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

S.A. No. 1990/2005-06

(Arising out of the order of the learned ACST, Sundargarh Range, Rourkela in first appeal Case No. AA 503 (RL-II) 2003-04 disposed of on 30.11.2005

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

M/s Omkar Steels (P) Ltd.,
F/9, Civil Township, Rourkela. ..... Appellant.

-Vrs.-

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

For the Appellant: : None
For the Respondent: : Mr. D. Behura, S.C.(C.T.)

Date of Hearing : 12.04.2021 * Date of Order : 18.05.2021**

O R D E R

The present second appeal of the dealer-appellant has been directed against the impugned order of learned Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as Ld. FAA) passed on 30.11.2005 in First Appeal case No. AA 503(RL-II) 2003-04 who upheld the demand of Rs.3,68,252/- raised by Sales Tax Officer, Rourkela-II Circle, Panposh (hereinafter referred to as LAO) in his assessment order passed on 06.02.2004 passed under section 12(4) of the OST Act for the assessment year 2002-03.

2. Being aggrieved by the impugned order of ld. FAA, the dealer-appellant has preferred second appeal before this Tribunal contending

that the first appeal order is illegal, arbitrary and bad in law. He challenged the aforesaid order on the following grounds:-

a. "For that, the present order of 1st appeal under this 2nd appeal is not based on the facts and circumstances of the case.

b. For that, the impugned provisions of Note No.1 & 2 as per Finance Department Notification dated 31st March, 2001 vide S.R.O. No.149/2001 is contrary and inconsistent with section 5(1) , 8 9(B), 1 & 2, 2(a) of the Act and Rule 26-A (3) of Rule and hence illegal and invalid.

c. For that, the provisions contained in Note No.1 and 2 providing for grant of set off of Orissa Sales Tax paid by the manufacturing dealer relating to purchase of raw-materials and consumables only when such tax is collected by the selling dealer separately on the body of the bills amounts to unreasonable restriction as they are illegal, arbitrary and unconstitutional.

d. For that, the notification of the Finance Department consists of Note No.1 and 2, which deal with the matter relating to payability of sales-tax by the registered manufacturing dealer and further contains elaborate procedure for working of tax liability, which is beyond the scope of Section 5(1) of the Act and is exceeding its delegated power by making such provisions. Therefore, it is the lapses of the legislation's jurisdiction and is therefore, invalid.

e. For that, the provision to Section 8 provide that self same goods shall not be taxed at more than one point in the same series of sale of purchase by the successive dealers. Under the said provisions of law obligating the registered dealers to realize sales tax on the body of the bill by effecting the sale of goods, the registered dealers are therefore free if they so choose to realize appropriate amount of sales tax on the body of their bill so

as to pass on the incident of taxes to the purchaser. The condition envisaged in note no. 1 & 2 appended to the Schedule of Taxes in the impugned notification is therefore, bad in law, arbitrary and illegal.

f. For that, it is a settled rule of law as held by the various high Courts and Hon'ble Supreme Court that liability to pay sales tax in case of sale of notified first point goods rests with the first seller of notified goods in the State. The dealer claiming for deduction from payment of tax on the ground of sale of first point tax paid declared goods, in the present case iron and Steel being the first point tax paid declared goods in the State of Orissa, there is no scope for the manufacturer to show the tax paid by him on its purchase invoices, which has been happens in the instant case of the appellant. The of her registered dealer avail the benefit of set off when the raw-materials are purchased from SAIL, RSP, Rourkela, where the first Point tax has been levied on the body of the bill as per provisions of the Act but subsequent dealer on sale of such first point declared goods are prevented from realizing of further Orissa Sales Tax in respect of same goods under the impugned condition are restricted to avail the benefit of such exemptions being similar in such situation, violates Article 14 of the Constitution, which is arbitrary and excessive.

