

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

S.A. No. 25 of 2002-03

(Arising out of order of the learned ACST, Cuttack-II Range,
Cuttack in Appeal No. AA 82/CU III/2001-02,
disposed of on 15.12.2001)

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

M/s. ArcelorMittal Nippon Steel India Ltd.,
(Formerly – M/s. Essar Steel Ltd.)
Udayabatta, Kujanga, Paradeep,
Dist. Jagatsinghpur ... Appellant

-Versus-

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

For the Appellant : Sri Bibekananda Mohanti, Sr. Advocate &
Sri A.K. Samal, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT) &
Sri A. Das, Addl. SC (CT)

Date of hearing : 04.01.2024 *** Date of order : 16.01.2024

ORDER

Dealer assails the order dated 15.12.2001 of the Asst. Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA 82/CU III/2001-02 confirming the assessment order of the Sales Tax Officer, Cuttack III Circle, Jajpur Road (in short, 'Assessing Authority').

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

M/s. ArcelorMittal Nippon Steel India Ltd. (Formerly- M/s. Essar Steel Ltd.) is engaged in purchase of iron ore on concessional rate of tax inside the State of Odisha and crushing the same at their crushing plant. The assessment relates to the year 1997-98. The Assessing Authority raised tax demand of ₹1,01,75,688.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Sr. Counsel for the Dealer submits that the Essar Steel Ltd. has already been merged with M/s. ArcelorMittal Nippon Steel India Ltd. and the debt proceeding of the Dealer has already been decided by the Hon'ble NCLT. He further submits that the State has not advanced its tax dues before the RP and the CIRP has already been accepted by the Hon'ble NCLT. He contends that the same CIRP has been approved by the Hon'ble NCLAT and affirmed by the Hon'ble Apex Court. So, he submits that the tax dues of the State stands extinguished by the order of the Hon'ble NCLT and the State cannot enforce the tax dues. Therefore, he urges that the orders of the First Appellate Authority and Assessing Authority cannot be materialized in the facts and circumstances of the case and thus, the same are liable to be quashed.

He relies on decision of the Hon'ble Apex Court in case of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Others*, reported in (2020) 8 SCC 531; and Hon'ble High Court of

Orissa in case of *M/s. ArcelorMittal Nippon Steel India Ltd. v. Principal Commissioner, GST & Central Excise & another* (W P (C) No. 9290 of 2020).

4. Per contra, the learned Addl. Standing Counsel (CT) for the State submits that the claim of the State is a contingent claim and the same cannot be extinguished in view of the Hon'ble Apex Court in case of *State Tax Officer v. Rainbow Papers Ltd.*, reported in **2022 SCC OnLine SC 1162**. He further submits that Assessing Authority and First Appellate Authority have rightly raised the tax demand and same is enforceable as per law.

5. Heard 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. It transpires from the record that M/s. Essar Steel Ltd. has been merged with M/s. ArcelorMittal Nippon Steel India Ltd. The record further reveals that the matter of the Dealer was before the Hon'ble NCLT in a proceeding under the Insolvency & Bankruptcy Code.

The copies of the orders of the Hon'ble Court passed on 09.01.2023 and 24.01.2023 in **W P (C) No. 9290 of 2020** reveal that Resolution Plan of the Dealer has been approved by the Hon'ble NCLT on 08.03.2019. The order of the Hon'ble NCLT and the Hon'ble NCLAT has modified the order of the Hon'ble NCLT on 04.07.2019.

The relevant order dated 09.01.2023 of the Hon'ble Court is extracted herein below for better appreciation :-

“3. The further admitted position is that the National Company Law Appellate Tribunal affirmed the order dated 8th March, 2019 passed by the NCLT approving the resolution plan filed by the present Petitioner.”

Subsequently, the order dated 24.01.2023 of the Hon'ble Court passed in I.A. No. 770 of 2023 is that -

“2. Para 3 of the order dated 9th January, 2023 passed in W.P.(C) No. 9290 of 2020 will read as under :-

“3. The further admitted position is that the National Company Law Appellate Tribunal modified the order dated 8th March, 2019 passed by the NCLT while approving the resolution plan filed by the present Petitioner.”

6. Hon’ble Apex Court have been pleased to direct that the Corporate Insolvency Resolution Process (CIRP) of the present Dealer will take place in accordance with the Resolution Plan dated 23.10.2018 and accepted by the Committee of Creditors on 27.03.2019. It transpires from the orders of the Hon’ble NCLT that claims in relation to all taxes which the Corporate Debtor was or may be liable to pay pertaining to the period (1997-98) prior to the insolvency commencement date shall stand extinguished on the plan approval date.

The relevant portion of the judgment of the Hon’ble Apex Court in case of *Committee of Creditors of Essar Steel India Limited* cited supra is extracted herein below for better appreciation :-

“156. The appeals filed by the Committee of Creditors of Essar Steel Ltd. and other civil appeals are allowed. The impugned NCLAT judgment is set aside, except insofar as Civil Appeals Nos. 6409, 7266 and 7260 of 2019 are concerned, which are dismissed. Insofar as Civil Appeals Nos. 6266 and 6269 of 2019 are concerned, the appeals are partly allowed in terms of this judgment. The writ petitions are disposed of in terms of the judgment. It is made clear that the CIRP of the corporate debtor in this case will take place in accordance with the resolution plan of ArcelorMittal dated 23-10-2018, as amended and accepted by the Committee of Creditors on 27-3-2019, as it has provided for amounts to be paid to different classes of creditors by following Section 30(2) and Regulation 38 of the Code.”

7. Admittedly, the State does not claim that the Revenue has made its claim before the RP. The State has not also challenged the RP and the same has already been approved by the Hon'ble NCLT and the same has been affirmed by the Hon'ble Apex Court. The matter has already been set at rest by the order of the Hon'ble NCLT and judgment of Hon'ble Apex Court.

The State has relied on the judgment of the Hon'ble Apex Court in case of *Rainbow Papers Ltd.* cited supra, wherein the State had advanced a claim which was rejected by the Hon'ble NCLT & NCLAT and Hon'ble Apex Court were pleased to set aside the order of the Hon'ble NCLAT with a direction to consider the Resolution Plan afresh.

But, the case in hand, the State had not advanced any claim before the RP nor challenged the Resolution Plan before the Hon'ble NCLT. Rather, the Resolution Plan has been approved by the Hon'ble NCLT & NCLAT and were pleased to direct that the CIRP of the Corporate Debtor will take place in accordance with the Resolution Plan of the Dealer dated 23.10.2018 and accepted by the Committee of Creditors (CoC) on 27.03.2019. The Resolution Plan has been approved by the Hon'ble NCLT and the matter has been confirmed by the order of the Hon'ble Apex Court. Therefore, the decision relied on by the State is not applicable to the present facts and circumstances of the case.

As the State did not challenge the Resolution Plan before the Hon'ble NCLT and the matter has been set at rest, the State cannot claim the tax liability of the Dealer in absence of the claim in the Resolution Plan.

8. So, for the foregoing discussions, the claim of the State stands extinguished in view of the order of the Hon'ble NCLT in absence of any claim before the CIRP. Hence, it is ordered.

9. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The order of the Assessing Authority for the year 1997-98 is quashed.

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**