

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

S.A.No.57(C) of 2008-09

(Arising out of the order of the ACST, Balasore Range,
Balasore, in First Appeal Case No. AA-30/BAC-2005-06,
disposed of on dtd.24.06.2008)

Present: **Mr. Ashok Kumar Panda**, 1st Judicial Member,
Shri Subrat Mohanty, 2nd Judicial Member,
&
Shri P.C. Pathy, Accounts Member-I.

M/s. B & A Multiwal Packaging Ltd.,
Balgopalpur Industrial Area,
Balgopalpur, Balasore. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. B.K. Senapati, Advocate
For the Respondent : Mr. M.S. Raman, Addl. S.C. (CT)

Date of Hearing: 10.12.2018 **** Date of Order: 24.12.2018

ORDER

The dealer-assessee has preferred this second appeal against the order of First Appellate Authority/ learned Asst. Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (hereinafter referred to as the, ACST) in First Appeal Case No. AA-30/BAC-2005-06, whereby the first appellate authority has upheld the findings of learned Assessing Authority, the learned Sales Tax Officer, Balasore Circle, Balasore (hereinafter referred to as, the STO) regarding denial of concession in rate of tax, imposition of surcharge and the rate of tax, reduced the demand only to the extent of the dealer could furnish the declaration form 'C' availing thereby the concessional rate of tax.

2. The appellant-dealer is a manufacturer and seller of paper sacks. It effects interstate as well as export sale of the goods produced by him for the assessment year 2003-04 in a proceeding u/s.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules), the assessing officer in consideration of the statement furnished by the dealer has arrived at a conclusion that the dealer is not entitled to exemption in tax for the indirect export sale worth of Rs.40,80,062.50 as he failed to produce the declaration form 'H'. Similarly, the dealer also declined the concession in tax on the amount of interstate sale worth of Rs.76,72,335.00 in absence of declaration form 'C' treating the aforesaid sales under the local tax net, he determined the tax liability in addition to that he imposed surcharge. At the same time, the assessing authority imposed the tax @ 12% on the goods treating the same under the category of unscheduled goods. In the result, the balance tax due calculated at Rs.7,72,449.00. Against the aforesaid order of assessment, the dealer knocked the door of the first appellate authority. The learned ACST as first appellate authority uphold the findings of the assessing authority and confirmed the order.

3. Being aggrieved with the aforesaid concurrent finding of both the fora below, the dealer has preferred this appeal. The dealer claimed, sufficient opportunity was not provided, to procure and furnish the declaration forms. The declaration forms are not mandatory to give concession in rate of tax. The imposition of surcharge against these CST sales is illegal and the rate of tax as imposed @ 12% is wrong since the goods are nothing but 'packing materials' covered under Sl. No.129 of List 'C' of the OST Rate Chart.

4. The appeal is heard without cross objection.

5. As narrated above, this tax appeal involves the following questions for decision like(i) whether the denial of concession in rate of tax against the interstate sale and indirect export sale for which the dealer has failed to procure and furnish the declaration form 'C' and 'H' as determined by the fora below is wrong?

(ii) Whether the dealer is liable to pay surcharge in addition to tax due when the interstate sale by the dealer is taxed under the local act ?

(iii) Whether the first appellate authority is wrong in not holding the goods dealt by the dealer under Sl. No.129 of List 'C' of the OST Rate Chart?

Findings:-

6. At the outset, it is pertinent to mention here that the law is no more *res-integra* keeping in view the plethora of decision that different authorities and the decisions of this Tribunal that, to avail the concession in rate of tax, the dealer is required to furnish the declaration forms 'C' in the event of interstate sale and form 'H' in the event of indirect export. So, avoiding necessary discussion on this issue it is held that the concurrent finding of both the fora below denying concession in rate of tax against the sale for which the dealer has failed to furnish the declaration form is hereby confirmed. So far as the plea of the dealer like sufficient time was not provided to procure and furnish the declaration form it is found that, the dealer has tendered some declaration forms (Xerox) and prayed for acceptance of the same as additional evidence which is allowed

7. Coming to the next question relating the rate of tax as raised by the dealer, according to the dealer the 'paper sacks' produced and sold by him is a packing material covered under entry in Sl. No.129 of List 'C' of the OST Rate Chart. The taxing authority has levied tax @ 12% treating the same as 'all other goods' as per entry in Sl. No.189 of List-C of the OST Rate Chart. Perinent to mention here that entry in Sl.No.129 effective from 01.04.2001 to 28.02.2002 read as follows:- Entry in Sl. No.129/255

“Packing materials, that is to say, gunny bags, HDPE bags, corrugated boxes and containers”

