

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 59 (C) of 2003-04

(Arising out of the order of the learned ACST, Sambalpur Range, Sambalpur, in Sales Tax Appeal Case No. AA 6 (SAIC) of 99-2000, disposed of on dtd.28.04.2003)

Present: **Mrs. Suchismita Mishra**, Chairman,
Shri Ashok Kumar Panda, 1st Judicial Member,
&
Shri P.C. Pathy, Accounts Member-I.

M/s. Radha Keshav Rice Mill (P) Ltd.,
At:- Larpank, P.O. Remed,
Dist.- Sambalpur. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. R.C. Poddar, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

Date of hearing: 20.11.2018 **** Date of order: 15.12.2018

ORDER

This appeal is directed against the order dated 28.04.2003 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in Sales Tax Appeal Case No. AA 6 (SAIC) of 99-2000, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Sambalpur I Circle, Sambalpur (hereinafter referred to as, the learned STO) passed in assessment u/r.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) in respect of the appellant-dealer for the assessment year 1995-96.

2. The appellant-dealer is a rice miller and it used to sale rice, broken rice and bran inside the State, outside the State through commission agents and also in course of export. In an assessment u/r.12(5) of the CST(O) Rules for the assessment year 1995-96, being noticed, the authorized representative of the appellant-dealer appeared before the learned STO and produced the books of account and the other relevant documents including the statutory declaration in form 'F', 'C' and 'H' which were duly been examined by him. On examination of the relevant documents, though the learned STO accepted certain declaration forms after being satisfied, did not accept 'H' declaration form relating to the transaction effected through the exporter M/s. R. Pyarelal International (P) Ltd. due to lack of any other supporting documents like the purchase order of the exporter and the foreign buyer and the bill of lading etc. Similarly, as regard the sale in course of export through B.S.I. Delhi, Krishna Traders, Calcutta and T.F. Industries, Calcutta, the appellant-dealer failed to produce the statutory 'F' declaration form or any other supporting documents and as such the learned STO did not allow any exemption or concession in the rate of tax in respect of those transactions and determined the NTO accordingly and finally the order of the learned STO resulted in a balance tax demand of Rs.52,170.00, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST bearing Sales Tax Appeal Case No. AA 6 (SAIC) of 99-2000. On hearing and on consideration of the materials on record, the learned ACST found no merit in the contention of the appellant-dealer in absence of any further material and accordingly dismissed the appeal by confirming the order of the learned STO. Thus, again being aggrieved with the order of the learned ACST, the appellant-dealer has preferred this second appeal.

4. No cross objection has been filed by the respondent-Revenue.

5. Heard both the sides. The learned Counsel appearing for the appellant-dealer submitted that, the learned forums below have not considered the matter in its proper perspective and have rejected the claim of

the appellant-dealer in spite of production of sufficient materials and as the order passed by the learned forums below is improper and unjustified, the same is liable to be set aside and the appeal preferred by the appellant-dealer is liable to be allowed. On the other hand, the learned Addl. Standing Counsel appearing for the respondent-Revenue supported the order of the learned forums below and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials on record. The law is very much clear that, under the provisions of the sales tax law, a registered dealer is entitled to get exemption or concession for payment of tax on the strength of certain statutory declaration forms. A dealer cannot be deprived of the said exemption or concession if for some good reason, the forms could not be produced before the learned assessing authority and was produced subsequently at the appellate stage or even before the Tribunal at the second appeal stage. But, here in the present case, though the appellant-dealer had an opportunity to produce the statutory 'F' declaration form and the supporting documents it has failed to produce the same relating to the transactions effected through B.S.I. Delhi, Krishna Traders, Calcutta and T.F. Industries, Calcutta. Similarly, so far as the submission of the 'H' declaration form relating to the transaction effected through M/s. R. Pyarelal International (P) Ltd. is concerned, it is beneficial to refer to section 5 of the CST Act, which speaks of sale or purchase of goods in course of import or export. Sub-section (3) of Sec. 5 provides for grant of exemption in respect of penultimate sale in course of export and sub-section (4) provides that such exemption shall be allowed subject to the condition of furnishing a declaration form in the prescribed manner. CST (Registration and Turnover) Rules, 1957 prescribes such declaration form as Form-H, i.e. certificate of export. A perusal of the prescribed Form-H reveals that Sl. No.5 of Part-B dealing with details regarding export and the same runs as under:-

- “(5) Number and date of air consignment note/bill of lading/railway receipt or goods vehicle record or postal receipt or any other document in proof of export of goods across the customs frontier of India (Certified copy of such air consignment note/bill of lading/railway receipt/goods

vehicle record/postal receipt/other document to be enclosed)”

7. In view of the above provisions of law, mere furnishing of declaration in form ‘H’ without any supporting documents would not amount to due compliance as required to enable the appellant-dealer to claim exemption. Therefore, the claim advanced by the appellant-dealer in both the counts bears no merit.

8. On scrutiny of the entire materials on record, it can clearly be said that, the order passed by both the learned forums below suffers from no infirmity and as such the same needs no interference of this forum. Hence, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

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

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I agree,

Sd/-
(Suchismita Mishra)
Chairman

I agree,

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