

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 101(C)/2017-18**

(From the order of the Id.JCST (Appeal), Cuttack-II Range,
Cuttack, in Appeal No. AA/05/CST/CUII/2017-
18/107131713000107, dtd.21.09.2017 modifying the
assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. Arati Steel Ltd.,
Dist. Cuttack. Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : Mr. P.K. Jena, Advocate

(Assessment Period : 01.04.2010 to 31.03.2011)

Date of Hearing: 20.04.2019 *** Date of Order: 20.04.2019

ORDER

This appeal is preferred by the Revenue against a reversing order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST) in an assessment u/s.12(4) of the Central Sales Tax (Orissa) Rules,

1957 (in short, CST(O) Rules) whereby the FAA has deleted the tax due and penalty assessed by the dealer relating to a claim of exemption u/s.5(3) of the Central Sales Tax Act, 1956 (in short, CST Act) by the dealer during the tax period 01.04.2010 to 31.03.2011.

2. M/s. Arati Steel, the instant dealer is a manufacturer and seller of Sponge iron, iron billets and ingots having its manufacturing unit at Ghantikhal, Athagarh for the tax period 01.01.2009 to 30.09.2010 and from 01.10.2010 to 30.04.2012. The dealer faced assessment u/s.12(3) of the CST(O) Rules vide order dtd.12.06.2012 and 04.06.2013 respectively. The Assessing Officer/Deputy Commissioner of Sales Tax, Cuttack-II Circle, Cuttack (in short, AO/DCST) during assessment, accepted the claim of the dealer towards exemption u/s.5(3) of the CST Act to the tune of Rs.63,99,904/-, but in a latter period, on the basis of report of investigating officials, proceeding u/s.12(4) of the CST(O) rules was initiated comprising tax period 01.04.2010 to 31.03.2011. It is reported that, the claim of export sale by the dealer was not covered under any contract between foreign buyer M/s. Devi Trading Company Limited, Hongkong and the ultimate seller M/s. Orecase (India) Ltd. So, the appellant's claim supported by declaration Form 'H'

was denied as not backed by valid contract. As a result, the tax exemption was not provided to the dealer and ultimately, the AA calculated the tax liability with penalty raised against the dealer at Rs.7,67,988/-.

3. As against the assessment and demand above, the dealer knocked the door of the FAA. Learned JCST as FAA reversed the finding of the AA and thereby the demand reduced to nil.

4. When the matters stood thus, State being aggrieved preferred this appeal with the following contentions:

The FAA has wrongly accepted the agreement between the ultimate seller and foreign buyer dtd.11.12.2011 since the agreement is an afterthought one. So, it is prayed that the impugned order should be set-aside and the dealer should be asked to pay tax and penalty as imposed by the AA because the dealer is not entitled to exemption on sale as claimed.

5. In the case in hand, the AA found that, the dealer is the penultimate seller in export sale. It sales goods to M/s. Orecast (India) Ltd. and in turn, M/s. Orecast (India) Ltd. export goods to foreign buyer M/s. Devi Trading Company Limited, Hungkong. Consequent upon agreement entered

between M/s. Devi Trading Company Ltd. and M/s. Orecast (India) Ltd. placed order before the instant dealer for supply of goods. Contract No.DTCL/Orecast/128/S/2011 dtd.20.02.2011 was the agreement on which the dealer supplied the goods. As per the said agreement goods like iron ore fines to the tune of 20000 MT was to be supplied by 31.03.2011. Later the delivery period as such was amended up to 30.04.2011 vide amendment no.1 dtd.20.02.2011 to the aforesaid contract. Again the period of supply was amended up to 20.05.2011 vide Agreement No.2 dtd.20.02.2011. Ultimately, thereafter, the contract was cancelled vide Letter No. DTCL/Orecast/103/2011 dtd.20.02.2011. So, the goods sold by the instant dealer to M/s. Orecast (India) Ltd. against the aforesaid contract in no case can be treated as export sale contract as per Sec.5(3) of the CST Act.

