

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A.No.52(C) of 2007-08.

(Arising out of the order of the learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur, in First Appeal Case No. AA-488/SAIII-CST-06-07, disposed of on 28.02.2007.)

Present: Smt. Suchismita Misra **Shri S. Mohanty** & **Shri P.C. Pathy**
Chairman, **2nd Judicial Member** **Accounts Member-I**

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

... Appellant.

- V e r s u s -

M/s. Mahanadi Coal Fields Ltd.,
Lakhanpur Area, Bandhabahal,
Dist- Jharsuguda.

... Respondent.

For the Appellant : ... Mr. M.S. Raman, Id. Addl. S.C.(C.T).
For the Respondent : ... None.

Date of Hearing: 16.04.2019 ***** Date of Order: 16.04.2019

ORDER

The Revenue challenges the order dtd.28.02.2007 passed by the learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, 'ld. ACST') in appeal Case No. AA-488/SAIII-CST-06-07, allowing refund of Rs.2,301.00 against the Nil assessment passed by the Sales Tax Officer, Jharsuguda Circle, Jharsuguda (in short, 'ld. STO') vide order of assessment dtd.22.11.2006 under Rule 12(5) of the Central Sales Tax (Orissa) Rules (in short 'CST(O) Rules') for the assessment period pertaining to the year 2004-05.

2. The brief factual matrix is that the dealer-respondent is a Government of India undertaking engaged in the business of excavation of coal which is sold both intra-state as well as in course of inter-state trade and commerce. The ld. STO has assessed the dealer to nil accepting the figures returned for the impugned period inasmuch as the dealer-company

has furnished the requisite declaration in Form-C in support of the claimed concessional sales. The ld. STO has determined the gross turnover, net taxable turnover and tax payable in respect of the dealer-company at Rs.519,87,66,336.47, Rs.499,82,22,446.00 and Rs.20,05,43,851.00 respectively. Against the tax due of Rs.20,05,43,851.00 the dealer-company having already collected and deposited Central Sales Tax amounting to Rs.20,05,46,152.00 the ld. STO assessed the dealer to nil.

Being aggrieved, the dealer-assessee preferred first appeal before the ld. ACST on the grounds that even though the ld. STO has accepted the facts and figures of the return filed for the purpose of the assessment in toto after examining the relevant books of accounts and documents has assessed the dealer to nil ignoring the fact that the dealer-company has never collected any tax from the customers till finalisation of grade of coal supplied to buyers.

On careful consideration/examination of grounds of appeal and the contentions of ld. advocate the ld. ACST came to the finding that the ld. STO has calculated the tax payable by the company at Rs.20,05,43,851.00 against which the dealer-assessee has deposited tax at Rs.20,05,46,152.00 on account of which Central Sales Tax to the tune of Rs.2,301.00 stands refundable in favour of the dealer-company. The ld. ACST has accepted the contention taken by the ld. Advocate and has after careful consideration concluded thus "since C.S.T. payable by the appellant-company stands at Rs.200543851.00 against which it has deposited C.S.T. amounting to Rs. 20,05,46,152.00 the company is liable for refund of Rs.2301.00."

3. Being aggrieved, the Revenue has filed second appeal on the following grounds:--

- a) The order of Id. ACST is not just and proper.
- b) The appellant dealer is a limited company mining and trading coal inside and outside the State, purchases machineries, materials and utilizes for mining purpose.
- c) Credit notes for Rs.25,15,35,78.38 for return of sold goods accepted but Id. ACST has not specifically examined its correctness of timely return.
- d) The claim of mistake has not categorically mentioned nor any revised return was submitted after detection of such mistake.
- e) A certain portion of purchase of machineries, materials, stock and stores have not been reflected in the books of account hence less shown of payment of tax on such goods appearing excess payment of tax.
- f) The Id. AST has not examined tax due and demand tax with reference to purchase and sale memos before refund order is unjustified.
- g) The order of Id. ACST should quashed and that of Id. STO may be modified to the above discussed extent.

