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

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

S.A.No.77(C) of 2006-07

(Arising out of the order of the learned ACST (Appeal), Sundargarh Range, Rourkela, in First Appeal Case No. AA 97(RL II-C) 2005-2006, disposed of on dtd.31.05.2006)

M/s. D.V. Steels Industries (P) Ltd.,
Mandiakudar, Sundargarh. ... Appellant

- V e r s u s -

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

S.A. No. 86(C) of 2006-07

(Arising out of the order of the learned ACST (Appeal), Sundargarh Range, Rourkela, in First Appeal Case No. AA 97(RL II-C) 2005-2006, disposed of on dtd.31.05.2006)

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

- V e r s u s -

M/s. D.V. Steels Industries (P) Ltd.,
Mandiakudar, Sundargarh. ... Respondent

For the Dealer : N o n e
For the Revenue : Mr. D. Behura, S.C.

Date of hearing: 22.03.2021 *** Date of order: 31.03.2021

O R D E R

As both the appeals bearing S.A. No. 77(C) of 2006-07 and S.A. No. 86(C) of 2006-07 arose out of the self-same order, both are disposed of by this common order.

2. S.A. No. S.A. No. 77(C) of 2006-07 has been preferred by the dealer whereas S.A. No. 86(C) of 2006-07 has been preferred by the Revenue against the order dtd.31.05.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA 97(RL II-C) 2005-2006, wherein and whereby he reduced the tax demand to Rs.16,01,279.00 from Rs.24,45,834.00 as raised by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, the learned STO) in an assessment u/r.12(4) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, CST(O) Rules) for the assessment period 2003-04.

3. The brief facts of the case are that, the dealer is a wholesaler of iron and steel. The dealer during the material period was found to have effected sale of goods in course of interstate trade and commerce for Rs.13,46,80,825.00 to registered dealers against 'C' declaration form. The respondent-dealer could be able to furnish declaration form 'C' for an amount of Rs.10,41,07,903.00 against first point tax paid iron and steel which has been accepted by the learned STO but failed to furnish such forms amounting to Rs.3,05,72,922.00.

On the basis of the aforesaid facts, the learned STO determined the GTO at Rs.13,46,80,825.00. The learned STO after allowing deduction of Rs.10,41,07,903.00 towards first point tax paid goods, he determined the NTO at Rs.24,45,834.00. The said amount of Rs.24,45,834.00 was to be paid by the dealer as nothing was paid earlier.

4. Being aggrieved by the order of the learned STO, the dealer preferred an appeal before the learned ACST who after thorough analysis reduced the demand to Rs.16,01,279.00 and also passed order that the excess tax paid, if any, be returned to the dealer as per the provisions of law.

No cross objection has been filed from either side.

5. The dealer in S.A. No.77(C) of 2006-07 has mainly come up with the ground that the learned ACST should have allowed reasonable opportunity to the dealer for submission of wanted declaration forms. The dealer further contended that it collected the wanted 'C' forms which may be accepted.

6. The Revenue as appellant has come up with the second appeal vide S.A. No.86(C) of 2006-07 on the grounds that the order of the learned ACST reducing the assessment is against the provision of law, erroneous as such and not maintainable under law; that the learned ACST erred in allowing deduction; that the respondent-dealer had not furnished 'C' declaration forms and as such is not entitled for deduction as tax free sale; that the order of the learned ACST is liable to be quashed and the order of the learned STO is to be restored.

7. Heard the learned Addl. Standing Counsel for the Revenue. The dealer did not participate in the hearing for

which the matter was heard exparte but on merit. Perused the materials available on record so also the orders of both the fora below. We also perused the grounds taken in both the appeals. Although the dealer has come up with the ground that it was not provided with the opportunity to produce the 'C' declaration forms and that it had collected the wanting declaration forms, but failed to produce the same before this Tribunal. Without reasonable excuse the dealer also failed to participate in the hearing. Thus the grounds taken by the dealer are baseless. On perusal of the materials available on record it is necessary to refer to the order of the Full Bench of this Tribunal vide S.A. No.193(C) of 2006-07 disposed of on dtd.16.06.2020. The facts of the said case of the Full Bench of the Tribunal is similar to the facts and circumstances of both the appeals. In the said case the sole question to be determined was that whether the dealer can apply for exemption without 'C' form when the amendment to Section 8(5) was enforced w.e.f. 11.05.2002 on the ground that the dispensing with of the condition was in vogue and survived till 13.10.2003? The details of the findings of the said case are narrated in the following paragraphs.

8. So far as the present case is concerned, in the humble view of the Tribunal, the amendment to Section 8(5) of the Act came into force which made a condition, such as, production of 'C' form universally applicable and in so far the State Government is concerned, it simply attuned itself to bring it in conformity with law and to clarify the position that earlier there was an exemption, which by virtue of amendment to Section 8(5) of the Act was deleted, which means, non-

