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

S.A. No. 98 of 2012-13

(Arising out of the order of learned DCST, Sundargarh Range, Rourkela, in First Appeal Case No. AA- 7 (RL-I) of 2010-11, disposed of on dt. 30.01.2013)

Present : **Smt. Suchismita Misra, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri Prabhat Ch. Pathy, Accounts Member-I

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

- V e r s u s –

M/s. Sidhivinayak Ferro Ispat Ltd., Industrial Estate, Rourkela, Sundargarh. . . . Respondent

For the Appellant … Mr. S.K. Pradhan, Addl. S.C. (CT)
For the Respondent … N o n e.

Date of hearing: 17.01.2020 **** Date of order: 06.02.2020

O R D E R

This appeal is directed against the order dated 30.01.2013 passed by the Deputy Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, "first appellate authority") in First Appeal Case No. AA- 7 (RL-I) of 2010-11 setting aside the order of assessment with further direction to the assessing officer to complete fresh assessment as per his instructions in the impugned order.

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Sidhivinayak Ferro Ispat Ltd. bearing R.C. No. RLI-3542 was assessed u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the tax period 2004-05 and that order of assessment was passed on 21.07.2006. However, later on basing upon some confidential information regarding escapement of turnover which resulted in under assessment of tax in the original assessment, a notice was issued to the dealer-assessee u/S. 12(8) of the OST Act with a direction for production of its books of account for necessary verification by the assessing officer on 18.02.2010. The dealer in response to the said notice intimated the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing officer') that its books of account were produced before the STO (I), Jajpur Road on 16.02.2010 and the matter was under investigation. Thus the present assessing officer was requested to wait for the report of STO (I), Jajpur Road in order to take up the fresh assessment proceeding initiated against the dealer in the instant case. When no such report was received from the STO (I), Jajpur Road even after lapse of a reasonable time the assessing officer of the present case again informed the dealer to produce its books of account before him on 25.03.2010 for his verification to complete the proceedings initiated against the dealer u/S.

12(8) of the OST Act. In the meantime a report of the STO(I), Jajpur Road relating to the year 2004-05 was received and the assessment proceeding against the dealer commenced. Accordingly the dealer appeared before the assessing officer and findings of the STO (Int.) in his report were confronted to it (the dealer). Then on thorough scrutiny of the relevant documents pertaining to the transactions effected by the dealer-assessee the assessing officer added an amount of ₹8,13,27,406.00 to the GTO already determined at the time of its original assessment which ultimately came to ₹8,55,47,366.00. After allowing deduction of ₹42,19,960.00 therefrom towards tax paid sales as allowed in the original assessment the TTO of the dealer was determined afresh at ₹8,13,27,406.00. Tax @ 4% was calculated on this TTO i.e. ₹8,13,27,406.00 which came to ₹32,53,096.00 and then surcharge @ 10% being added to it with penalty imposed on the dealer as per the statute, the assessing officer determined its tax liability at ₹84,58,050.00 and issued a demand notice accordingly.

Being aggrieved by this order of assessment the dealer-assessee preferred an appeal before the first appellate authority. The first appellate authority considered all the points raised by the dealer-assessee while challenging the order of assessment before him and then came to a conclusion that certain opinion formed against the dealer-assessee in respect of its bank transactions as out of account

sale of goods were not supported with evidence on record and the same was based on presumption and assumption only. Similarly the allegation against the dealer-assessee in respect of suppression of production was not found sustainable by the first appellate authority. The first appellate authority also did not agree with the findings of the assessing officer in respect of the allegation of out of account sale by the dealer-assessee and while considering these aspects he disposed of the appeal with a direction to the assessing officer to verify the alleged bank transactions for the year 2004-05 with books of account of the dealer-assessee, to conduct enquiry wherever the same is necessary and also to confront the purchases and sales involved in order to establish the fact of sale of goods out of account or otherwise and then to complete the fresh assessment accordingly after affording reasonable opportunity to the dealer to produce the connected books of account as well as the papers and documents. With these instructions the first appellate authority remitted the case to the assessing officer.

