

**BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)**

S.A. No. 36(C) OF 2002-03

(Arising out of order of the learned ACST, Cuttack-I Range,
Cuttack in Sales Tax Appeal Case No. AA- 36(C)/CUIE/98-99,
disposed of on dated 25.02.2002)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. NCCF (I) Ltd.,
Ashok Nagar, Unit-II, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri Tusar Dutta, Advocate
For the Respondent : Sri M.L. Agarwal, Standing Counsel (CT)

Date of hearing: 05.05.2020 ***** Date of order: 21.05.2020

ORDER

The instant appeal is preferred against the impugned order dated 25.02.2002 promulgated by the learned Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, 'FAA') in Appeal No. AA- 36(C)/CUIE/1998-99 for the assessment year 1995-96 which confirmed the demand raised under the order of assessment dated 07.01.1999 passed under Rule 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') by the learned Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, 'STO') on the grounds inter alia that it is bad in law and, therefore, deserves to be set aside in the interest of justice.

2. Shorn of unnecessary details, the appellant is a dealer and a national level Co-operative Organization being a Government of India undertaking and in so far as the subject matter in dispute is concerned, the same related to the transactions of the assessment year 1995-96. It is made to appear that a notice was issued under Rule 12(5) of the Rules to the appellant to produce the books of account for the year 1995-96 for its verification. The appellant is, in fact, a dealer which deals with different types of seeds and later to the notice served, it produced the relevant documents for verification. In course of such verification, it was revealed that the appellant, in the year 1995-96, is said to have effected sales of seeds to the tune of ₹1,16,39,350/- vis-a-vis the inter-State trade which has been treated as net turnover. It was further revealed that the appellant disclosed 'nil' tax on the net taxable turnover and the books of account suggested that the purchase of different kinds of seeds stood at ₹1,12,95,303.80 from M/s. Tirupati Agro Seed Distributors, Kolkata and disposed of in favour of M/s. Tripura Horticulture Corporation Ltd., Agartala and M/s. West Bengal State Seeds Corporation Ltd., Kolkata and the sale bills raised at Cuttack, Odisha indicated that the goods were sold at a camp of the appellant at Kolkata. The crux of the matter is with regard to the nature of the trade and if at all, the appellant is entitled to any exemption with respect to the certified seeds in view of Entry 35-F of the Schedule of the notification dated 23.04.1976 (SRO No. 469/76). According to the State, it is an inter-State trade and exigible to tax and the appellant is not entitled to exemption thereof, since the sole condition under the Schedule to Entry 35-F was not fulfilled. On the other hand, the appellant controverted the facts alleged by the State and

contended that the inter-State sales of goods are exempted from levy of tax under the Central Sales Tax Act, 1956 (in short, 'the Act'), while raising a faint plea to the effect that such imposition of tax is precluded as the goods having not entered the State of Odisha.

3. The authorities below rejected the contention of the appellant as to the nature of the trade and arrived at a logical conclusion that situs of sale is immaterial for a sale to be completed in course of inter-State trade so long as there is movement of goods from one State to another pursuant to an agreement for sale. Admittedly, in the present case, the appellant transacted with regard to vegetable and certified seeds having purchased it from a dealer of Kolkata and sold the same to two other dealers, one at Agartala and another, at Kolkata and raised the bills at Cuttack. In this regard, the learned Standing Counsel (CT) referred to a decision reported in [2003] 132 STC 431 (Kerala) and contended that the appellant is a registered dealer under the OST and CST Act in the State of Odisha and it raised the alleged bills generated at Cuttack, Odisha and received the consideration at Cuttack and, therefore, the State of Odisha is the appropriate State to collect the tax and the nature of transactions do come within the ambit of Section(s) 3 and 6(2) of the Act. It is urged that the nature of transactions vis-a-vis the appellant is nothing but an inter-State trade and the question so raised by the appellant has been set to rest in the decision (supra). On a bare perusal of the aforesaid decision, it is made to understand that inter-State movement of goods is a necessary pre-condition for assessment either under Section 3(a) or (b) of the Act and in the facts of the said case, it was found that there was such movement of

goods under Section 3(a) of the Act from one State to another and the dealer obviously made subsequent sale by endorsing the title in favour of the ultimate buyer and under such circumstances, exemption was denied on the ground that it failed to produce declarations under Forms 'C' and 'E-I'.

