Out of which consumption were 11,80,458 ltrs. for Rs.2,04,10,119.00 leaving closing balance of 6282 ltrs for Rs.1,08,615.78. The STO also found that out of total consumption the appellant had used 955870 ltrs. for Rs.1,72,18,592.00 and 184588 ltrs for Rs.31,91,526.52 in the vehicle engaged in mining and in non-mining respectively. The learned STO observed that the appellant has violated the condition of form IV in utilizing the HSD in the vehicle engaged in non-mining. So tax was lelvied on Rs.31,91,526.52 at the different rate of tax for mis-utilisation of form IV.

The appellant has effected purchase of raw material for canteen sale of Rs.14,92,161.15 and it has disclosed canteen sales for Rs.5,20,431.33. It was stated that since those sales were effected to the staffs of the company on the subsidized rate. The sale were non-commensurate to its purchase which is nothing but a supporting incentive to the workers to enhance their inducement. But the learned STO observed that even though the company does not operate canteen for the purpose of profit its sale cannot be less than its purchases of raw materials. So the STO treated the transaction in this respect to be on the basis no profit no loss principle. Thus the difference amount between purchase of raw materials and sales in respect of canteen has taxed at the appropriate rate. On scrutiny of stock statement so furnished of chrome ore and pyroxenite, the STO found that the opening balance of chrome ore was 1,12,715.070 MT, pyroxenite were 16,59,658.040 MT thereby aggregating to 17,72,373.110 MT. Out of this dispatches by way of OST sales, CST sales, conversion, export, feed to COB plant, dispatches to Baminipal, Jamshedpur and samples were for 16,82,987.062 MT, thereby leaving a closing balance of 89,386.048 MT. The appellant has also shown closing stock of pyroxenite of

25,576.03 MT. The appellant has submitted the details of statement showing dispatches of chrome ore from Sukinda to different conversion agents for 2,19,806 MT. On verification of the statement regarding dispatches of chrome ore to the different conversion agents the learned STO found that the appellant has despatched chrome ore of 2,29,147.720 MT to the different conversion agents during the material period. The appellant has also furnished another stock statement showing despatch of chrome ore for 218086.802 MT to different conversion agents at the assessment stage. The learned STO believed that the stock accounts maintained by the appellant was in doubt as it has shown different quantities on different dates. So the learned STO taxed the differential quantities of chrome ore shown in the statement between 229247.720 MT and 219806 MT. Accordingly, the GTO was determined at Rs.29,47,19,359.97. After allowing deduction of Rs.1,09,31,606.46 towards STC, the TTO was determined at Rs.28,37,87,753.51. Tax @4% on Rs.27,67,92,740.16, @4% on Rs.23,11,055.50, @ 8% on Rs.14,92,431.33, @16% on Rs.31,91,526.52 which calculated to Rs.1,17,94,190.58. Surcharge @10% calculated to Rs.11,79,419.05. Thus, tax with surcharge arrived to Rs.1,29,73,609.63. The appellant having paid Rs.1,20,24,767.00 was required to pay the balance amount of Rs.9,48,843.00.

3. As against such order of assessment, the dealer preferred first appeal before the learned ACST (Appeal), Jajpur Range, Jajpur Road who allowed the appeal in part and reduced the assessment to Rs.8,63,307.00.

4. Further, being dissatisfied with the order of the first appellate authority, the dealer preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. No cross objection has been filed by the Revenue in the present case.

6. Despite of due service of notice on the dealer, he neither appeared in person nor engaged any one to remain present during the time of hearing of this appeal. So having no alternative this Tribunal proceeded to dispose of the appeal on exparte basis on merit hearing the submission of the learned Standing Counsel for the Revenue.

7. In the instant case, three points are to be adjudicated upon such as:

i) mis-utilisation of Form IV for the purpose of HSD for its diversion to non-mining purpose

ii) sale suppression in respect of canteen transaction.

iii) Stock discrepancy of quantity of chrome.

With regard to Issue no.1, the case record entails that during the period under challenge, the appellant purchased HSD of 11,62,953 ltrs. for Rs.2,01,07,465.00 against Form IV from M/S.BPC Ltd.. The appellant had opening stock of HSD of 23787 ltrs. for Rs.3,80,117.00. Noteworthy to mention that as per condition of form IV the goods purchased by the dealer shall be used in mining only and not otherwise. In the instant case, the appellant utilized 11,80,458 ltrs. and produced supporting documents for utilisation of HSD for 955870 ltrs in mining out of the total consumption and the same was accepted by the STO. But the appellant failed to produce the detail accounts for utilisation of balance quantities of HSD. So the learned STO treated the said balance quantities of HSD to have been utilised other mining purpose. On the other hand, the appellant admits that he has purchased HSD against declaration form IV, but could not be able to justify that the same were utilised only in mining purpose. So it becomes violative to the conditions prescribed under 5th proviso to Section 5(1) of the Act read with Form IV. So the learned assessing officer has rightly mentioned in the assessment order that “consumption of 184588 ltrs. for Rs.31,91,526.52 in the vehicle that were engaged in non mining purpose

which means those vehicles were being operated in the purpose that have been ancillary to the mining operation which is violative in view of purchases of HSD on strength of form IV" likewise. when the appellant failed to produce detail accounts of utilisation of HSD, the learned first appellate authority mentioned in his order that " the appellant failed to produce the supporting documents for utilisation of the balance quantities of HSD for 18,45,88 ltrs in mining". Learned assessing officer is competent to verify the utilisation of HSD purchased on the strength of Form IV invoking the 5th proviso of Section 5(1) of the Act. The legislature has granted concession to utilise the goods in mining and not to facilitate the mining. So the learned first appellate authority has rightly arrived at the conclusion that the learned assessing officer has reasonably taxed on the said amount at the differential rate of tax as per 5th proviso of Section 5(1) of the OST Act.

With regard to Issue no.II, the appellant had purchased the goods of Rs.14,92,161.15, whereas sold the same at Rs.5,20,,431.33 and as such, the differential amount was added by the learned assessing officer. But the first appellate authority deleted it holding the same to be ex-gratia placing reliance the judgement of the Hon'ble Apex Court decided in the case of TISCO General Office Recreation Club Vrs. State of Bihar. So in view of such, the contention raised by the learned Standing Counsel for Revenue that the exemption of canteen sale is mis-conceived holds not good.

With regard to Issue No.III, stock discrepancy of quantity of chrome ore, the dealer neither explained it in a cogent manner nor furnished any document. Had there been any document, matter would have been otherwise and such grievance of the dealer could have been considered.

So in toto, in view of the above analysis, we are of the unanimous view that the learned first appellate authority has rightly

considered all the aspects in-consonance with the provisions of law which warrants no interference.

8. In the result, the appeal preferred by the dealer is dismissed and the order dated 31.01.2007passed by the learned first appellate authority in first appeal case No.AA.332/CUIII/05-06 is hereby confirmed.

Dictated and Corrected by me,

Sd/-
(Shri S.K.Rout)
Judicial Member-II

Sd/-
(Shri S.K.Rout)
Judicial Member-II

I agree,

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

I agree,

Sd/-
(Shri M.Harichandan)
Accounts Member-I