BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 554/2008-09

(Arising out of order of the ld.ACST, Sundargarh Range, Rourkela, in First Appeal Case No. AA.98 (RL II-R) 2007-08, disposed of on dtd.30.06.2008)

P R E S E N T :

Sri A.K. Das, Chairman **Sri S. K. Rout, Judicial Member-II** **&** **Sri S. Mishra, Accounts Member-II**

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

-Versus-

M/s. Shree Ram Re-Rollers (P) Ltd., Rajgangpur, Dist. Sundargarh. .... Respondent

For the Appellant : Mr. M.L. Agarwal, S.C. (C.T.)
For the Respondent : None

(Assessment Period : 2003-04)

Date of Hearing: 09.02.2022 *** Date of Order: 08.03.2022

ORDER

The present appeal is preferred against the order dtd. 30.06.2008 of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/ACST) in First Appeal Case No. AA.98 (RL II-R) 2007-08, thereby confirming the order of assessment in part passed by the learned Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AA/STO) u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) relating to the

period 2003-04 raising the demand of Rs.10,38,837/- and directing for refund of excess tax paid, if any.

2. The case at hand is that : The dealer-assessee runs three units carrying on business in manufacturing and sale of MS rod and M.S. ingot, sponge iron, flats, angles, channels etc. having its work site at Railway siding, Rajgangpur and another unit being added later on located at Lodasara near Kuarmunda, where it manufactures M.S. Ingot for use in own re-rolling mill. On verification of the books of account produced, the learned Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AA/STO) found that, the appellant has collected OST to the tune of Rs.16,96,492.86 on the body of the bills but has paid Rs.1,25,835/- with the returns and the rest has been claimed as set off of tax. On further verification, the learned STO found that, the appellant has directly purchased raw materials from manufacturers on payment of tax to the tune of Rs.7,96,986.09 and Rs.2,51,317.79 for the Unit-I and Unit-II respectively. As the dealer put the raw materials to use in the captive consumption in the Unit-II and not for sale, the learned STO disallowed the set off on the same. The learned STO calculated the set off by multiplying the OST paid raw materials by the OST sales minus opening balance and the whole divided by the total production. Thus, arriving at the set off claim of Rs.5,31,820/-, the GTO was determined at Rs.4,52,97,272.35. After allowing deduction of Rs.11,88,472.00 towards sale tax paid goods and Rs.16,96,492.30 towards collection of OST, the TTO was determined at Rs.4,24,12,307.49. Tax @4% on the TTO was

calculated at Rs.16,96,492.30. The dealer was allowed set off of Rs.5,31,820/- and the tax payable was computed at Rs.11,64,672/-. The dealer having paid Rs.1,25,835/-, was required to pay the balance of Rs.10,38,837/-.

3. Being aggrieved with this order, the dealer preferred appeal before the learned FAA, who after proper hearing of the case, reduced the demand of tax to Rs.4,69,452/- from Rs.10,38,837/- as assessed by learned AO in his order.

4. Now, being aggrieved with this first appeal order, State preferred the present appeal with the prayer to quash the order of the learned FAA as the same is bad in the eyes of law.

5. No cross objection is filed by the dealer-respondent in this case.

6. Despite due service of notice on the dealer, he neither engaged a counsel nor anybody on his behalf remained present before this forum during the course of hearing. So, this Tribunal heard the argument of Mr. M.L. Agarwal, learned Standing Counsel appearing for the Revenue and proceeded to dispose of the matter on ex-parte basis on merit.

7. Perused the assessment order as well as first appeal order, all the materials available on record, grounds of appeal submitted by the Revenue. During the course of hearing, Mr. M.L. Agarwal, Standing Counsel for the State argued that, the order of the fora below is not just and proper.

8. The sole question in the present case is, whether, the dealer is entitled to set off apropos FD notification no.14687-CTA

2001(PT) F. Dated 31.03.2001 under SRO No.149/2001- note I and note II of the schedule rate charge which reads as follows:

Note-I:

(a) The amount of tax payable in respect of goods specified in Sl. Nos. 1, 6, 11, 12, 13,14, 17, 28, 30, 46, 56, 58, 65,68,69,76,87,92,107,121,127,129,134,136,138,156,180,181,183 and 186A shall be reduced by the amount of Orissa Sales Tax paid by the dealer on raw materials and consumables subject to tax on purchase turnover and/or tax collected from him by the selling dealer separately on the body of the bill in respect of sale of raw materials and consumables subject to tax on sale turnover directly used in manufacture of such goods.

Explanation:

Building materials for construction of factories and allied construction, office equipment, packing materials, vehicles and such other materials which are not directly used in manufacture shall not be treated as raw material or consumables for the purpose of allowing set off.

(b) The amount of tax payable in respect of goods specified in Part-III of the schedule to the Orissa Entry Tax Act, 1999 as well as in Sl. Nos. 46,101,108,138,143 and 155 shall be reduced by the amount of Orissa Entry Tax paid on such goods under Orissa Entry Tax Act, 1999 and the Rules made there under.