3. Now the State brought this appeal before the Tribunal challenging the order of the first appellate authority on the grounds that the same is unjust and improper. The original assessment did not reveal any anomaly which was detected subsequently from some other sources against the dealer and as such those anomalies were confronted to the dealer accordingly. The mismatch of closing stock relating to the year

2004-05 was construed as out of account sale and the same did not require any other documents to substantiate the same as the dealer had admitted the same. There was absolutely no irregularity which would have invited reopening of assessment. In the abovesaid circumstances the State urged before the Tribunal to set aside the impugned order while restoring the order of the STO.

No cross-objection has been filed on behalf of the dealer-assessee in this second appeal.

4. In course of hearing of the appeal it was found that none appeared on behalf of the dealer-assessee to participate in this proceeding before the Tribunal despite service of notice on the dealer by way of affixture as reported by the Dy. Commissioner of CT & GST, Rourkela-I Circle, Uditnagar which is kept in the record. Hence, the matter was heard exparte to be disposed of on merit as per Rule 60(2) of the OST Rules.

5. Learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that the assessing officer had properly assessed the dealer-assessee u/S. 12(8) of the OST Act when it came to their notice regarding production suppression and some other anomalies in its bank transactions but the first appellate authority discarded all these allegations against the dealer-assessee and remitted the case to the assessing officer for fresh assessment. He, therefore, urged before

this forum to set aside the order of first appellate authority and restore the order of assessment in the instant case.

6. However, on perusal of the impugned order it is found that the first appellate authority had gone through the allegations against the dealer in detail. As per his (first appellate authority) opinion the reporting officer had treated the receipt and refund of share money as receipt against sale of goods on the grounds that all the share holders were either employees of the dealer's sister concern namely M/s. East India Steels Ltd., Industrial Estate, Rourkela or the family member of the Director of the Company. No tangible effort was made by the assessing officer to verify the fact from the Registrar of the Company, Cuttack, Odisha or to confront the share holders in this regard. Similarly the cash transaction with M/s. East India Steels Ltd., Industrial Estate, Rourkela i.e. the sister concern of the dealer had also been taxed without any inquiry as to whether there existed any purchase and sale of goods. The receipt of advance and payment of advance for sale and purchase had been put to tax without verifying the fact as to whether those transactions had taken place during the relevant year or not. The payment to Exfin Shipping towards breach of business conduct had also been put to tax without proof of the fact that the transaction whether related to purchase or not. The dealer though demanded for confrontation with the parties involved in the so called

bank transactions with an undertaking to bear the cost the same was not considered by the assessing officer. The opinion formed in respect of bank transactions as out of account sale of goods was thus found to be without evidence on record and as opined by the first appellate authority the same was purely based on presumption and assumption for which he set aside the order of assessment. The first appellate authority thus remitted the case to the assessing officer for fresh assessment following certain instructions as given by him in the impugned order.

At this stage also no evidence has been placed before us to come to a conclusion that even with all these aforesaid shortcomings in the order of assessment as pointed out by the first appellate authority the same is just and legally sound as well as tenable for which we are to restore the order of assessment as such. On the other hand, we find that the first appellate authority in his order has categorically mentioned with reasons as to why he found certain findings of the assessing officer not sustainable and then remitted the case to the assessing officer for fresh assessment with certain directions to him as to how to conduct the proceeding pertaining to fresh assessment in the instant case. As we do not find any sort of infirmity in the impugned order, legal or otherwise we feel that the same should not be disturbed in any manner.

7. In the result, as per the discussion made above the appeal preferred by the State is dismissed and the impugned order of the first appellate authority is hereby confirmed. Before parting with the case we would like to observe that the first appellate authority, however, omitted to specify as to within how many months the fresh assessment is supposed to be completed. Therefore, we are supplementing the same by giving a time frame of three months only to complete the exercise of fresh assessment in this case by the assessing officer from the date of receipt of this order.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I