BEFORE THE ACCOUNTS MEMBER-I: ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 39(C) of 2024

(Arising out of the order of learned JCST (Appeal) Territorial Range, Bhubaneswar, in First Appeal Case No. AA-55/ CST/BH-I/2021-22, disposed of on 16.07.2024)

P r e s e n t: Shri A. Bhoi, Accounts Member-I

M/s. KEC International Ltd,
Holding No.544, Bhubaneswar Marg,
Near Mausimaa Temple,
Bhubaneswar,
At Present;- 8th Floor Building No.9A
DLF Cyber city, Phase-III,
Gurgaon, Haryana-122002 … Appellant

- V e r s u s –

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

For the Appellant: :Mr. P.K.Panda, Advocate
For the Respondent: :Mr. N.K.Rout, Addl.SC. (CT)

Date of hearing :25.09.2026 ***Date of order : 09.10.2026

O R D E R

This appeal is directed against the impugned order dated 16.07.2024 passed by the learned Joint Commissioner of Sales Tax (Appeal), Territorial Range. Bhubaneswar, (hereinafter referred to as learned First Appellate Authority/ ld. FAA) in First Appeal Case No.AA-55/CST/BH-I/2021-22, modifying the assessment order of Sales Tax Officer, CT & GST Circle,

Bhubaneswar-I, Bhubaneswar, (hereinafter referred to as Assessing Authority) passed on dated 28.07.2021 under Rule 12(1) (a) of the Central Sales Tax (Orissa) Rules, (hereinafter referred to as, the CST(O) Rules, involving additional tax and interest of ₹58,65,764.00 for the tax period from 1.4.2014 to 31.3.2015.

2. The brief facts of the case are that the dealer M/s. KEC International Ltd, Bhubaneswar, is a Public Limited Company incorporated under the Company Act 1956 having its Registered Office at CEAT Mahal, 1st Floor, Dr. Anni Beasant Road, Worli, Mumbai-400030 and corporate office at Building No.9A, 8th Floor, DLF Phase-III, Gurgaon-122002, Haryana and one of the branch at Bhubaneswar in the State of Odisha. The dealer company executes works contract and also undertakes supply of goods as a trading concern.

The dealer company has claimed inter-State sale of ₹3,37,07,875.00 including CST and submitted "C" form of ₹1,77,19,997.00 and failed to produce "C" forms for ₹1,59,87,878.00 during the period of provisional assessment. The dealer company has also claimed the branch transfer of goods to the tune of ₹5,05,40,635.00 and failed to submit "F"

forms in support of such Branch Transfer of goods. Further the dealer company has effected 6(2) sale against C and E I forms of ₹87,12,575.00. Accordingly the Gross Turnover and Net Turnover determined at ₹9,29,61,085.00 and ₹9,23,00,146.00 respectively. Tax @ 2% on ₹1,77,19,997.00 in respect of Inter-State sale of scrap, tax @5% on ₹1,56,74,390.19 towards inter-State sale of scrap for non-submission of "C" forms, tax @5% on ₹5,05,40,635.00 for non-submission of "F" forms in respect of branch transfer of tools and machineries, tax @ 13.5% on ₹87,12,575.00 for non-submission of E-1 and "C" forms, calculated at ₹48,34,401.00. After deduction of tax paid amount, the balance tax due calculated at ₹33,26,520.00. Further interest of ₹25,39,244.00 levied on the tax due. Accordingly balance tax and interest together determined at ₹58,65,764.00 for the material period.

3. On being aggrieved by the order of the Assessing Authority, the dealer assessee preferred an appeal before the First Appellate Authority who has modified the assessment order by enhancing the tax and interest amounting to ₹70,31,036.00.

4. Being further aggrieved by the order of the learned FAA, the Authorized Representative of the dealer-company has preferred this second appeal before this Tribunal.

5. The State files Cross objection.

6. In course of hearing of appeal the Ld. Advocate for the dealer company submits that the dealer petitioner has transferred its own tools, tackles and other equipments to other States for its own use and hence taxing them only in absence of statutory forms are not only illegal but also arbitrary exercise of power and not sustainable on fact and law. Further he submits that the dealer company has effected inter-State sales of iron scraps U/s.3(a) of the CST Act and spare parts U/s.3(b) of the CST Act claiming exemption U/s.6(2) of the CST Act. But the Ld. STO as well as First Appellate Authority have levied tax at the highest rate i.e. 14.5% to all the goods which is Illegal and not sustainable on fact and law. The Learned Advocate also submits that the levy of interest amounting to ₹29,73,889.00 is not only excessive and should have been considered as on the date of the original assessment. He also submitted that when the dealer petitioner has sought for time to produce such forms, the order of provisional assessment denying the time are

nothing but arbitrary exercise of power and liable to be set-aside. The Learned Advocate also submits that the amount of ₹8,46,942.00 vide Challan No.0040/793 dated 21.8.2018 and a sum of ₹5,86,576.00 vide Challan No.0040/69 dated 9.11.2021 paid at the time of filing of appeal dated 13.12.2021 are not considered for adjustment from the output tax. In course of hearing the Ld. Advocate for the dealer Company submitted copy of C forms and requested to accept the same.