6. With the view above, the AA treated the goods sold by the assessee-dealer to M/s. Orecast (India) Ltd. relating to the aforesaid cancelled contract is not qualified for any exemption in tax. So, even though the dealer had furnished the declaration Form 'H', but the exemption was denied and the dealer was asked to pay tax at appropriate rate and penalty for the default in payment of tax.

7. When the matters stood thus, the FAA on the other hand accepted the plea of the dealer that, even though the earlier contract was cancelled, but a latter period another contract was entered into between the aforesaid dealers like M/s. Devi Trading Company and M/s. Orecast (India) Ltd. vide No.DTCL/Orecast/128/S/2011 dtd.11.12.2011 and in consequence to that contract, which is nothing but renewal of the earlier contract by a new contract, the goods which were sold to M/s. Orecast (India) Ltd. by the present dealer was exported and as against that export, the dealer was issued with declaration Form 'H', which was produced before the AA. The FAA accepted the plea of the dealer and held that, the dealer is entitled to exemption u/s.5(3) of the CST Act.

8. The contention of the Revenue is, the second contract is an afterthought. It was not produced before the AA. It is inconceivable that, there was no such contract in between M/s. Devi Trading Company with M/s. Orecast (India) Ltd. dtd.11.10.2011. To appreciate the fact, it may successfully reproduce the relevant paragraph of the order of the AA herein below :

“Besides from the copies of the agreements made between the foreign buyer with M/s. Orecast (India) as submitted by the instant dealer it is found that vide contract bearing No.DTCL/Orecast/103/2011 dated 20.02.2011 M/s. Devi Trading Company Limited, Hongkong had placed orders with M/s. Orecast (India),

Bhubaneswar for supply of 20000 M.T. of iron ore fines by 31.03.2011. Subsequently the period of delivery was amended up to 30.04.2011 vide amendment No.1 to contract No.DTCL/Orecast/103/2011 dated 20.02.2011. Further the same period of supply was again amended up to 20.05.2011 vide amendment No.2 to the contract cited above. Again vide amendment No.3 to contract No.DTCL/Orecast/103/2011 dated 20.02.2011 the entire contract was cancelled. Thus it is found that the aforesaid supply of iron ore fines to M/s. Orecast (India) which was later claimed to have been exported in pursuance to a contract has not been taken place rather it was exported without any supporting contract which violates the conditions of section 5(3) of the CST Act.”

Conversely, the FAA has held that, the learned AA has not taken into consideration of the documents more particularly, the fresh contract bearing No. DTCL/Orecast/128/S/2011 dtd.11.12.2011, which was subsequently extended the date of despatch to 21.12.2012. The FAA has further held that, ld.AA failed to take into consideration, the explanation offered by the dealer regarding delay in dispatch of goods due to seizure of goods by the mining department and it was only after investigation of the Shah Commission, when the goods were released, the same exporter M/s. Orecast (India) Ltd. has exported the iron ore to the same foreign buyer i.e. M/s. Devi Trading Ltd. on the basis of a fresh contract dtd.11.12.2011. So, exemption is available to the dealer u/s.5(3) of the CST Act.

9. Above being the findings of the FAA, it is hard to accept the argument of the learned counsel for the Revenue that, the second agreement is an afterthought only. Production of agreement/contract is not a mandatory one. In this regard, we can successfully rest the findings on the view taken by Hon'ble Court in **V. Win Garments – Vrs. Additional Deputy Commercial Tax Officer, Central I Assessment Circle, Tirupur** reported in [2011] 42 VST 330 (Mad).

From the discussion above, it is held that, the order of the FAA suffers from no illegality. Hence, calls for no interference. The goods sold to the ultimate seller M/s. Orecast (India) Ltd. to foreign buyers were sold by the penultimate seller like the instant dealer i.e. in consequence to a contract with the foreign buyer and duly supported by declaration Form 'H' entitling the instant dealer, thereby to claim exemption of export sale as per the provision u/s.5(3) of the CST Act. Accordingly, it is ordered. The appeal sans merit is dismissed as of no merit.

Dictated and Corrected by me,

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

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

