

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

S.A. No. 56(C) of 2008-09

(Arising out of order of the learned Asst. Commissioner of
Sales Tax, Sundargarh Range, Rourkela,
in First Appeal Case No. AA-31 (RL-I-C) 2007-08,
disposed of on dated 24.05.2008)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Gulf Oil Corporation,
Sonarparbat, Rourkela. ... Appellant

-Versus-

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

For the Appellant : Mr. L. Pangari, Sr. Advocate &
Mr. P.R. Pattnaik, Advocate
For the Respondent : Sri D. Behura, S.C.
Sri S.K. Pradhan, A.S.C.

Date of hearing: 20.04.2022 *** Date of order: 27.04.2022

ORDER

The dealer-assessee has preferred this second appeal challenging the order dtd.24.05.2008 passed by the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, the first appellate

authority) in First Appeal Case No. AA-31 (RL-I-C) 2007-08, thereby allowing the appeal in part and reducing the tax demand to Rs.1,22,00,681.00 from Rs.2,08,48,791.00 raised by the Sales Tax Officer, Rourkela I Circle, Uditnagar (hereinafter referred to as, the assessing authority) in its order dtd.30.03.2007 for the assessment period 2003-04 in the assessment framed u/r.12(5) of the Central Sales Tax (Orissa) rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. The facts relevant for the adjudication of the present second appeal are that, the dealer-assessee carries on business in explosives and its accessories and clad metal in course of interstate trade and commerce and export. The dealer-company also effects transfer of stocks of the said items to its branches located at different places outside the State and to the agents for sale on commission basis. The assessing authority to assess the dealer-company initiated proceeding u/r.12(5) of the CST(O) Rules and issued notice to it (dealer-company). The dealer responding to the notice u/r.12(5) of the CST(O) Rules, appeared through its Deputy Manager, Finance and produced the books of account and documents relating to interstate sale, stock transfer made to the branches and export sales which were duly examined by the assessing authority with reference to the reruns filed by the dealer. The assessing authority on examination of the books of

account and other relevant documents found that the dealer-company disclosed gross interstate sale of Rs.8,78,52,952.45 deducting Rs.57,81,154.17 towards credit note. Then the net interstate sale was determined at Rs.8,18,34,532.87 after deduction of Rs.27,78,466.70 towards freight charges and Rs.32,39,952.88 towards STC. The dealer-assessee claimed Rs.8,18,11,163.51 as sale at concessional rate of tax u/s.8(1)(b) of the CST Act, to have effected sale of goods valued at Rs.4,01,62,156.00 in course of export u/s.5(1) of the CST Act and sale of Rs.15,69,23,934.00 to its agents for sale on commission basis and to its branches for sale. The assessing authority on examination of the relevant documents opined that the entire interstate sales were made basing on pre-existing contract and accordingly goods moved from the State of Odisha to other states. Thus, the sale fell u/s.3(a) of the CST Act. It was further observed that the dealer-assessee produced declaration in form 'C' for Rs.8,07,32,307.51 against claim of Rs.8,18,11,163.51 which were found to be in order and were accepted. Accordingly, the assessing authority levied tax at the concessional rate of 4% on sale turnover of Rs.8,07,32,307.51. The balance amount of Rs.10,78,856.00 were taxed at the appropriate rate for non-furnishing of declaration form 'C'. The assessing authority also allowed claim of deduction of Rs.36,78,460.70 towards freight charges as the same are charged separately on the sale bill over and above the cost

of the goods agreed for sale. The assessing authority also allowed claim of deduction of Rs.4,01,62,156.00 towards export sale after due verification of the copy of the agreement with the foreign buyers and the bill of lading. However, the assessing authority rejected the claim of stock transfer of goods valued at Rs.15,69,23,934.00 u/s.6(a) of the CST Act. The assessing authority determined the GTO at Rs.28,49,39,042.45 and after allowing deduction of Rs.27,78,466.70, Rs.32,39,952.88 and Rs.4,01,62,156.00 towards freight charges, S.T.C. and export sales respectively, determined the NTO at Rs.23,87,58,466.87 which was taxed @ 4% on Rs.8,07,32,307.51 and @13.2% on Rs.15,80,26,159.36. Thus, the total tax was calculated at Rs.2,40,88,745.00 out of which the dealer-company had already paid Rs.32,39,954.00 and therefore was required to pay the balance amount of Rs.2,08,48,791.00.