The said entry as amended w.e.f. 01.03.2002 reads as follows:-

“Packing materials, that is to say, gunny bags, HDPE bags, corrugated boxes, tin containers and glass bottles”

8. The meaning and term of entry in Sl. No.129 is effective from 01.03.2002 mentioned above is applicable to case in hand since the

assessment period is 2003-04. If we go by the term like that is to say as engrafted in the aforesaid entry, we can successfully take a cue from the authority in the case of **State of Tamil Nadu vrs. M/s. Pyare Lal Malhotra and others (1976) 1 SCC 834 (in para-7)**. Thus, in view of the authoritative pronouncement without reproducing the view of the Hon'ble Court here it can safely be concluded by saying that the entries specifically made therein, in Sl. No.129 only can be treated as packing materials w.e.f. 01.03.2002. The present dealer being a trader of 'paper sacks' which is not a specific entry in the schedule of OST Rate Chart then it will go as an unscheduled goods covered under entry in Sl. No.189 thereby exigible to tax @12%. Sub-section (2)(b) of section 8 of the CST Act specifically provides the manner of levying of rate of tax. The provisions reads as follows:-

“Sec.8	xxx	xxx	xxx
(1)	xxx	xxx	xxx
(2)	xxx	xxx	xxx

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher is higher; and”

Thus, here it is found that the first appellate authority while confirming the order of the assessing authority by levying tax @ 12% has committed no wrong. Accordingly, the finding thereon is confirmed.

9. The next question raised by the dealer is since the sale is interstate or export sale for which the concession in rate of tax is not granted for want of declaration form but thereby the dealer is not liable to pay surcharge. The learned Counsel for the dealer argued that surcharge is leviable against the sale covered under State law i.e. Orissa Sales Tax Act. Here by default the sale is taxed under local law and in that event surcharge is not applicable. This question has been decided in favour of the taxing authority by the Hon'ble Apex Court in the case of **Dy. Commissioner of Sales Tax vrs. Ayasha Hosiery Factory (P) Ltd. (1992) 85 STC 106** and by the honourable court in **M/s. Aerocom Pvt. Ltd. vrs. Sales Tax Officer and others in SLP (Civil) No.603/2001 vide order dtd.04.09.2001** . Section 8 of the CST Act, 1956 provides that interstate sales made by a

dealer against form 'C' shall attracts CST at a concessional rate or at the rate applicable to the sale or purchase of such goods inside the appropriate state under the sales tax law of that State, whichever is lower. In case the sale is not against form 'C' the local tax rate as applicable in that state would be the effective rate.

The provision u/s. 5-A reads as follows:-

“[5-A. Surcharge –

(1) Every dealer shall, in addition to the tax payable by him under this Act, also pay a surcharge at the rate of ten per centum of the total amount of tax so payable by him :

Provided that the aggregate of the tax and surcharge payable under this Act shall not exceed in respect of goods declared to be of special importance in inter-State trade or commerce by Section 14 of the Central Sales Tax Act, 74 of 1956 the rate fixed by Section 15 of the said Act.

(2) xxxx xxxx xxxx

Wherever there is provision for payment of surcharge in addition to the tax applicable as CST rate would be the rate as increased by such surcharge. Accordingly, the applicable rate of tax for the purpose of payment of CST would include such additional surcharge.

10. Thus, in view of the discussion above, it is held that the first appellate authority is correct in confirming the order of the assessment authority, whereby surcharge has been added in addition to local tax.

11. While arriving at the conclusion as above, here in this case it is found that the dealer has furnished some declaration forms 'C' worth of Rs.31,24,283.00. It is prayed by the learned Counsel for the dealer submitted that the aforesaid declaration form should be considered and the appropriate rate of tax should be calculated. . This forum being the highest fact finding forum is competent to consider and accept the declaration forms. Learned Addl. Standing Counsel Mr. Raman appearing for the Revenue conceded the above view but argued for scrutinizing of the genuineness of the forms. In such view of the fact, it is held that this is a fit case where the matter should be remanded back to the Assessing Authority to accept the declaration forms and in the event the forms are found genuine

and not tainted with fraud or misrepresentation then the assessing authority is required to accept the forms and to recomputed the tax liability by giving necessary concession. In the wake of above, it is ordered.

12. The appeal is allowed in part. The matter is remitted back to the assessing authority for the limited purpose such as, the assessing authority will scrutinize the genuineness and correctness of the declaration forms and determined the tax liability of the dealer. The assessing authority is directed to complete the proceeding within three months from the date of receipt of this order.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
2nd Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

I agree,

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