BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL:CUTTACK.
S.A.No.490 of 2007-08.

(Arising out of the order of the learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur, in First Appeal Case No. AA-485/SAIII/OST/06-07, disposed of on 28.02.2007.)

Present: Smt. Suchismita Misra, Chairman, Shri S. Mohanty, 2nd Judicial Member & Shri P.C. 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. Mahanadi Coal Fields Ltd., Lakhanpur Area, Bandhabahal, Dist- Jharsuguda. ... Respondent.

For the Appellant : ... Mr. M.S. Raman, ld. Addl. S.C.(C.T).
For the Respondent : ... None.

Date of Hearing: 16.04.2019 ***** Date of Order: 16.04.2019

O R D E R

This second appeal has been filed by the Revenue against the order dtd.28.02.2007 of the learned Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, 'ld. ACST') in first appeal case No. AA-485/SAIII/OST/06-07, allowing refund of Rs.2,00,791.00 to the dealer-assessee against nil assessment made by the learned Sales Tax Officer, Jharsuguda Circle, Jharsuguda (in short, 'ld. STO') in his order passed on 22.11.2006 under section 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the period of assessment relating to the year 2004-05.

2. The respondent in the instant case is a Government of India undertaking engaged in mining and trading of coal. The dealer company is excavating coal and effecting sale of coal inside the State as well as in course of interstate trade and commerce. The ld. STO in absence of any adverse report against the business activities and in absence of any

discrepancies in figures returned with reference to books of accounts produced by the dealer-assessee accepted the figures returned by the dealer and completed assessment accordingly. The tax along with surcharge assessed by the ld. STO stands at Rs.7,42,72,833.00. The ld. STO concluded that the dealer-company having collected and paid Rs.7,44,66,282.00 before furnishing return is assessed to nil. This led the dealer-company to assail the order of assessment before the ld. ACST on the ground that the ld. STO's finding that the dealer-company have collected and paid the amount is factually not correct for the dealer assessee had deposited excess tax out of its own fund without collecting the same from the buyers during the material period. This apart the dealer-assessee also challenged that the sale of old use unserviceable empty steel drums is nothing but declared goods and levy of tax @12% instead of 4% is illegal and uncalled for.

The ld. ACST careful analysis of the case and the contentions of the ld. Advocate came to the conclusion that as the dealer-assessee has deposited tax of Rs.7,44,66,282.00 against total tax and surcharge dues amounting to Rs.7,42,72,833.00 is entitled to get refund of Rs.2,00,791.00 paid in excess.

3. Being aggrieved, the State has filed second appeal on the following grounds:-

a) The order of ld. ACST is not just and proper.

b) The sales tax collection and credit notes for Rs.7,42,60,544.99 and Rs.45,305.75 have been allowed by ld. STO.

c) The appellant claimed refund arose from over sight and calculation mistake but no revise return submitted for such error committed hence not acceptable.

d) Old used unserviceable steel drums rightly taxed at 12% since it is unspecified goods, it is not the same goods as that of iron and steel goods having the same quality.

e) The demand tax is made as the return and returns are not rejected and hence demand tax equals the demand due and no excess should arise.

f) The claims of excess demand tax paid out of own fund is nothing but reduction of taxable turnover which is illegal and attracts penal provisions u/s. 9-B of OST Act.

g) A certain portion of purchase on machinery spare parts, stock and stores are not displayed and OST & OET collection not shown on them making excess payment.

h) The OET is not adjusted in OST.

i) The order of ld. ACST is not correct therefore should be quashed and that of ld. STO should be modified to the above discussed extent.

4. The dealer-respondent has filed following cross objections in response to the grounds of appeal filed by the State:-

I. The first appeal order passed by the Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur is both factually and legally absolutely correct and does not warrant any interference.

II. Both the assessment order as well as first appeal order were passed after considering the books of accounts of the respondent. Therefore the allegation of the appellant that books of accounts were not properly verified is far from true and mere wild imagination.

III. The most of the sale of coal were executed on linkage basis to State owned Power Sectors as well as to PSUs of both Central Government and State Government and also to big private industrial houses. All the sales are on credit basis and only after finalization of grade of coal and reconciliation of supply of coal the purchasers paid the outstanding dues to MCL. As such to discharge its statutory liability MCL paid the tax as per the sale invoice but actual figures are finalized only after the above process.

5. Mr. M. S. Raman, the learned Additional Standing Counsel (C.T.) appearing on behalf of the Revenue vehemently argued that the ld. ACST should not have allowed refund to the dealer-assessee without verifying the books of accounts and without submission of revised return on the part of the dealer-respondent.

6. There is no response from the side of the dealer–respondent despite due service of notice sent through the registered post with acknowledgement as the same returned with the postal remark “Refused HRS”. As the assessment period relates to the year 2004-05 and the dealer has not appeared before this Bench, the appeal is disposed of exparte on merit taking into consideration the cross objection filed by the dealer-respondent and the materials available in the record.

7. Heard the ld. Addl. S.C. (C.T.) on behalf of the appellant-State in absence of dealer-respondent. Gone through the impugned orders of assessment as well as appeal, the grounds of appeal and cross objection. The dispute before us to address is whether the order passed by the ld. ACST allowing refund to the dealer-assessee against the nil assessment made by the ld. STO can be sustained in the eyes of law? It is pertinent to

make a mention here that the ld. STO has completed assessment accepting the figures returned by the dealer-assessee in absence of any adverse report against the business activities of the dealer-respondent and in absence of any discrepancies detected in course of hearing for assessment. The ld. STO has assessed the dealer to nil on the ground that the dealer-assessee has collected and paid Rs.7,44,66,929.00 against the tax and surcharge dues aggregating to Rs.7,42,72,833.00. Basing on the grounds of appeal the ld. ACST on verification of books of accounts on careful analysis found that the contention of the ld. Advocate appearing on behalf of the dealer-assessee that the appellant had deposited excess tax out of its own fund without collecting the same from the buyers during the material period is just and proper has accepted the same with the finding that "since the appellant-company has deposited tax at Rs.7,44,66,282.00 on total tax due at Rs.7,42,72,833.00 the company is liable for refund of Rs.2,00,791.00." The ld. Addl. S.C. (C.T.) on behalf of the State failed to adduce any evidence contrary to the findings of the ld. ACST before the Bench in support of the points raised in the grounds of appeal and contended before the Bench. On perusal of the last Para at page-2 of the assessment order passed by the ld. STO it is noticed that the ld. STO has allowed deduction of Rs.7,42,60,544.99 towards collection of sales tax out of the gross turnover determined at Rs. 192,99,94,975.50. Hence the conclusion drawn by the ld. STO that "the dealer-company having collected and paid Rs.7,44,66,282.00 before furnishing the returns is now assessed to nil", is not based upon correct position of sales tax collected by the dealer-respondent. In view of the above, we are not inclined to interfere with the findings of the ld. ACST

as the same is based on careful analysis and there is no incongruity in the findings of the ld. ACST.

8. In the result, the appeal is dismissed. The appeal order passed by the ld. ACST is confirmed. The cross objection is disposed of accordingly.

Dictated and corrected by me,

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

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

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member