4. The dealer-respondent has filed following cross objections in response to the grounds of appeal filed by the Revenue:-

- I. The first appeal order passed by the Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur is both factually and legally absolutely correct and does not warrant any interference.
- II. Both the assessment order as well as first appeal order were passed after considering the books of accounts of the respondent. Therefore

the allegation of the appellant that books of accounts were not properly verified is far from true and mere wild imagination.

III. The factum of Credit notes is beyond challenge and the authenticity of credit notes also has not been challenged, rather the same has been duly accepted both by the Id. STO as well as Id. First appellate authority after duly examining the same as per provision of law. Therefore the allegation of non examination of relevant papers by Id. ACST is not correct.

IV. In similar facts and circumstances the Hon'ble Tribunal (FB) as well as (DB) has already allowed refund in the case of the present appellant.

(i) S.A. No.245 of 2007-08 (Tribunal Full Bench)

(ii) S.A. No. 32 (C) & 51 (C) of 2012-13 (Tribunal Full Bench)

(iii) S.A. No. 30(C) of 2007-08 (Tribunal Division Bench)

5. Mr. M.S. Raman, the learned Additional Standing counsel (C.T.) appearing on behalf of the Revenue reiterated the points raised in the grounds of appeal and vehemently challenged the order of the Id. ACST wherein the Id. ACST allowed refund without submission of revised return by the dealer-respondent. He further stated that the Id. ACST has not examined the tax collected and paid before allowing refund to the dealer-respondent.

6. Despite service of notice on account of refusal by the dealer-respondent to receive the notice sent through the registered post with acknowledge there is no appearance from the side of the dealer-respondent in the hearing before the Bench. Hence the appeal is disposed of exparte

on merit taking into consideration the cross objection filed and the materials available in the record.

7. Heard the ld. Addl. SC (C.T.) appearing on behalf of the Revenue in absence of dealer-respondent at the time of hearing. Gone through the grounds of appeal, impugned orders of assessment as well as appeal and cross objection filed by the dealer-respondent. It is to be seen whether the refund allowed by the ld. ACST in the face of the fact that the ld. STO has assessed the dealer to nil, in the given facts and circumstances, is just and proper? The ld. Addl. S.C. (C.T.) could not adduce any valid or cogent documentary evidences in support of the contentions taken in the grounds of appeal or contended at the time of hearing before the Bench. The ld. STO, as its revealed form the assessment order has duly verified the books of accounts of the dealer including the issue of credit notes and has accepted the figures returned by the dealer-assessee. However, the ld. STO at page-2, Para-1 of the assessment order has made the following observation:- "it is revealed from the books of accounts that the dealer-company has returned the GTO at Rs. 519,87,66,336.47 for the year 04-05 including collection of tax amounting to Rs.20,05,43,890.47." But at the concluding part of the assessment order at page-3 the ld. STO has made the following observation "The dealer-company has already collected and deposited C.S.T. amounting to Rs.20,05,46,152.00 while furnishing the monthly returns and is now assessed to nil." From the aforesaid two conflicting observations it is safe to conclude that the dealer has collected C.S.T. to the tune of Rs.20,05,43,890.47 instead of Rs.20,05,46,152.00 inasmuch as the ld. STO has repeated the figure of C.S.T. collected at the last Para of page-2 of the assessment order. On the basis of aforesaid facts

it is crystally clear that the C.S.T. collected by the dealer is more than the C.S.T. payable by the dealer but the dealer has paid C.S.T. amounting to Rs.20,05,46,452.00. Hence the dealer-respondent is entitled to refund of Rs.2,261.53 rounded off to Rs.2,262.00 instead of Rs.2,301.00 as allowed by the ld. ACST.

8. In the result, the appeal is allowed in part and the order of the ld. ACST is modified to the extent mentioned above. The cross objection filed by the respondent is disposed of accordingly.

Dictated and corrected by me,

Sd/-
(P. C. Pathy)
Accounts Member-I

Sd/-
(P. C. Pathy)
Accounts Member-I

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(S. Mohanty)
2nd Judicial Member