

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

S.A. No. 79 (C) of 2010-11

(Arising out of order of the learned DCST, Sundargarh Range,
Rourkela in First Appeal Case No. AA- 21 (RL-II-C)
of 2009-10, disposed of on dated 31.08.2010)

Present: **Shri A.K. Das, Chairman**
Shri A.K. Dalbehera, 1st Judicial Member
&
Shri S. Mishra, Accounts Member-II

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

-Versus-

M/s. Arihant Casting,
Chikatamati, Kalunga, Sundargarh ... Respondent

For the Appellant : Sri D. Behura, SC (CT)
For the Respondent : Sri D. Pati, Advocate

Date of hearing: 21.06.2021 *** Date of order: 02.07.2021

O R D E R

The State being represented through the
Commissioner of Sales Tax, Odisha preferred this appeal
assailing the order dated 31.08.2010 passed in First Appeal
Case No. AA- 21 (RL-II-C) of 2009-10 by the learned Deputy
Commissioner of Sales Tax, Sundargarh Range, Rourkela
(hereinafter called as 'first appellate authority') thereby
allowing the appeal and reversing the order of assessment

dated 10.11.2009 passed by the Asst. Commissioner of Sales Tax, Rourkela-II Circle, Panposh (in short, 'assessing authority') u/r. 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the assessment period 01.07.2006 to 30.06.2008 raising a demand of ₹61,03,932.00.

2. The facts and circumstances of the case leading to the filing of present appeal are that the dealer-respondent is engaged in manufacturing and sale of C.I. casting like grinding media ball and cylperbs and trading in iron and C.I. scrap etc. The dealer purchases and sells both inside and outside Odisha. The assessment proceeding was initiated against the dealer on the basis of Audit Visit Report (in short, 'AVR') submitted by the Audit Team, Sundargarh Range, Rourkela. The assessing authority on verification of the books of account produced by the dealer found that it had effected total sales of ₹3,37,00,343.00 in course of inter-State trade and commerce against declaration in Form-C at the concessional rate of tax. But the dealer failed to submit the requisite declaration in Form-C before the assessing authority for which he taxed the turnover at the appropriate rate and calculated tax of ₹24,82,379.68. After allowing

adjustment of ₹6,74,006.40 towards ITC u/s. 21(1) of the OVAT Act, raised an extra tax of ₹18,08,373.28 on which interest was levied for ₹6,78,811.88 u/r. 8(1) of the CST (O) Rules. The assessing authority also imposed penalty of ₹36,16,746.56 u/r. 12(3)(g) of the CST (O) Rules.

2(a). The dealer-respondent challenged the order of the assessing authority raising tax demand of ₹61,03,392.00 and filed appeal before the first appellate authority, who set aside the impugned order of the assessing authority, deleting imposition of penalty and interest charged on the dealer. The first appellate authority further held that after adjustment the dealer-assessee is to pay the balance amount of ₹0.86 or say ₹ Nil. The State being aggrieved with the order of the first appellate authority filed the present second appeal.

3. The learned Standing Counsel (CT) challenging the impugned order passed by the first appellate authority vehemently urged that the first appellate authority incorrectly applied the rate of tax @ 2% u/s. 8(1) of the CST Act, 1956 in respect of transaction of inter-State sales effected during the period from 01.07.2006 to 30.06.2008. The period of assessment covers pre-amendment as well as

post-amendment of Section 8(1) of the CST Act by virtue of the Taxation Laws (Amendment) Act, 2007 which came into force from 01.04.2007. The rate of tax was 4% prior to amendment and after amendment it was reduced to 3%. The Central Government further reduced the rate of tax from 3% to 2% w.e.f. 01.06.2008 vide Gazette of India Extraordinary No. 745 dated 30.05.2008. The first appellate authority without properly examining the law regarding the rate of tax applicable to the transactions effected by the dealer-respondent during the assessment period 01.07.2006 to 30.06.2008, calculated tax at concessional rate of 2%. He further argued that the notification under which the dealer desires to claim concessional rate of tax and certificate issued by DIC in his favour was within the knowledge of the dealer-respondent, but it did not place the relevant materials before the authorities below. So, the status of the dealer whether it is Small Scale Industrial Unit or not is essentially dependent on the fact finding by the authorities below after due enquiry. The certificate issued by the DIC, Rourkela having not been produced before the authorities below, he has got no right to produce the new material before this appellate forum. He submits to deny the dealer-

respondent the concessional rate of tax @ 2% which the Small Scale Industrial Units are entitled to. The certificate produced by the dealer-respondent also shows that it is a tiny enterprise for which it is not entitled to the benefit of concessional rate of tax @ 2% which the Small Scale Industrial Units are entitled to. The order of the first appellate authority is illegal, arbitrary and against the sanction of law for which the same needs to be interfered with by this Tribunal and to restore the order of the assessing authority.

