

BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 16(C)/2007-08

(Arising out of the order of the learned ACST, Sundargarh Range, Rourkela in first appeal Case No. AA35(RL-II)C 2006-07 disposed of on 22.11.2006)

Present :- Shri A.K. Dalbehera, Smt. Sweta Mishra, & Shri S. Mishra,
1st Judicial Member 2nd Judicial Member Accounts Member-II.

M/s Meena Electrical and Electronics,
Main Road, Rajgangpur.

..... Appellant.

-Vrs.-

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

..... Respondent.

For the Appellant:

: None

For the Respondent:

: Mr. S.K. Pradhan, Addl.S.C.(C.T.)

-----**Date**
of Hearing : 24.03.2021 * Date of Order : 15.04.2021**

ORDER

The present appeal of the dealer-appellant has been directed against the impugned appeal order of learned Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as ld. FAA) passed on 22.11.2006 in Sales Tax Appeal No.AA35(RL-II)C 2006-07 reducing the extra demand of Rs.10,49,013.00 raised by learned Sales Tax Officer, Assessment Unit, Rajgangpur (hereinafter referred to as LAO) in his assessment order passed on 28.03.2006 framed u/r. 12(4) CST (O) Rules for the year 2003-04 to Rs.50,882.00 that includes both tax and surcharge.

2. Being aggrieved by the impugned order of Id. FAA, the dealer appellant has preferred second appeal before the Tribunal contending that the first appeal order is illegal, arbitrary and bad in law. He challenged the aforesaid order on the following grounds:-

“That, the appellant M/s. Meena Electrical & Electronics, Main road, Rajgangpur, RL-II-C/R-434 trades In Electrical Motors and other electronic goods.

That, in course of assessment U/r. 12(4) of the C.S.T. (O) Rules 57 the dealer appellant could not provided with sufficient opportunities to produce required statutory forms in support of claim of tax exemption sales U/s.6(2) of the C.S.T. Act, 56 for which Rs.10,49,013.00 was raised.

That, the appellant was not able to collect the statutory forms from the companies for commission & profit related disagreements with the mother companies i.e. M/s. Crompton Grieves, (Baroda), M/s. Greaves Cotton Ltd, Falta, W.B. And for transformation of M/s. Shristi Ispat to M/s. Scan Steel Ltd the company was too busy in the process to issue any forms.

That, in the mean time all the difference & difficulties have been settled and the appellant has finalized the disputes with the companies and received all the statutory forms covering the entire amount of 6(2) sales for Rs.,79,47,070.00.

That, the appellant has furnished all the statutory declaration E-1 forms covering an amount of Rs.76,13,511.94 of the Companies outside the State who had first moved the goods in course of interstate trade and commerce under the condition of section 6(2) of the C.S.T. Act, 56. Accordingly, the appellant has provided required numbers of Form ‘C’ to them as against form E-1. Hence there is no irregularity in these transactions.

That, in the subsequent stage, the dealer appellant has naturally sold the goods at a higher price which includes the transporting charges and other incidental charges with own profit and accordingly has collected Form “C” over the selling amount Rs.79,47,070.77 and furnished to the

First Appellate Authority. The Learned Appellate authority did not accept the claim of entire exemption and taxed the differential amount of Rs.3,85,469.79 with a wrong notion not being covered Form E-1 vide 1st Appeal Case No. AA 35 (RL-II-C) 2006-07 which is basically wrong & ultra vires the real provisions of section 6(2) of the C.S.T. Act, 56 and debarring the appellant from its legitimate claim of tax exemption.

That the ld. 1st appellate Authority did not apply his mind as to how the E-1 Forms could cover the selling price of the appellant when the entire purchases covered under Form “E-1” of the selling dealers outside the state who 1st move the goods. The humble appellant has duly obtained such E-1 Forms from the supplying dealers and has obtained required “C” from its purchases and produced before the appellate Authority who should have allowed the tax exemption as claimed.

That, sustention of extra demand in the first appellate forum is bad in law and liable for rejection.”

