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

S.A. No. 111(C)/2004-05

(Arising out of the order of the learned ACST, Cuttack-II Range, Cuttack in first appeal Case No. AA.129(CU-III-C) 1999-2000 disposed of on 19.07.2002.)

Present :- Shri A.K. Das, Chairman **Smt. Sweta Mishra, 2nd Judicial Member** **& Shri S. Mishra, Accounts Member-II.**

M/s. Mid East Integrated Steels Ltd.,
Kalinga Nagar, Industrial Complex, Khurunti,
Danagadi, Dist-Jajpur, CUC-III-1148. ..... Appellant.

-Vrs.-

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

For the Appellant: : Mr. D. Pati, Ld. Advocate.
For the Respondent: : Mr. D. Behera, Standing Counsel.
: Mr. S.K. Pradhan, ASC(C.T.).

Date of Hearing : 06.09.2021 *** **Date of Order : 30.09.2021**

O R D E R

The present appeal of the dealer has been directed against the impugned order of learned Asst. Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter referred to as ld. FAA) passed on dated 19.07.2002 in Appeal Case No. AA.129(CU-III-C) 1999-2000 confirming the order of assessment of the Learned Sales Tax Officer, Cuttack III Circle, Jajpur Road (hereinafter referred to as LAO) framed Under Rule 12(4) of the CST(O) Rules who raised a demand of Rs.80,35,068.00 relating to the year 1997-98.

2. Being aggrieved by the impugned order of the ld. FAA, the dealer appellant has preferred second appeal before the Tribunal mainly on the following grounds:-

i. That, the forums below committed manifest error in law and in facts in taxing the sale of waste material when, the appellant has not entered into commercial production and such sale is not liable to be taxed.

ii. That, the forums below acted illegally and arbitrarily in determining a sum of Rs.1,07,67,637.15 as taxable turnover and taxing it when there is no material available in record about such consignment sales and the determination of consignment sale value is illegal and arbitrary.

3. The brief facts of the case is that the instant dealer is engaged in setting up of an integrated steel plant at Duburi in Jajpur District and is registered under the CST Act bearing No.CUC III 1148. As the appellant did not file any returns for the relevant year, he was penalized of Rs.35,440.00 u/r.8(2) of CST(O) Rules. However, at assessment stage, he filed all the quarterly returns along with annual return for the material period, on 14.01.2000 disclosing GTO at Rs.2,49,092.39 in respect of interstate sale of coke. On demand for examination, he could not produce books of account excepting some statements disclosing a part of its business activities. In course of hearing, he claimed that he is not liable to pay tax on inter-state sale of iron and steel scrap valued at Rs.1,07,60,625.42 as it is not related to its business, relying on Hon'ble

Apex Court decision in case of State of Tamilnadu Vrs. Port Trust of India and Others reported in 114 STC 320. However, the LAO observed that the appellant is engaged in business of manufacture and sale of steel for which goods are being purchased for setting up the factory which is well covered under the definition of business as per Sec.2(b) of OST Act and as such, the ratio of above judgment is not applicable to the instant case as the appellant has sold iron and steel scrap, MS plate, joist, MS angles etc. which are in connection with or incidental or ancillary to manufacturing activities to be undertaken that comes under the definition "business".

4. Further, the LAO found that the appellant has claimed to have dispatched imported coke for its manufacturing activities to its consignment agents outside the State worth of Rs.1,07,67,637.15 as tax exempted goods U/S6A of CST Act without furnishing the required 'F' forms and other relevant documents. Moreover, the appellant could not submit appointment letters towards appointment of its consignment agents. Accordingly, he disallowed the above claim and considered it as interstate sale liable to be taxed. Further, on verification of way bill accounts, the LAO found that the appellant has dispatched 19,389.00 MT of coke valued at Rs.7,86,61,000.00 to outside state from Paradeep Port that attracts tax liability. All these resulted in a tax demand of Rs.80,35,068.00 by the LAO in his order.

5. Being aggrieved by the aforesaid order, the dealer filed first appeal before the ld. FAA who after examination of the case confirmed the order of assessment.

6. Being further aggrieved with the aforesaid appeal order of Ld.FAA, the dealer knocked the door of this Tribunal by filing second appeal and assailed that the orders of the forum below suffers the vice of illegality and arbitrariness.

