

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 31 (C) of 2018

(Arising out of order of the learned Addl. CST (Appeal), North
Zone, Sambalpur in Appeal No. AA- RL3 (C)/16-17,
disposed of on dated 30.01.2018)

Present: **Shri A.K. Das, Chairman**

M/s. Time Steel & Power Ltd.,
Plot No. 98, IDC, Kalunga,
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri S.C. Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing: 28.07.2022 *** Date of order: 30.07.2022

ORDER

The dealer-assessee has filed this second appeal challenging the order dated 30.01.2018 passed by the learned Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (hereinafter called as 'first appellate authority') in Appeal No. AA RL3 (C)/16-17 thereby reducing the demand to ₹26,97,839 as against the demand of ₹75,22,279.00, which includes interest of ₹12,96,746.00 and penalty of ₹9,50,321.00, raised by the Deputy Commissioner

of Sales Tax, Sundargarh Range, Rourkela (in short, 'assessing authority') for the period 01.04.2012 to 31.03.2014 in the assessment framed u/s. 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

2. Briefly stated, the facts of the case are that the dealer-appellant is engaged in manufacturing and sale of sponge iron by utilizing raw materials such as iron ore, coal and dolomite and it effects purchase and sale of goods both inside as well as outside the State. On the basis of the Audit Visit Report (AVR) received from DCST, Rourkela-II Circle, Panposh, learned assessing authority initiated proceeding u/s. 12(3) of the CST (O) Rules and notice was issued to the dealer-assessee in Form-IV for completion of assessment. In response to such notice, the authorized person of the dealer appeared and produced the books of account along with declaration in Form-C and subsidiary documents relating to export sale for verification. The assessing authority on verification of the documents produced by the dealer-assessee, AVR and other materials on record, raised an extra demand of ₹75,22,279.00, which includes interest of ₹12,96,746.00 and penalty of ₹9,50,321.00.

2(a). The dealer-assessee being dissatisfied with the demand raised by the assessing authority, filed appeal before the first appellate authority on the ground that the assessing authority did not give reasonable opportunity to submit declarations in Form-C and 'H', resulting in extra demand of ₹75,22,279.00. In course of hearing of the first appeal, the dealer-assessee submitted 21 nos. of 'C' form in original for ₹8,64,27,695.00 for the assessment year 2012-13, 17 nos. of 'C' form for ₹5,20,07,052.00 for the year 2013-14, which were accepted by the first appellate authority and concessional rate of tax @ 2% was allowed. The dealer-assessee failed to submit 'C' form for the balance CST sale to tune of ₹3,48,98,810.00, which was taxed @ 5%. Similarly, the dealer-assessee also filed xerox copy of 'H' form in respect of export sale, which was not accepted by the first appellate authority and tax was levied @5% on export sale of ₹95,03,214.00. Accordingly, the first appellate authority reduced the demand to ₹26,97,839.00.

2(b). The dealer-assessee being further dissatisfied with the demand raised by the first appellate authority, preferred the present second appeal only on the

ground that some more opportunity should have been given by the first appellate authority for submission of 'C' and 'H' forms but it committed serious illegality in disposing of the appeal in hasty manner without giving reasonable opportunity for submitting the declarations in Form-C and Form-H. The revenue pursuant to the notice issued by this Tribunal, filed cross-objection supporting the impugned orders of the forums below.

3. I have heard the rival submissions of the parties, gone through the grounds raised in 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 order of the first appellate authority was challenged by the dealer-assessee that it was not given reasonable opportunity to submit declaration in Form-C in respect of inter-state sales to the tune of ₹3,48,98,810.00 for claiming concessional rate of tax and 'H' form in respect of export sale for claiming exemption. In course of hearing of the appeal, the dealer-assessee filed 14 nos. of 'C' form to the tune of ₹2,62,18,835.00 and one 'H' form for ₹20,78,960.00 and submitted to accept these statutory forms and recompute its tax liability. Learned Standing

Counsel (CT) for the revenue seriously objected to the prayer of the dealer-assessee for accepting such forms on the ground of unreasonable delay in collecting statutory forms and submitting the same before the appropriate authority. He further objected to the prayer of the dealer-assessee to accept 'H' form on the ground that it is not supported by other relevant documents, such as bill of lading, letter of credits and agreement, in the absence of which 'H' form cannot be accepted. There is no dispute in the present case that the dealer has effected inter-State sales and export sales during the relevant period against required statutory forms. The assessing authority as well as the first appellate authority accepting the statutory forms submitted by the dealer-assessee, granted concessional rate of tax in respect of inter-State sales and exemption in respect of export sales. But, unfortunately, due to certain reason the dealer-assessee could not submit 'C' form in respect of inter-State sale to the tune of ₹2,62,18,835.00 and 'H' form in respect of export sale to the tune of ₹20,78,960.00. If the statutory forms submitted by the dealer-assessee before this forum are found to be genuine and correct, it would be entitled to claim concessional rate of tax and exemption in respect of

export sale. The right of the dealer to make the aforesaid claims cannot be denied only because of some delay in submission of the statutory forms. When the statute prescribes for extending certain benefits to the bonafide tax payers, such right should not be taken away merely because of delay in submission of the statutory forms. But extension of such benefit to the dealer-assessee depends upon the fact that statutory forms are genuine and correct, which only can be ascertained after proper verification by the assessing authority. Therefore, under this circumstance, I am inclined to remit the matter back to the assessing authority for recomputation of tax liability of the dealer-assessee according to law.

4. In the result, the appeal is allowed and the impugned order of the first appellate authority is set aside to the extent of levying tax @ 5% on ₹2,62,18,835.00, inter-State sale without 'C' form and on ₹20,78,960.00 without 'H' form. The matter is remitted back to the assessing authority with a direction to give a reasonable opportunity of hearing to the dealer-assessee to submit original 14 nos. of 'C' forms to the tune of ₹2,62,18,835.00 and 'H' form to the tune of ₹20,78,960.00 and other relevant supporting documents to

substantiate the claim of inter-State sales against Form-C and export sale against Form-H, where after it (assessing authority) shall examine the genuineness of the statutory forms to be submitted by the dealer-assessee and compute the tax liability afresh according to law within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman