

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 15 (C) of 2011-12

&

S.A. No. 16 (C) of 2011-12

(Arising out of orders of the learned JCST, Sundargarh Range, Rourkela in First Appeal Nos. AA-142 (RL-II-C) of 2009-10 & AA- 70 (RL-I-C)/2007-08, disposed of on dated 30.01.2011)

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

M/s. Gulf Oil Corporation Ltd.,
Sonaparbat, Rourkela-16 ... Appellant

-Versus-

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

For the Appellant : Sri P.R. Patnaik, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 13.07.2022 *** Date of order: 20.07.2022

O R D E R

Both these second appeals relate to the same dealer-assessee involving common question of facts and law on account of which they are heard together and are disposed of by this composite order.

2. The dealer-assessee has preferred S.A. No. 15 (C) of 2011-12 assailing the order 31.01.2011 passed by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela, (hereinafter called as 'first appellate authority') in Appeal No. AA- 142 (RL-II-C)/2009-10 thereby confirming the tax demand of ₹1,39,26,811.00 raised by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing authority') for the period 2002-03 in the assessment framed u/r. 12(8) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

3. S.A. No. 16 (C) of 2011-12 has also been filed by the dealer-assessee challenging the order dated 30.01.2011 passed by the same first appellate authority in Appeal No. AA- 70 (RL-I-C) of 2007-08 confirming the tax demand of ₹96,05,518.00 raised by the same assessing authority for the tax period 2004-05 in the assessment framed u/r. 12(4) of the CST (O) Rules.

4. The facts relevant for adjudication of these second appeals in nutshell are that the dealer-assessee carries on business in explosives and its accessories and clad metal in course of inter-State trade and commerce and export. The dealer-Company also effects transfer of stock of the said items to its branches located at different places

both inside and outside the State for sales. The original assessment u/r. 12(4) of the CST (O) Rules for the period 2002-03 of the dealer-assessee was completed earlier on 30.03.2006. Thereafter the assessing authority reopened the assessment u/r. 12(8) of the CST (O) Rules relying on the observation of the Hon'ble High Court of Orissa and subsequent judgment of Hon'ble Apex court with regard to stock transfer to outside the State and subsequently sold to the subsidiaries of Coal India Ltd. (CIL) being inter-State sale, but allowed as stock transfer besides irregular allowance of sale at the concessional rate of tax against non-submission as well as defective 'C' forms allowed in the original assessment, which led to under assessment of tax. The assessing authority in the reassessment proceeding taking note of the judgment dated 16.11.2007 of the Hon'ble Apex Court passed in SLP (C) No. 8377 of 2006 (Civil Appeal No. 5272 of 2007) in case of the dealer-assessee (formerly known as M/s. IDL Chemicals Ltd.) held the stock transfer of goods to the tune of ₹10,21,89,154.70 by it out of the total claim of stock transfer of ₹23,37,73,060.88 allowed in original assessment, meant for supply to the subsidiaries of CIL by the consignment agents/depot of the dealer-Company were inter-State sales falling u/s. 3(a) of the CST

Act and accordingly, he disallowed such claim of stock transfer worth ₹10,21,89,154.70 from the total claim as allowed in the original assessment. Since the dealer-Company failed to furnish 'C' forms for an amount of ₹10,21,89,154.70, the same was subjected to tax @ 13.2% including surcharge as per Sec. 8(2)(b) of the CST Act by the assessing authority. Further, the assessing authority rejected the claim of sale of goods worth ₹47,59,157.45 at the concessional rate as allowed in original assessment on the ground that the amounts mentioned in 3 nos. of 'C' form were less than the amounts disclosed in the statement of sale furnished and as such, said turnover was taxed at the appropriate rate as per Section 8(2)(b) of the CST Act. Accordingly, the assessing authority determined the GTO at ₹26,31,02,561.66 and after allowing deduction of ₹44,80,879.14, ₹38,79,350.58 and ₹4,05,39,235.73 towards STC, freight charges and export sales respectively, determined the NTO at ₹21,42,03,096.21, which was taxed @ 4% on ₹10,55,96,845.96 and @13.2% on ₹10,86,06,250.25. Thus, the total tax was calculated at ₹1,85,59,899.00 out of which the dealer-Company had already paid ₹46,33,088.00 in original assessment and,

therefore, it was required to pay the balance amount of ₹1,39,26,811.00.

4(a). The dealer-assessee challenging the above demand raised by the assessing authority, filed appeal before the first appellate authority on the ground that despite clear cut findings and direction of the Hon'ble Apex Court in its (dealer's) case as well as other similar cases, where the local sales tax had already been paid in other States and the same yet to be refunded to the dealer-assessee through agents/branches, tax levied on the turnover by the assessing authority without affording sufficient time to furnish 'C' form was unlawful. Further, the non-acceptance of 'C' forms for discrepancy in the amount mentioned therein and the statement of sale due to changing over of accounting procedure to system based including the rectified Form-C, by the assessing authority was illegal and arbitrary. Learned first appellate authority considering the submissions put forth by the learned Counsel for the dealer and the materials on record, observed that the assessing authority had allowed sufficient time to the dealer, but it could not be able to furnish the required statutory Form-C and not even before the appellate authority in course of appeal hearing, as a result, he upheld

levy of State tax on the inter-State transactions not supported by Form-C. Since the dealer-assessee failed to produce evidence with regard to the different amount mentioned in the 'C' forms as well as the rectification made in 'C' form having not been done by the purchasing dealer, learned first appellate authority upheld the tax levied by the assessing authority. Consequently, the appeal was dismissed thereby confirming the demand raised on that account.

4(b). Similarly, in the assessment proceeding u/r. 12(4) of the CST (O) Rules for the period 2004-05, the assessing authority found the transfer of stock worth ₹7,22,66,634.00 out of total claim of stock transfer at ₹14,45,59,475.00 by the dealer-assessee meant for supply to the subsidiaries of CIL by the consignment agents/depot of the dealer, were inter-State sales falling u/s. 3(a) of the CST Act. Learned assessing authority, as observed in the assessment for the period 2002-03, disallowed the claim of stock transfer to the tune of ₹7,22,66,634.00 and levied tax with surcharge @ 13.2% as per Section 8(2)(b) of the CST Act. The GTO was determined at ₹23,33,07,457.00 and after allowing deductions of ₹31,15,546.00, ₹6,69,57,740.00 and ₹40,55,635.00 towards freight charges, export sales and STC

respectively, the NTO was determined at ₹15,91,78,536.00, which was taxed @ 4% on ₹7,96,72,422.00 and @ 13.2% on ₹7,95,06,114.00. Thus, the total tax was calculated at ₹1,36,81,704.00 and as the dealer-assessee had already been paid ₹40,76,186.00, the balance amount of ₹96,06,518.00 was raised on it. The dealer-assessee being aggrieved with such demand raised by the assessing authority, preferred appeal before the first appellate authority who also upheld the assessment taking similar view as taken for the assessment period 2002-03, and dismissed the appeal.

5. The dealer-assessee being further dissatisfied with the orders of the forums below for both the periods, preferred the present second appeals mainly on the ground that it was not given reasonable opportunity to collect and submit the statutory declaration forms before the forums below while making assessment against it (dealer-Company). The learned Counsel for the dealer-Company challenging the impugned orders of the forum below vehemently urged that the Company did not get adequate time to submit statutory forms in respect of amount of inter-State sales, which were disallowed by the forums below on account of non-production of statutory forms. The valuable

right of the dealer-Company cannot be taken away without giving it the adequate opportunity to produce the statutory forms to substantiate its claim of concessional rate of tax. He submitted to set aside the impugned orders of the forums below and remand the matters back to the assessing authority in order to enable the dealer-Company to produce the statutory declaration forms.

6. Per contra, the learned Standing Counsel (CT) for the revenue refuting the contentions raised by the learned Counsel for the dealer-Company vehemently urged that the amount in respect of which statutory forms could not be furnished were taxed at the appropriate rate. The dealer-Company having been given adequate opportunity before the forums below, no further opportunity should be given to it. He submitted to dismiss the appeals having no merit.

7. We have heard the rival submissions of the parties, gone through grounds raised in the 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 orders for both the periods are challenged is that the dealer-Company was not given adequate opportunity to produce the declarations in form 'C' in order to avail

concessional rate of tax in respect of inter-State sales. The present second appeals are of the year 2011-12 and pending before this forum since last ten years. In course of hearing the appeals, the dealer-Company could not submit any statutory forms before us to show that such documents are available with it. If at all, the contention raised by the learned Counsel for the dealer-Company is accepted that it was not given adequate opportunity to submit the statutory declaration forms in order to claim concessional rate of tax, it could have produced those documents before this Tribunal. When the dealer-Company could not collect the relevant documents within fourteen years from the date of initiation of the assessment proceeding against it, remanding the matters back to the assessing authority to enable the dealer-Company to produce such declaration forms would be wastage of valuable time and abuse of the process of this Tribunal. The dealer-assessee having failed to produce the relevant documents within last fourteen years of the initiation of the proceeding, no further opportunity can be given to him. On perusal of the impugned orders of the first appellate authority, we are of the view that it has rightly confirmed the tax demands raised by the assessing authority. There is no illegality or impropriety in such

findings of the forums below warranting interference of this Tribunal.

8. For the foregoing discussions, the second appeals filed by the dealer-assessee for the periods 2002-03 and 2004-05 stand dismissed being devoid of any merit and the impugned orders of the forums below are hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

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

I agree,

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