7. From the rival contentions taken by the Counsel of appellant & respondent during hearing stage, the questions raised for decision in this appeal are:

i. Whether the appellant is liable to pay CST on interstate sale of iron and steel scraps valued at Rs.1,07,60,625.42, claimed to be not coming under the definition of "business" as per Hon'ble Apex Court decision in case of State of Tamilnadu Vrs. Port Trust of India and Others reported in 114 STC 520?

ii. Whether the appellant is liable to pay CST on sale of coke of Rs.8,96,77,729.54, claimed to have been dispatched to its authorized agents outside the State during the material period?

8. Addressing to question No.(i), it is revealed from the order of LAO that the appellant has sold iron and steel scraps valued Rs.1,07,60,625.42 in interstate trade or commerce without payment of tax claiming that these goods do not come under the definition of "business" as he is engaged in the business of manufacture and sale of

steel goods. In this connection, it is pertinent to quote the relevant provision of the Act which is as under:-

Sec.2(aa) of CST Act:

'BUSSINESS' includes-

"(i) Any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;"

9. In the referred judgment (State of Tamilnadu and another Vrs. Boart of Trustees of Port of Madras reported in 114 STC 520) by the appellant, their Lordship of the Apex Court held that the activities of Madras Port Trust includes services of camping, shipping and transshipping, receiving, transporting, storing etc. of goods brought into premises of port trust. By analyzing the relevant provisions of law contained in Tamilnadu General Sales Tax Law, it was clearly held that the Port Trust was not carrying on any "business" for which cannot be branded to a dealer. More also, it was held that since the sale of goods ("unserviceable and unclaimed materials") are in connection with or incidental or ancillary to the main "Non-business" activities, the same cannot be treated as business and hence attracts no tax liability.

10. However, in the present case, the appellant is engaged in the business of manufacture and sale of steel for which goods are being purchased for setting up the factory which is well covered under the definition of "business" as per Sec.2(aa) of the CST Act. It is revealed from the assessment order that, the appellant has sold iron and steel scraps, MS plate, joist, MS angles etc. worth of Rs.1,62,23,100.18 during the impugned period both in intrastate and interstate transactions. The volume and magnitude of such transactions clearly proves that these transactions are in connection with or incidental or ancillary to manufacturing activities that comes under definition of 'bussiness' as envisaged in Sec.2(aa)(ii) of CST Act. Moreover, to substantiate the fact, this Tribunal relied upon a decision of Hon'ble Apex Court in case of Indian Express (P) Ltd. Vrs. Tamilnadu (1987) 67 STC 474, wherein it is held that the sale of goods i.e. unsold newspapers by newspaper publishers as waste paper was incidental to the main business of printing and were liable to pay sales tax.

Accordingly, we observe that the interstate sale of iron and steel scraps is liable towards CST.

11.(a) Now, addressing to question No.(ii) as to whether the appellant is liable to pay tax on dispatch of coke valued Rs.8,96,77,729.54 to its consignment agents outside the State, it is relevant to quote the prescribed law under the statute:-

"**Sec.6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.-**

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods."

11(b). As per Sec.6A of CST Act, the burden is squarely on the assessee to prove that the movement of goods was occasioned from one State to another not by reason of sale but by reason of transfer of such goods by him to the destination which is the place of his business or his agent or principal. It is established by law that Central Sales Tax is not leviable in respect of transaction of transfer of goods from a head office or a principal to a branch or an agent or vice-versa as these do not amount of sales. This aids evasion, in that, dealers try to show even genuine sales to third parties as transactions of this type. Accordingly, it is provided that the burden of proving that the transfer of goods in such cases is otherwise than by way of sale shall lie on the dealer who claims exemptions from tax

on the ground that there was in fact no sale. The burden of proof by the dealer can well be discharged by submitting a declaration in the prescribed form duly filled and signed by the consignee of other State along with the evidence of dispatch of goods to other State. In the case in hand, the appellant could not furnish the required declaration forms 'F' along with relevant documents in any of the forums below including before this Tribunal. Accordingly, in our considered opinion, the dispatch of coke valued Rs.8,96,77,729.54 amounts to interstate sale liable to CST.

12. Accordingly, it is ordered.

The appeal filed by the dealer-appellant is rejected being devoid of any merit and the impugned order passed by the ld. FAA for the relevant year is confirmed.

The cross objection filed by the respondent-State is disposed of accordingly.

Dictated & corrected by me.

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member