7. Per contra, the learned Addl. Standing Counsel (C.T.) appearing for the State submits that more than eleven years have passed since the period ended and the dealer still cannot produce the balance declaration forms, hence the plea of natural justice has no substance. Further, he submits that interest is mandatory and correctly levied U/r.8(1) of the CST(O) Rules. He relies on the decisions of Hon'ble Orissa High Court in Bateman Engineering (India) Pvt. Ltd, Vrs. State of Orissa (2012) 47 VST P-246 (Ori) and the decision of this Tribunal held in the case of Gupta Trading Co. Vrs. State of Odisha in S.A.No.4(C)/2017-18 order dated 23.5.2018. The Additional Standing Counsel also strongly argued that the allegation of the dealer that the STO taxed @ 14.5% is no longer true and

correct. Further he stated that the Assessing Authority has taxed @5% on branch transfer goods taking into account as tools Under Entry B-II-117 of the OVAT Act. It is also stated that without the E-I Certificate, exemption claimed U/s.6(2) of the CST Act cannot be granted and the State Rate of 13.5% applies.

8. Heard the rival submissions from the parties. Perused the case records and the grounds of appeal. Also perused the materials available on record.

9. As per Proviso to Rule 12 (1) (b) of the CST (O) Rules, power is vested with the prescribed authority to allow such declaration and certificates to be furnished within such further time as that authority may permit on being satisfied that the person concerned was prevented by sufficient cause from furnishing such declarations and certificates within the time prescribed under the said Rules. In the case sufficient opportunities are provided to the dealer for furnishing declaration forms.

10. In course of hearing of appeal the Learned Advocate submits the Xerox copies of “C” Forms bearing Serial No.21C-18001731815 for ₹29,71,201.00, Serial No.21C16023331592

for ₹29,97,937.00 and Serial No.21C16023333077 for ₹17,37,605.00 issued by M/s. Power Grid Corporation of India Limited. Later, the Learned Advocate produced the original copy of "C" form bearing Serial No.21C-18001731815 for ₹29,71,201.00 only and stated that if the said C forms are not accepted the dealer shall be prejudiced. Therefore this forum feels it proper to remand the matter to the Assessing Authority with a direction to the dealer to furnish the original copy of "C" forms for proper verification with reference to the books of accounts and tax invoices.

11. Regarding Branch Transfer the dealer appellant contended that the goods transferred are capital goods or tools for its own use. Section 6 (A) of the CST Act, provides that the initial burden of proof is on the dealer to show that the movement was occasioned by reason of transfer of goods, otherwise than by way of sale . But the dealer assessee has not submitted the documentary evidences regarding movement of goods was occasioned by reason of transfer to branch located outside the State. The dealer is also required to file "F" in support of Branch Transfer of goods. In the case at hand the dealer appellant is not able to submit the "F" forms. Thus the

Assessing Authority as well as the First Appellate Authority calculated tax @5% on branch transfer of goods for non-submission of declaration form “F” is upheld . On observation of the case it is also seen that the dealer appellant has claimed exempted sale of ₹87,12,575.00 U/s. 6(2) of the CST Act. and the fora below has determined the tax @13.5% as against @2% in absence of certificate in Form E-I. In the facts and circumstances of the case it is required to verify the “C” forms submitted in case of tax exempted sale and to calculate tax at appropriate rate for submission of “C” forms treating the same as inter-State sale instead of tax exempted sale.

12. Regarding levy of interest the Ld. Advocate stated that interest is to be calculated up to the date of original assessment instead of reassessment.It is settled principle of law that levy of interest is mandatory when there is default in payment of tax. Such levy of interest is compensatory and automatic. A dealer while filing in the periodical returns has to fill up and submit the details of concessional sales effected U/s.8 of the CST Act and accordingly has to furnish declaration form “C” thereof for depositing less amount of tax i.e. at concessional rate of tax instead of full rate of tax. Due to delayed payment of tax for

non-furnishing of declaration forms, the State Exchequer has to be compensated for belated payment of differential tax due through levy of interest which runs automatically from the original due date of filing the periodical returns up to the date of actual payment or assessment order. Thus, the dealer assessee is liable to pay interest as per provision of Section 9(2B) of the CST Act read with Rule 8 of the CST (O) Rules. In the case tax amounts deposited, if any, by the dealer assessee shall be adjusted against the tax demand.

13. In the result, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The case is remanded back to the Assessing authority for verification of the genuineness of the submitted statutory forms with reference to the return and books of accounts to determine the tax liability of the dealer appellant and pass the order as per the above observations within the period of three months from the date of the receipt of this order. The cross objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(A. Bhoi)
Accounts Member-I

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(A. Bhoi)
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