g. For that, the ld. Asst. Commissioner without going through the tit-bit of the notification and intention of the legislature in the above notification confirm the created formula adapted by the ld. STO as per his own sweet will to calculate the tax liability of the dealer-appellant which is a wrong method because even if for the sake of argument but not for admittance, the formula adopted by the ld. Sales Tax Officer has taken to be correct as per the above binding notification, the materials purchased by the appellant dealer from the second seller i.e. traders those who have

purchased materials from manufacturers like SAIL, RSP and sold the same back to back to the manufacturing Unit like the appellant-dealer i.e. direct and indirect purchase of material, the manufacturer manufacturing its finished goods and sold inside the State as well as outside the State, the benefit of set off of tax from the outside sale should not be reduced as per the formula of the Ld. Sales Tax Officer as because the raw materials purchased from the traders must have utilized in manufacturing process and from this outcome the finished product might have been sold in course of interstate trade and commerce. This part has been intentionally avoided by the Sales Tax Officer with the intention to raise huge demand. Otherwise the demand will be reduced substantial after proper calculation should have been done on the above formula. Which the ld. ACST has not taken any pain to go through its genuineness.

h. For that, the details of capital goods purchased by the dealer-appellant furnished in a separate statement as per Schedule 1 & 2 of the Orissa Entry Tax Act may be taken into consideration by this Hon'ble Forum and the tax liability may be fixed accordingly by reducing the actual demand raised by the ld. STO and confirm by the ld. ACCT.

i. For that, the demands raised for the material period as per the Finance Department Notification dated 31st March, 2001 as enumerated in detail in the facts of this grounds of appeal, which is a matter of sub-judice before the Hon'ble Orissa High Court. So, when the matter is sub-judice before the Hon'ble Orissa High Court the ld. ACST has no legal jurisdiction to dispose this appeal. But in the present case he has passed this order without caring the above matters which is illegal and misuse of power bestow to them. Keeping in view of the above facts and circumstances, this Hon'ble forum may be kind enough to consider the matter.

j. For that, the appellant-dealer craves leaves to add, alter or modify these grounds of appeal on or before its hearing."

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

That, the instant dealer-appellant runs an SSI Unit manufacturing M.S. Rods, Flats, angles etc. He purchases raw-materials and consumable both from inside and outside the State and sells its finished goods in intrastate and interstate transactions. It maintains purchase, sale and stock account. At the time of assessment the LAO observed that the dealer-appellant has disclosed his GTO and TTO at Rs. 2,14,95,637.42 and Rs.2,06,68,884.48 respectively which he accepted as the books of accounts are in order. He assessed him to tax at Rs.8,26,755.37. However, he observed that on the above tax payable amount, the dealer has paid no tax and availed set off to the extent of Rs.8,26,752.00 as tax paid purchases. On further examination, he observed that the dealer has paid tax on purchase of raw-materials to the tune of Rs.8,11,149.36. Against such allegation, the dealer stated that he has also purchased raw-materials from second sellers who purchased goods from SAIL, RSP, Rourkela by paying tax. However, referring to note 1 & 2 of List 'C' of Sales Tax Rate Chart as per F.D Notification No.14688/CTA/37/2001 dtd.31.03.2001 effective from 01.04.2001, he rejected the contention taken by the dealer. Accordingly, he determined & allowed set off of tax for Rs.4,58,503.54 and demanded the balance due of Rs.3,68,252.00 for the year 2002-03.

4. That, being aggrieved by the order of assessment, the dealer preferred first appeal before the ld.FAA and contended in hearing that set off of tax paid on purchase of raw-materials should be allowed irrespective of the fact that whether it has been collected separately on the body of the bill or not. In support of his argument, he produced copies of purchase invoices showing purchase of goods (raw-materials) as tax paid materials supported with the purchase invoices issued by the SAIL, RSP, Rourkela in favour of second sellers. On detail examination, the ld. FAA observed in his order as follows:

"..... Though it can be assumed that the goods sold by SAIL, RSP, Rourkela on collection of OST and ET were ultimately sold to the appellant by the intermediary dealer, yet it cannot be said that the appellant's seller i.e. M/s. Shree Om Industries, Rourkela has collected tax from the appellant separately on the body of the bills as required under the provision of law. Note-1 of List-C of the Sales Tax Rate Chart also speaks that (a) the amount of tax payable in respect of the goods in Sl. No.1,6,11 x x x x x x x x x x x x 183 & 186A shall be reduced by the amount of Orissa Sales Tax paid by the dealer on raw materials and consumables subject to tax on purchase turnover and/or tax collected from him by the selling dealer separately on the body of bill in respect of sale of raw materials and consumables subject to tax on sale turnover directly used in manufacture of such goods. Under the circumstances of the above discussed facts, the claim of the appellant is not acceptable because there is no piece of evidence regarding payment of tax by the appellant that has been collected by its seller has been collected separately on the body of the bill. This being the only point of dispute and finding that the set off that has been allowed by the learned STO is as per the provisions of law, this forum inclined to uphold the order of assessment."

That, being further aggrieved, the dealer appellant has come up before the Tribunal assailing the order of ld. FAA as unjust, improper and bad in law as per his grounds of appeal.

5. It is observed from the record that the second appeal filed by the dealer-appellant was admitted after rectification. Accordingly, notice was issued inviting cross objection by 16.03.2009. Thereafter, series of intimation and adjournment 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 option and as the case is lingering for the last almost 12 years, the case was heard and disposed of on ex-parte basing on the material available on the record and hearing from the learned Standing Counsel for the Revenue–respondent.

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

"whether in the facts and circumstances of the case, both the fora below are justified in raising a demand of Rs.3,68,252.00 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.

In course of hearing the ld. S.C. for Revenue-respondent vehemently argued in favour of order of Ld. FAA and prayed for its sustenance.

6. On examination of information available in the record, it is observed that the dispute relating to set off of tax involves in note 1 and note 2 of List 'C' of Sales Tax Rate Chart vide above FD Notification which was effective from 01.04.2001. In order to appreciate the crux of the issue, the said notes are reproduced below for better appreciation:-

"**Note 1**

(a) The amount of tax payable in respect of goods in Sl. Nos. 1, 11, 12, 13, 14, 17, 28, 30, 56, 58, 65, 68, 69, 76, 87, 92, 107, 119, 127, 134, 136, 138, 156, 180, 181, and 183 shall be reduced by the amount of Orissa Sales Tax paid by him on raw materials and consumables subject to tax on purchase turnover and/or tax collected from him by the selling dealer separately on the body of the bill in respect of sale of raw materials and consumables subject to tax on sale turnover directly used in manufacture of such goods.

Explanation- Building materials for construction of factories and allied construction, office equipments, packing materials, vehicles and such other materials which are not directly used in manufacture shall not be treated as raw material or consumable for the purpose of allowing set off.

(b) The amount of tax payable in respect of goods specified in Part-III of the Schedule to the Orissa Entry Tax Act,1999 as well as Sl. Nos. 21,32,46,74,101,108 and 155 shall be reduced by the amount of Orissa Entry Tax paid on such goods under Orissa Entry Tax Act,1999, and the Rules made thereunder.

Note 2

The set off tax as provided in note 1 above shall be regulated subject to the following conditions:-

(i) The amount of set off claimed shall be limited to the Orissa Sales tax payable on sale of finished products manufactured out of such raw materials and consumables.

(ii) The amount of set off claimed against payment of tax under the Orissa Entry Tax Act,1999 shall be limited to the OST payable on sale of such goods.

(iii) In respect of goods exigible to tax on sale turnover the amount of Orissa Sales Tax realized separately from the dealer on the body of purchase invoice in respect of the purchases from the registered dealers during a particular year shall be eligible for computation of the amount of set off to which the dealer shall be entitled, during the same year. It is the responsibility of the dealer for proper custody of those invoices to facilitate verification by the Sales Tax Officer.