3. The brief fact of the case is as follows:-

- i. That, in the instant case, the dealer-appellant carries on business in trading in TV, electrical fans, home appliances, washing machines and other electronic goods and effects 6(2) sales under the CST Act. On verification of the books of accounts, the ld. STO observed that the appellant failed to furnish required declarations and forms in respect of sales effected under the CST Act as per sec 6(2) of the Act in spite of reasonable opportunity accorded to him. Accordingly, the ld. STO completed the assessment to the best of his judgment on the materials available on record. After verification of returns filed together with books of accounts produced, he determined the GTO/NTO at Rs.79,47,070.77 and in the absence of any statutory declarations, he taxed the above amount @12% with levy of surcharge @10% on the tax so calculated, resulting in a total demand of Rs.10,49,013.00
- ii. That, being aggrieved by the order of assessment the dealer-appellant preferred first appeal before the ld. FAA and submitted ‘C’ forms for Rs.79,46,070.31 and E-1 declarations for

Rs.75,60,600.52 in respect of his claim of 6(2) sales under the CST Act. The Id. FAA found these forms as in order. However, since the appellant could not produced required forms for Rs.3,85,469.79 (Rs.79,46,070.31-Rs.75,60,600.52), he taxed it @12% with levy of surcharge of 10% on the tax so calculated resulting in a total demand of Rs.50,882.00.

- iii. Being further aggrieved, the dealer-appellant has come up before the Tribunal assailing the order of Id. FAA as unjust, improper and bad in law.
- iv. It is observed from the record that the second appeal filed by the dealer-appellant was admitted after rectification and accordingly cross objection was invited from opposite party vide letter no10840 dtd.09.07.2008 to which the opposite party complied. Thereafter, series of intimations and adjournments were made for hearing of appeal. In spite of sufficient and reasonable opportunities availed by the dealer-appellant, he failed to appear in his proceedings. Being left with no other options and as the case is lingering for the last almost 13 years, the case was heard and disposed of on exparte basing on the materials available on the record and hearing from the Id. Addl. SC for the Revenue-respondent.

The only factual dispute involved in this case warranting proper adjudication is :

“Whether, in the facts and in the circumstances of the case, the Id. FAA is justified in raising a demand of Rs.50,882.00 including surcharge for the material period against the contention of the dealer that such order is illegal, arbitrary and bad in law as per his grounds of appeal.”

4. In course of hearing on 24.03.2021, Shri S.K. Pradhan, Id. Addl. S.C. for Revenue –respondent vehemently argued in favour of order of Id. FAA and prayed for its sustenance as per cross objection filed.

It is observed from the grounds of appeal filed by the dealer-appellant that he has submitted declaration forms E-1 for Rs.75,60,600.52 and C forms for Rs.79,46,070.31 which were accepted

by the Id. FAA, being in order. He has contended therein (grounds of appeal) that the total amount in the C forms received from the ultimate buyers in his subsequent sale will naturally be higher than the total amount shown in E-1 form received from the first sellers to him in 6(2) transaction as he has included transporting charges and other incidental charges with own profit. Accordingly, he has prayed for rejection of demand raised by the Id. FAA in his order.

For the sake of justice and equity, it will be prudent to quote the relevant provisions of the Statute i.e. section 6(2) of the CST Act prevailing during the impugned period :

Section 6(2):

“(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(A) To the Government, or

(B) To a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of Section 8:.....”

5. In consonance with the above provisions of the statute, it is observed that in the instant case, the dealer-appellant purchased goods

from outside the State for its 6(2) sale and thereby received E-1 Forms for Rs. 75,60,600.52 and has submitted C forms to its respective sellers for equal amount. It has made subsequent sale during such movement of goods by transfer of documents of title of such goods to registered dealers outside the State amounting to Rs.79,46070.31 against which he has received all the C forms from the ultimate purchasers. Naturally, the total amount of C forms received by the dealer-appellant from its ultimate purchasers will be higher than the E-1 Forms received by him from its first sellers as he has to add his own profit with other incidental charges for such 6(2) sale. It is further observed that at no point of time the dealer-appellant has received the goods and has made subsequent inter-State sales. Moreover, the ld. FAA in his order has admitted that all the E-1 and C forms furnished by the dealer-appellant are in order. This being a clear cut case of transactions made u/s. 6(2) of CST Act, the appeal filed by the dealer-appellant needs to be allowed in full and the demand raised by the ld. FAA needs to be reduced to Rs. Nil.

6. Hence it is ordered. The appeal is allowed in full and the demand raised by the ld. FAA is reduced to Rs. Nil. Cross objection filed by the respondent-State is disposed of accordingly.

Dictated & Corrected by me.

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

I agree,

I agree,

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

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

Sd/-
(Sweta Mishra)
2nd Judicial Member.