3. The dealer-company challenging the aforesaid demand raised by the assessing authority preferred appeal before the first appellate authority who reduced the tax demand to Rs.1,22,00,681.00 on the finding that the materials on record shows goods moved from the factory of the dealer-company to outside the State for delivery to the subsidiary collieries in pursuance of the contract for sale placed by Coal India Ltd. (CIL) irrespective of the fact that the actual supplies have been made from the branch

sale office or authorised agent as per the indent placed by the collieries. Therefore, the dispatched of goods from the factory of the dealer-company at Sonarparbat, Rourkela to outside the State branches/agents was in pursuance of the contract for sale falling u/s.3(a) of the CST Act. The goods worth Rs.6,55,15,986.00 dispatched against form 'F' outside the State was accepted as branch transfer in view of the judgment of the Hon'ble Apex Court and the said turnover was deleted from the gross turnover and net taxable turnover determined by the STO.

4. The dealer-assessee being further aggrieved by the demand of Rs.1,22,00,681.00 raised by the first appellate authority preferred the present second appeal mainly on the ground that the appellant was not given reasonable opportunity to collect and submit the statutory declaration form before the forums below while making assessment against it(appellant-company). The learned Sr. Counsel for the dealer-company challenging the impugned judgments of the forum below vehemently urged that the company was not given reasonable opportunity to submit statutory form in respect of amount of interstate sales which were disallowed by the forum below on account of non-production of statutory forms. The valuable right of the dealer-company cannot be taken away without giving it the adequate opportunity to produce the statutory forms to substantiate its claim of deduction and claim

concessional rate of tax. He submits to set aside the impugned orders of the forums below and remand the matter back to the assessing authority in order to enable the dealer-company to produce the statutory declaration forms. The learned Standing Counsel refuting the contentions raised by the learned Sr. Counsel for the dealer-company vehemently urged that the statutory forms submitted by the dealer-company before the forums below were scrutinised and was accepted after the same were found to be in order. The amount in respect of which statutory forms could not be furnished were taxed at the appropriate rate. The dealer-company having been given adequate opportunity before the forums below no further opportunity should be given to it. He submits to dismiss the appeal.

5. We have heard the rival submissions of the parties, gone through grounds raised in the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The only ground on which the impugned orders are challenged is that the dealer-company was not given adequate opportunity to produce the declaration in form 'C' in order to avail concessional rate of tax in respect of interstate sales. The present second appeal is of year 2008-09 and pending before this forum since last thirteen years. In course of hearing the appeal, the dealer-company could not submit

any statutory form before us to show that such documents are available with it. If at all, the contention raised by the learned Sr. Counsel for the dealer-company is accepted that it was not given adequate opportunity to submit the statutory declaration forms in order to claim deduction at concessional rate of tax, it could have produced those documents before this Tribunal. When the dealer-company could not collect the relevant documents within twenty years from the date of initiation of the assessment proceeding against him, remanding the matter back to the assessing authority to enable the dealer-company to produce such declaration forms would be wastage of valuable time and abuse of the process of the of this Tribunal. The dealer having failed to produce the relevant documents within last twenty years of the initiation of the proceeding no further opportunity can be given to him. On perusal of the impugned orders of the first appellate authority, we found that it has rightly reduced the tax demand raised by the assessing authority accepting the branch transfer against form 'F' and deleting the amount of Rs. 6,55,15,986.00 from the GTO and TTO. There is no illegality or impropriety in such finding of the first appellate authority warranting interference of this Tribunal.

6. For the foregoing discussions, we do not find any merit in the appeal. Accordingly, the second appeal filed by the dealer-company stands dismissed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

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