(iv) While completing assessment excepting assessment under sub-section (I) of section 12 of the Orissa Sales Tax Act,1947,the Sales Tax Officer or Assistant Sales Tax Officer as the case may be shall examine the records of the dealer and determine the amount of set off to which the dealer is entitled. In the event it is found that the dealer has availed of set off in excess of the amount to which he is entitled the dealer shall be required to file a corrected claim for set off alongwith revised return within a reasonable time. If it is so required by the Sales tax Officer the dealer shall furnish a statement showing dealerwise list relating to value of purchase of raw materials and consumables purchased during the relevant year and tax paid on the same.

(v) In case the dealer claims inadmissible set off deliberately on false documents or without supplying any documents as in (iii) above then the entire claim of set off during the year in question shall be

disallowed after giving the dealer a reasonable opportunity of being heard.

(vi) In case a dealer sells a part of his finished products in the course of inter-state trade or commerce or disposes in a way other than sale in Orissa the set off allowed in respect of tax payable on sale effected inside the State of Orissa shall be reduced proportionately."

It is observed that the dealer-appellant purchased raw-materials from second sellers as tax paid goods, and accordingly both the fora below allowed set off of tax to the tune of Rs.4,58,503.54 against claim of Rs.8,26,755.37. It is to reiterate that iron and steel goods are declared goods and are taxable at the first point of such sale. However, the fora below disallowed tax paid goods on raw-materials as it has not been charged separately on the body of the bills referring to Sub-clause (iii) of Note-2 of above notification.

In this connection, it is pertinent to refer to a judgment of Hon'ble Orissa High court in W.P.C. No.1195/2002 disposed on 27.02.2019 whose ratio is applied to this case too. In the said judgment, the Hon'ble Orissa High Court held as under:

"7.We have heard learned counsel for the petitioners and learned counsel for the State. Taking into consideration the observations made by the Orissa Sales Tax Tribunal and the Authority, we are not disturbing the findings of any of the authorities. However, in view of the observations made by the Hon'ble Supreme Court in the case of **Commissioner of Sales Tax, Orissa and others V. Crown Re-Roller (P) Ltd. and others (Supra)**, Para-19 of which is reproduced hereinabove, the petitioners can approach the Authority and produce the bills/Invoices which are not accepted. If it is proved that the earlier dealer has paid the tax and if the Authority is satisfied that the tax is paid during the relevant financial year for which he is claiming exemption, then the Authority will pass a reasoned order and will grant the benefit. If the tax is paid, the benefit is required to be extended to

the petitioners under the transactions covered under category-3 mentioned in Tribunal's order dated 29.03.2007 which is quoted below:

> *"(iii) Purchases from other registered dealers as tax paid who purchased the same on payment of tax from other registered dealers."*

and the same is in consonance with Notes 1 and 2 of the Notification dated 31.03.2001. Accordingly, we direct that the orders of the Assessing Authority under Annexure-11 in W.P.C. No.1195 of 2002 and Annexure-8 in W.P.(C). No.9910 of 2003 are hereby quashed and the Assessing Authority is directed to consider the claim of the petitioners regarding set off under the Notification dated 31.03.2001 in terms of the aforesaid findings.

The impugned order dated 29.03.2007 passed by the Orissa Sales Tax Tribunal, Cuttack in S.A. Nos.106 of 2006-07 connected with STREV Nos.132 and 133 of 2007 is hereby set aside in terms of the aforesaid judgment."

Accordingly, in view of above judgement of Hon'ble Orissa High Court, the case is set-aside and remanded to the ld. STO to re-examine the bills and invoices on purchase of raw-materials and consumables as tax paid goods from second sellers during the relevant financial year for which he is claiming exemption. If the tax is paid on purchase of raw-materials as tax paid goods during the relevant year and the finished goods manufactured out of such tax paid raw materials & consumables are sold inside the State during the same year, the benefit of claiming such exemption towards set off of tax is to be considered. It is now ordered accordingly.

7. Both the orders of fora below are set aside with a direction to the LAO to re-examine the instant case in the light of above judgement of Hon'ble Orissa High Court and complete re-assessment preferably

within three months of receipt of this order after giving the dealer a reasonable opportunity of being heard.

This case is disposed of accordingly.

Dictated & Corrected by me.

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

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

I agree,

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

I agree,

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