4. The learned Counsel for the dealer-respondent resisting the contention raised by the learned Standing Counsel (CT) for the State in terms of cross-objection filed by it submitted that the State is estopped to dispute the status of the dealer-respondent as for the previous assessment period the dealer was held to be Small Scale Industrial Unit and tax was calculated @ 2% as applicable to Small Scale Industries. The first appellate authority was correct in its approach in accepting the contention raised by the dealer-respondent and setting aside the impugned order of the assessing authority. There is no

illegality or impropriety in the impugned order of the first appellate authority warranting interference of this Tribunal.

5. We have heard the learned Counsel for the parties and have gone through the materials on record. In view of the rival contention of the parties, the only dispute for determination in the present second appeal is whether the first appellate authority was correct in its approach in applying rate of tax @ 2% u/s. 8(1) of the CST Act. In course of argument, the learned Counsel for the parties fairly conceded if the dealer-respondent is held to be a Small Scale Industries, he is entitled to the benefit of concessional rate of tax @ 2% in view of the Finance Department Notification No. 14700-CTA-37/2001(pt)-F (SRO No. 160/2001), dated 31.03.2001 read with Finance Department Notification No. 26867-CTA-87/2005-F (SRO No. 334/2006), dated 16.06.2006. The learned Counsel for the dealer-respondent to substantiate his claim that his industry is a Small Scale Industrial Unit filed certain documents such as Notifications dated 31.03.2001 and 16.06.2006, Permanent Registration Certificate issued by the DIC, Rourkela along with an application u/r. 102 of the OVAT Rules to adduce those documents as additional evidence. The learned Counsel for

the appellant did not dispute the documents filed by the dealer-respondent. He only in course of argument challenged the right of the respondent to file documents as additional evidence at the second appellate stage. There is no dispute that the documents filed by the dealer-respondent are vital documents for effective adjudication of the dispute between the parties. It is also settled position of law that if the document sought to be produced as additional evidence is relevant for effective adjudication of the dispute, the Court should take the same into consideration even at the appellate stage for effective adjudication of the dispute and pronouncement of the judgment in a better manner. In the present appeal, the appellant would not be prejudiced in any manner if the documents filed by the dealer-respondent are accepted as the genuineness of those documents are not in dispute. Accordingly, the application for additional evidence is allowed and the documents so filed by the dealer-respondent are accepted as additional evidence.

In the first page of the certificate issued by the DIC, Rourkela it has been mentioned that M/s. Arihant Casting is a Small Scale/Tiny Unit and the second page of

the certificate shows that the authority issuing the certificate, certified the Industrial Unit of the dealer as Tiny enterprise. The Industrial Unit which is a Tiny enterprise is small than the Small Scale Industrial Unit. Therefore, the concessional rate of tax which the Small Scale Industrial Units are entitled to is also applicable to Tiny enterprise. Moreover, the assessment order filed by the dealer-respondent for the assessment year 2005-06 shows that the STO, Rourkela-II Circle, Panposh held the industrial unit of the dealer-respondent as Small Scale Industrial Unit and accordingly imposed the tax on it. On being queried from the Standing Counsel (CT), he submitted that this order of the assessing authority has not been challenged in higher forum. Once the dealer is assessed to tax holding it as Small Scale Industrial Unit, his status cannot again be disputed. The State is estopped to deny the benefit of concessional rate of tax which is applicable to Small Scale Industrial Unit as per Finance Department Notification No. 14700-CTA-37/2001(pt)-F (SRO No. 160/2001), dated 31.03.2001 read with Finance Department Notification No. 26867-CTA-87/2005-F (SRO No. 334/2006), dated 16.06.2006. The contention raised by the learned Standing Counsel (CT) for

the appellant is negated in view of the assessment order of the assessing authority for the year 2005-06 and the Permanent Registration Certificate issued by the DIC, Rourkela in favour of the dealer-respondent. The appellate authority has rightly assessed the tax at the concessional rate of 2% which is applicable to small scale industrial unit. There is no illegality or impropriety in such order of the first appellate Authority.

6. In view of the discussions made above, the appeal being devoid of merit, the same stands dismissed. The order of the first appellate authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

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