

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 41 (C) of 2019

(Arising out of order of the learned Additional CST (Appeal), South Zone,  
Berhampur in Appeal Case No. AA (CST) 01/2018-19  
disposed of on dated 29.08.2018)

Present: Shri R.K. Pattanaik,  
Chairman

M/s. Hanuman Cotton Industries,  
At- Komatlapeta, Dist. Rayagada ... Appellant

-Versus-

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

For the Appellant : Sri J. M. Pattanaik, Advocate  
For the Respondent : Sri D. Behura, Standing Counsel (CT)

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Date of hearing: 03.03.2021 \*\*\*\*\* Date of order: 06.04.2021  
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**ORDER**

The dealer assessee preferred the Instant appeal in terms of Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') questioning the legality and judicial propriety of the impugned order dated 29.08.2018 promulgated in Appeal Case No. AA (CST) 01/2018-19 by the learned Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, 'FAA'), who declined to interfere with the order of assessment dated 30.12.2017 directed under Rule 12(1) of the Rules by the learned Deputy

Commissioner of Sales Tax, Rayagada Circle, Rayagada (hence called 'AA') for tax periods 01.04.2013 to 31.03.2015 on the grounds inter alia that it is illegal, arbitrary and thus, liable to be set aside.

2. The dealer assessee is a partnership concern and engaged in the processing of raw cotton and its sale inside and outside the State. Its contention is that sufficient opportunity was not provided to submit and also replace declarations in Form-C; ITC was not adjusted with CST payable which contravened Section 20(3)(d) of the OVAT Act, 2004; and levy of interest was illegal, morefully when, surplus non-adjusted ITC was lying idle with the Revenue. The State, on the other hand, filed a cross-objection and contended that sufficient opportunity to submit statutory declaration forms was provided to the dealer assessee and that apart, no documentary evidence was produced vis-a-vis adjustment of ITC against CST payable and respecting levy of interest, it is automatic and by operation of law from the date on which tax was required to be paid.

3. The FAA in the back ground of facts that the purchasing dealers received the goods in the month of April and referring to Rule 12(1) of the CST (R&T) Rules, 1957 reached at a conclusion that spreading over transactions in absence of separate declaration cannot be accepted and on that premise, was not inclined to disturb the finding of the AA regarding rejection of declaration forms. It was also observed that the dealer assessee did not explain vis-a-vis deduction of ITC before assessment and it was not evidenced during the pendency of appeal and therefore, was again not persuaded to accept the contention on ITC.

4. It is contended that as regards rejection of 'C' forms valued at ₹20,18,346.00, the transactions relating to inter-State sales stand proved, inasmuch as, necessary evidence including affidavits were filed by clarifying that the dates were mistakenly noted therein as against the invoices. It is also contended that the AA for the other tax periods allowed set off on the ground that excess adjustment of ITC is legally acceptable to the extent CST payable as per proviso (d) of Section 20(3) of the OVAT Act, 2004. The learned Counsel for the dealer assessee also produced copies of orders of assessment besides affidavit in support of the contention raised, as above.

5. The FAA dismissed the claim of the dealer assessee and rejected 'C' forms due to want of declaration or certificate in respect of goods delivered in separate quarters referring to Rule 12(1) of the CST (R&T) Rules, 1957, whereas, the contention is that there were only mistakes apparent in the forms comparing the invoices which was clarified by way of affidavits. It has been made to suggest by the dealer assessee that the transactions in question are related to the month of March, 2015 and thus, relating to the period 2014-15 and not beyond, the fact which was not properly considered by the authorities below despite filling of affidavits. Under the above circumstances, the Tribunal is of the considered view that the aforesaid aspect of the matter needs re-examination considering the materials on record. The Tribunal is also of the humble opinion that the dealer assessee should once again be provided an opportunity to substantiate deduction and adjustment of ITC to the tune of ₹6,38,358.00 as against the ITC allowed for ₹2,55,344.00 towards CST

payable. But, on interest part, the Tribunal is of the firm view that in the event of failure to submit declaration forms, it must have to be levied in view of Rule 8(2) of the Rules as the differential tax is to be assumed as the tax due payable as per law.

6. Hence, it is ordered.

7. Thus, the appeal stands partly allowed. As a logical sequitur, the impugned order dated 29.08.2018 passed in Appeal No. AA (CST) 01/2018-19 is hereby set aside to the extent as aforesaid. Consequently, the matter is sent back to the AA for the purpose of computation as to tax liability vis-a-vis the dealer assessee for the tax periods 01.04.2013 to 31.03.2015 after taking into account the materials so far been produced by the dealer assessee and to pass appropriate order in accordance with law, preferably, within a period of three months from the date of receipt of the above order. The cross-objection filed by the State is disposed of accordingly.

Dictated & Corrected by me

Sd/-  
(R.K. Pattanaik)  
Chairman

Sd/-  
(R.K. Pattanaik)  
Chairman