So far as Section 3(a) of the Act, a completed sale of goods occasions on consideration with its movement from one State to another under a contract of sale. In other words, a sale being by its very definition, a transfer of property becomes inter-State sale under Section 3(a) of the Act, if the movement of goods from one State to another is under a covenant or incident of the contract of sale and the property in goods passes to the purchaser otherwise than by transfer of documents of title, which is in accordance with Section 3(b) thereof. In the instant case, the learned Standing Counsel (CT) claimed that invoices were raised by the seller and also the appellant dealer, who ultimately endorsed delivery of goods to the ultimate buyer, namely, the two other dealers of Kolkata and Agartala and statutory declarations vide Forms 'C' and 'E-I' have not been produced while seeking exemption. The authorities below concluded that such transaction vis-a-vis the appellant is guided and governed by Section 3(b) of the Act. Thus, according to the State, as contended by the learned Standing Counsel (CT), the appellant is not eligible and entitled to any exemption due to want of Forms 'C' and 'E-I'. So far as the appellant is concerned, it said to have disposed of the certified and vegetable seeds at a camp in Kolkata. It is not clear, whether the appellant is having any branch at Kolkata. No material exists to suggest any branch transfer or stock consignment to an agent stationed at Kolkata

to be responsible towards disposal of the goods. The admitted fact is that the appellant raised invoices at Cuttack in Odisha. The settled law is that the parties may belong to one State; situs of sale may be located at an outside place and the movement of goods could possibly be through either of the States to which the parties belong and despite that, it could still be an inter-State trade between them. When the appellant sold the goods at Kolkata but being a registered dealer in the State of Odisha under the OST Act and CST Act, it is to be assumed that the sale was effected in terms of Section 3(b) of the Act. The original seller raised the invoice and also the appellant, the commercial invoice with an endorsement for delivery of the goods at its ultimate destination and in under such circumstances there can be no escape from conclusion that the parties indulged in inter-State trade. It is not clear either, if the appellant as a registered dealer in the State of West Bengal purchased and sold the goods at Kolkata. In view of the aforesaid discussions, it has to be held that the appellant has had an inter-State trade notwithstanding the fact that the location of sale was at Kolkata and in absence of any declarations under Form 'C' and 'E-I', it was not entitled to any exemption whatsoever. Being a registered dealer in the State of Odisha and having purchased and sold the vegetable and certified seeds, although at Kolkata, for all intent and purposes shall have to be treated as inter-State trade and movement of goods, as such, is also to be assumed inter-State even with respect to the sale and purchase effected at Kolkata vis-a-vis one of the dealers stationed there. Thus, the authorities below rightly appreciated and finally reached at the conclusion that the alleged transactions are inter-State vis-a-vis the parties in question. So to say, the feeble

ground on this count raised by the appellant opposing it to be an inter-State trade cannot, thus, be countenanced.

4. So far as the exemption on the certified seeds is concerned, one has to fall back upon Entry 35-F of the Schedule appended to the list of goods exempted from OST Act read with Section 8 of the Act. The schedule and the list stand notified vide Notification No. 20206-CTA-14/76-F dated 23.04.1976 (SRO No. 469/76) where vide Entry 35-F and 38-C, the related goods stand exempted under the OST Act, however, with respect to Entry 35-F, the sole condition subject to which exemption has been allowed is to the effect that the certified seeds which exclude vegetable seeds should be sold in sealed bags or containers. The Tribunal is to examine, whether, the appellant while despatching the certified seeds sold it in sealed bags or containers which is required under Entry 35-F while seeking exemption.

5. Admittedly, the vegetable seeds have been exempted from levy of tax vis-a-vis the appellant under the alleged transaction with M/s. Tirupati Agro Seed Distributors, Kolkata. As regards the certified seeds, such exemption has been denied by the authorities below. The appellant claims exemption vide notification issued under Section 6 of the OST Act under Entry 35-F of the tax free list read with Section 8(2-A) of the Act. With regard to inter-State trade and commerce, rates of tax stand indicated in Section 8 of the Act. However, under sub-section (2-A) of Section 8 of the Act, notwithstanding the relevant provisions mentioned therein, the Sales Tax law of the appropriate State vis-a-vis the sale or purchase, as the case may be, of any goods by a dealer shall be exempted from generally, or is subject

to tax generally at a rate which is lower than the percentage stated, the tax payable under the Act on the turnover or any part thereof related to the sale of such goods shall be 'NIL' or, as the case may be, calculated at a lower rate but it appends an explanation that sale or purchase of goods shall not be exempt from tax generally under the Sales Tax law of the appropriate State, if under that law, it is exempted only in specified circumstances or under specified conditions, or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods. Thus, from the above explanation, it is to be understood that sale of goods shall not be exempt from tax generally if under the State law it is exempted only on the fulfilment of the specified condition. As revealed from Schedule of Entry 35-F, a condition is attached, while demanding exemption which is to the effect that the certified seeds must be sold in sealed bags or containers. In the case at hand, the authorities below rejected the exemption solely on the ground that the appellant failed to fulfil the above condition appearing against Entry 35-F. There is no dispute to the fact that the appellant dealt with certified seeds besides vegetable seeds which is generally exempted from tax without any pre-condition. The learned Counsel for the appellant contended that the learned STO observed that the certified and vegetable seeds were purchased from a single dealer and the entire stock was disposed of and despatched to the other two dealers and, therefore, it is to be assumed that the sale of certified seeds was in conformity with the condition appearing in Entry 35-F. It is contended that there was no question of any sale of certified seeds, in particular, through loose bags or on retail basis. The question is, whether, such an assumption would be appropriate

in absence of any material evidence? The authorities below verified and examined the bills and ultimately reached at a conclusion that the said condition that the certified seeds to be sold in sealed bags or containers not to have been fulfilled. The burden of proof rested on the appellant to establish that the certified seeds were despatched in sealed bags or containers. It is not that the State was to collect the materials to find out and ascertain the nature of disposal of certified seeds. Under what circumstances and manner in which the certified seeds were sold were to be proved and established by the appellant by leading cogent and credible evidence. Such an assumption that the entire stock was disposed of, so it was despatched in sealed bags and containers, would be totally misplaced in absence of any specific evidence or material in that respect. At the cost of repetition, it is to be stated that when exemption was claimed by the dealer, it was he, who was to discharge the burden of proof by laying evidence that the certified seeds were, in fact, sold in sealed bags or containers. Absolutely, there is no iota of evidence on record to arrive at a decision in favour of the appellant. It is not understood why the appellant did not produce any such evidence or at least moved the authorities below or even the Tribunal, for that matter, to call for such materials in order to vouchsafe the nature of disposal of the certified seeds. The appellant did not bother to bring it to the notice of the Tribunal as to the nature of despatch of certified seeds while claiming that they were sold in sealed bags and containers. Such a condition as mentioned in Entry 35-F of the Schedule is in absolute term and it must be satisfied, while seeking exemption. It is no general exemption like Entry 38-C, as a specified condition is mentioned against certified seeds under

Entry 35-F. In this connection, the learned Standing Counsel (CT) cited certain decisions of the Hon'ble Apex Court reported in [1976] 38 STC 108 (SC): Indian Aluminium Cables Ltd. Vs. State of Haryana; [1987] 64 STC 349 (SC): Indian Cables India Ltd. Vs. Assessing Authority; [1995] 96 STC 355 (SC): CST Vs. Pine Chemicals Ltd.; and [1996] 101 STC 529 (SC): State of UP Vs. Hindustan Safety Glass Works Pvt. Ltd. in order to buttress an argument that the present case is not one of general exemption but an exemption from tax subject to fulfilment of the condition earmarked in Entry 35-F of the Schedule. The ratio of the aforesaid decisions clearly lays down the law regarding the specified conditions to be satisfied unlike general exemption which are related to goods totally exempt from tax. In the instant case, as to the nature of disposal, or whether the certified seeds were really disposed of in sealed bags or containers does not come forth on record and in absence thereof, no exemption can be permitted. The appellant was duty bound to produce such relevant evidence in support of the manner of disposal and despatch either in sealed bags or containers of the certified seeds before demanding exemption under Section 6 of the OST Act read with sub-section (2A) of Section 8 of the Act. For a moment, the Tribunal thought it proper to remand the matter, but declined to do it, simply for the reason that the appellant was grossly callous and negligent in submitting any material with regard to the nature of disposal of certified seeds and perhaps for having no evidence at all. Thus, the irresistible conclusion of the Tribunal is that the decision of the learned FAA with respect to the certified seeds and vis-a-vis the nature of trade is absolutely just and proper and does not call for any interference.

6. Hence, it is ordered.

7. In the result, the appeal stands dismissed. As a consequence, the impugned order dated 26.02.2002 promulgated in Sales Tax Appeal Case No. AA. – 36(C)/CUIE/98-99 concerning the assessment for the year 1995-96 vis-a-vis the appellant is hereby confirmed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree,

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

I agree,

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