Note-2:

The set off tax as provided in Note-1 above shall be regulated subject to the following conditions.

(a) The amount of set off claimed shall be limited to the Orissa Sales Tax payable on sale of finished products manufactured out of such raw materials and consumables.

(b) The amount of set off claimed against payment of tax under the Orissa Entry Tax Act, 1999 shall be limited to the OST payable on sale of such goods.

(c) In respect of goods exigible to tax on sale turnover, the amount of Orissa sales tax realized separately from the dealer on the body of the purchase invoice in respect of the purchase from the registered dealers during a particular year shall be eligible for computation of the amount of set off to which the dealer shall be entitled, during the same year. It is the responsibility of the dealer for proper custody of those purchase invoices to facilitate verification by Sales Tax Officer.

(d) While completing assessment excepting assessment under sub-section (1) of Section 12 of the Orissa Sales Tax Act, 1947, the Sales Tax Officer or Assistant Sales Tax Officer, as the case may be, shall examine the records of the dealer and determine the amount of set off to which the dealer is entitled in the event it is found that the dealer had availed of set off in excess of the amount to which he is entitled the dealer shall be required to file a corrected claim for set off along with revised return within a reasonable time. If it is so required by the Sales Tax Officer, dealer shall furnish a statement showing dealer wise list relating to value of purchase of raw materials and consumables purchased during the relevant year and tax paid on the same.

(e) In case, the dealer claims inadmissible set off deliberately on false documents or without supplying any

documents as in (iii) above then the entire claim of set off during the year in question shall be disallowed after giving the dealer a reasonable opportunity of being heard.

(f) In case, a dealer sells a part of his finished products in the course of interstate trade or commerce or dispose in a way other than sale in Orissa, the set off allowed in respect of tax payable on sale effected inside the State of Orissa shall be reduced proportionately.

9. The sole contention in the present case is that the set off of tax to the tune of Rs.11,01,205.13 is not supported by invoices charged with the first point tax, being purchased from subsequent sellers through which the appellant herein claims a right to avail the said set off by virtue of rulings of Hon'ble High Court in case of Crown Re-roller (P) Ltd.139 STC page 305, whereby the Hon'ble Court has decided that the dealer-appellant in that case is entitled to benefits of refund by virtue of the purchase from the subsequent purchasers who have paid taxes in the first point. It is worthwhile to mention here that the said case was subject matter of further litigation by the Hon'ble Supreme Court of India in which the Hon'ble Apex Court in Para-19 of the Judgement ruled that:

"The State cannot resile itself from the statutory provisions of exemption made by it. In our opinion, in equity, the State in a situation of this nature, must act in letter and spirit of the act. **(However, the state can only refund what it actually collected and not any amount it had not collected. We, therefore, are of the opinion that the interest of justice will be sub served if an opportunity is given to the respondent to produce the evidence before the assessing authority in regard to existence of legal**

requirements as noticed herein above for maintaining the claim of the refund. The assessing authority shall give an opportunity to the respondent to place all materials in connection therewith or in relation thereto)."

10. For this purpose, the Hon'ble Court made it open for the STO to call for any record from the RSP or any other dealer. The Court was of the opinion that it will not be entitled to interest on the refund amount for the present as the quantum thereof is yet to be determined. It is observed that the same issue had been taken to High Court in WP(C) No.1195 of 2002 and the Hon'ble High Court of Odisha in para-6 of their order dated 27.02.2019 observed as follows:

"Learned Counsel for the opposite parties contended that in view of the aforesaid provisions of law and taking into consideration the decisions of the Hon'ble Apex Court, there arises a contingency, where a dealer is not showing the tax paid bills. In that event, he is to produce his books of accounts in detail. But in a case where the bill is not showing collection of tax, there is a possibility that the verification will be difficult for the taxing authority. In that view of the matter, Clause-3 of Note-2 of the Notification dated 31.03.2001 is required to be construed very strictly and if ultimately in view of the observations made by the Hon'ble Apex Court on verification it is found that tax is paid earlier, he can be granted set off or the refund as the case may be, otherwise, the Clause is valid and no interference is called for."

The Full Bench of this Tribunal in S.A.No.405 of 2006 in order dated 15.10.2019 in case of Pareek Ferro Pvt. Ltd. Vrs State of Odisha, represented by the Commissioner of Sales Tax,

Odisha, Cuttack which was a similar matter in case of the present appellant, had remitted back the matter for fresh assessment as per direction in the W.P.(C) No.1195 of 2002.

11. In view of the above mentioned evolution of the case and the views taken by Hon'ble Apex Court, Hon'ble High Court of Odisha and by the Full Bench of this Learned Tribunal, we hereby set aside the order of the FAA and remit the matter to the learned STO to examine the books of account of the dealer which he shall produce before him within two months from the receipt of this order without seeking separate notice for the purpose. The STO will examine the said records in the manner laid down as per the order of the Hon'ble High Court in W.P.(C) No.1195 of 2002 (supra).

Dictated and Corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(A.K. Das)
Chairman

I agree

Sd/-
(S. Mishra)
Accounts Member-II