production of 'C' form which was previously allowed was no more available making it mandatory for the dealers to comply Section 8(4) of the Act. A law which has been enforced by an amendment and later on, a rebate which was granted earlier, if sought to be enforced, notwithstanding the fact that it stood omitted, it would lead to a chaos. Originally, the Act delegated an authority to State Government without any condition, either to exempt tax or levy a tax at a lower rate, but then vide notification of 1991, some conditions were brought forth for claiming the benefit under Section 8(5) of the Act and one of the conditions was to furnish 'C' form which was subsequently omitted in 1994 by a notification and that very condition was incorporated therein vide Finance Act 2002 and that under such circumstances, there is no escape from the conclusion that such a condition shall have to be mandatorily complied with by all the dealers who are involved in selling of goods in course of inter-State trade or commerce. It is also to be concluded that the concessional rate of tax in respect of goods or classes of goods or persons or classes of persons and to what extent and manner still is the prerogative of the State Government, which has not been taken away on account of the amendment to Section 8(5) of the Act. So, the contention that even after Section 8(5) was amended in 2002, the appellant was entitled to exemption without furnishing 'C' form till 13.10.2003 is totally unacceptable. The latter notification of 2003 is just a confirmation to the change in law so as to bring it in harmony vis-a-vis Section 8(5) of the Act with the condition and compliance of sub-section (4) thereof and according to the Tribunal, the compliance is mandatory

and it is with effect from 11.05.2002. In the instant case, the appellant submitted some 'C' forms before the authorities below and at the same time, attempted to evade it taking a plea that such compliance is not to be insisted upon since the notification was brought in October, 2003 which deserves no consideration.

9. As to the source of power for the State Government to grant concession or allow tax at a concessional rate, it is derived from the Act itself. Such exercise of authority under Section 8(5) of the Act granting concessions in tax with respect to goods or classes of goods and/or for persons or classes of persons cannot be independent of the conditions emanating therefrom. In other words, exercise of power allowing concessions in terms of Section 8(5) is always subject to the conditions of the Act. Being a Central Act, power to amend it always lies with the Government of India. In exercise of such power, the Government of India introduced the Finance Act 2002 in order to amend certain provisions of the Act which included Section 8(5). According to the Tribunal, later to the amendment to the Act under the Finance Act 2002, the State Government is duty bound to follow the conditions and exercise the power consistent with it and not in derogation thereof. In fact, the power so delegated to the State Government is always subject to the condition appearing in Section 8(5) of the Act. The State Government cannot go behind or override the Act which imposes conditions for fulfilling the tax liability. Any such attempt to do is certainly to make the amended law nugatory. To the extent, it can be said that the State Government cannot overlook the change in law

and act in contrast and for that matter, certainly lacked or is denuded of its competence to dispense with the condition incorporated in Section 8(5) of the Act. In view of the discussion above, it has to be held that the condition to furnish 'C' form in accordance with Section 8(5) of the Act is, clearly and in unequivocal term, mandatory and by no stretch of imagination, the same can be dispensed with not even by an act of the State Government. It is stated that grant of concessions or otherwise is always be the prerogative of the State Government, but then, such an authority is subject to the provisions of the Act and not divorced thereof.

10. The Act and some of its provisions stood amended by the Finance Act 2002 and it is prospective with immediate effect. The operation of the law cannot be suspended animation on the ground that a consequential notification to follow suit, when the State Government is at liberty to do so or otherwise. Obviously, earlier arrangement under the unamended law cannot be given effect to once the new law has come into force with a plea that the State Government is to issue a notification in respect thereof. Any such attempt either to suspend the law or to discontinue its applicability on whatever ground, it would destroy the spirit as well as intent and purpose of the law. From any angle appreciated, the only conclusion which is deducible is that the amendment to Section 8(5) of the Act is prospective in nature and with immediate effect and not dependent on any act of the State Government.

11. In the view of the Tribunal, with a specific purpose, the Bill was introduced and ultimately, enforced as a law vide

the Finance Act, 2002 in order to withdraw the powers of the State Governments to dispense with submission of 'C' forms. The concessional power of the State Government, as earlier discussed, still remains and the amendment to Section 8(5) of the Act is only to withdraw the power dispensing with requirement of 'C' forms, which means, it is an amendment to the extent indicated above. In this regard, the statement and object of the Bill can be gone into to appreciate the purpose and legislative intent vis-a-vis amendment to Section 8(5) of the Act. A condition which is purposefully withdrawn, its effect cannot be denuded by taking refuse to issuance of a notification. Any such attempt would be to demean the effectiveness of the law designed for a specific purpose on the ground that publication of a notification is awaited. If that be so, the very purpose for which the law was amended can easily be frustrated or defeated. Even, no such intention on the part of the State Government with a plea of a notification to emerge on the anvil of amended law can even be attributed. Any such interpretation would undoubtedly to make the law totally redundant.

12. The later notification of 2003 may be held as clarificatory in nature. However, at times it is also felt that there lies no need of carrying such a view to justify the said notification. The delay in issue of notification of 2003 is albeit unexplainable, but it should not be related to the amendment of 2002 by assigning such a reason that it to be merely a clarification. Whether, a notification is published or not, in the considered opinion of the Tribunal, it is hardly to affect the enforceability of the law. It means enforceability of the Act

with the amendment is not dependent on the publication of a notification at a later point of time. In that sense, an alternative argument of the Tribunal could be, there is absolutely no need for any harmonious reading, or to justify delay in publication of notification and to treat it as a clarification so as to defeat incongruity.

13. In the view of the aforesaid findings of the Full Bench of this Tribunal which are squarely applicable to the facts and circumstances of the present cases we hold that there is merit in the appeal preferred by the State but the appeal preferred by the dealer is devoid of any merit. Hence, it is ordered.

14. The appeal preferred by the State is allowed and the impugned order of the learned ACST is hereby set aside. Resultantly, the order of the learned STO is upheld. At the same time the appeal preferred by the dealer is dismissed being devoid of any merit.

Dictated & corrected by me,

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

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

I agree,

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

I agree,

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