

Central Sales Tax (Odisha) Rules, 1957 (in short, "CST (O) Rules") in respect of the dealer-assessee for the period 2003-04.

2. The facts leading to this appeal are as follows:

The dealer-assessee M/s. Nilachal Ispat Nigam Ltd., in the district of Jajpur is a manufacturer of Pig Iron from Iron Ore. It thus effects sale of Pig Iron alongwith its by-products such as slag and iron scrap. Assessment in respect of this business concern under Rule- 12(5) of the CST (O) Rules for the period 2003-04 was completed on 22.02.2007 but subsequently on receipt of objection from A.G. Audit about under assessment of tax liability of the dealer on account of irregular grant of exemption on sale of its by-products like iron scrap and slag under IPR-92 and also for acceptance of defective Form-H by the assessing officer, the case against the dealer was reopened and fresh assessment was done under Rule-10 of the C.S.T. (O) Rules. On being served with a notice issued by the authority concerned the authorised officer of the dealer company appeared before the assessing officer and produced all the accounts and documents connected to the business of the company before him. While examining those documents the assessing officer could find that exemption on the interstate sale of by-products like iron scrap and slag was given in favour of the dealer in contravention of the IPR Policy when under the policy sales tax concession is available on sale of finished products only. Further from the A.G. Audit report in respect of the dealer assessee for the relevant period it could be gathered that exactly five numbers of Form-H submitted by the assessee on the export sales of pig iron were defective. Then considering all the business transactions of the dealer the assessing officer concluded that the dealer was still required to pay the balance amount of its tax dues as determined by him at Rs.9,04,66,806.77 for that relevant period.

3. Being aggrieved with this order of assessment the dealer preferred an appeal before the First Appellate Authority but curiously enough as it seems from the appeal order the first appellate authority found himself stuck in a dilemma or rather got confused with regard to acceptability of the Memos issued by the Director of Industries, Orissa vide No.8888 (4), dated 17.07.2003 and No.10971 (5), dated 29.08.2003 in deciding the extent of tax liability of the dealer as he held those two memos to be self contradictory in nature. He thus concluded that both the memos as referred to above can not operate simultaneously and as it was not known which memo would override the other he simply confirmed the order of assessment holding the same to be correct and without any dispute.

4. Under the above circumstances the dealer- assessee came up with the present appeal before this forum challenging the impugned order on the grounds that the same is bad in law being contrary to the well established legal propositions. The First Appellate Authority mis-read and mis-interpreted the Notification No.41261-CTA- 106/92-F dated 23.09.1992 issued by the Finance Department, Government of Odisha as well as the Certificate in Form E-92 issued by the Director of Industries in conformity with the aforesaid notification of the Finance Department. Further, the Sales Tax Authorities concerned have erroneously held that the dealer- assessee was not entitled for exemption on the pretext of some minor defects in the declaration in Form-H though those were subsequently rectified by the merchant exporter. With the aforesaid contention the dealer urged before this forum to set aside the impugned order dated 30.08.2011.

5. Cross-objection on behalf of the State has been filed to the effect that this appeal is not sustainable being devoid of merit. The order of assessment as well as the impugned

order are correct having been passed in conformity with the statutory provisions under the relevant Act and Rules.

6. In course of hearing learned Counsel for the dealer took us through some documents and on perusal of the same we felt that those are quite relevant to take note of for a just conclusion in the case. From the copy of the letter No.____(not clearly legible)-29/2003, Cuttack dated 28.08.2003 issued from the office of the Director of Industries, Odisha, Cuttack to the dealer it is revealed that a certificate of eligibility for sales tax concession on raw material, machinery spare parts and finished products under IPR- 1992 (New Unit) was extended in favour of the dealer and in that communication it was also made clear that besides Pig Iron, the Iron Scrap and granulated slag produced in the dealer's company were also described as finished product for the said business concern and not only that but further this communication was made in supersession to the order No.8887, dated 17.07.2003 issued earlier in favour of the dealer. Similarly, copy of the letter issued from MMTC vide MMTC/BBSR/FA/ NINL/2010-11, dated 29.07.2010 to the dealer-assessee indicates that MMTC had purchased Pig Iron from NINL during the year 2003-04 and had exported the same through Paradeep Port for which they had issued 'H' Forms as per the detail given in the aforesaid letter.

7. Thus it is found from the impugned order that the first appellate authority has certainly come to a very unreasonable rather harsh conclusion by reflecting that the memos No. 8888 (4) dated 17.07.2003 and No.10971 (5) dated 29.08.2003 issued by the Director of Industries, Orissa are self-contradictory and both of them can not operate simultaneously. Further he also could not find as to which memo will override. This appears to be absolutely wrong on his part to give such opinion and leave the matter as such. He should have at least the patience to read the entire memo in question which consists of only two pages and

wherein it is clearly mentioned (in paragraph 8) that the said letter i.e. letter No.10971(5) dated 29.08.2003 supercedes order No.8887 dated 17.07.2003 issued earlier. Thus the author of the impugned order certainly invites a stricture on this issue but we desist ourselves from passing any stricture against him since he has not been afforded with the opportunity of being heard with regard to his aforesaid observations in the order.

8. Therefore, in view of our above observations in the matter we feel this is a fit case for remand. Besides this in course of hearing learned Addl. Standing Counsel appearing on behalf of the State also submitted that if at all the case needs to be remanded for fresh assessment then it should be pointed out to the authorities concerned to keep in view that the unit of the dealer being located at Kalinga Nagar Industrial Complex, Duburi comes under Zone-B, Sub-Division of Jajpur as per Finance Department Notification, dated 23rd September, 1992 and make the assessment accordingly. A copy of this Gazettee published in September, 28, 1992 containing the above notification was also filed in this case by the Learned Addl. Standing Counsel. In reply to this contention of the State learned Counsel for the dealer submitted that the dealer would have no objection if its unit would be permitted to avail concession or exemption as applicable to the units coming under Zone-B.

9. Thus the impugned order is set aside and the matter is remitted back to the Assessing Officer with a direction to make fresh assessment and complete the same within a period of three months from the date of receipt of this order keeping in view the memo No.10971(5), dated 29.08.2003 issued by the Director of Industries, Cuttack in favour of the dealer-assessee while treating the unit of the dealer coming under Zone-B and not under Zone-A (as described in the above memo of Director of Industries, Cuttack) as per the Finance Department Notification mentioned above

published in the Orissa Gazette on September,28, 1992 and also the letter received by the dealer from MMTC regarding declaration in Form-H issued by them. The dealer-assessee is directed to furnish the aforesaid documents before the Sales Tax Officer i.e. the assessing officer in original within the time fixed by the latter for disposal of the matter within the stipulated period.

10. Accordingly, the appeal preferred by the dealer-assessee is allowed and the cross objection is disposed of accordingly.

Dictated & Corrected by me,

(Smt. Suchismita Misra)
Chairman.

(Smt. Suchismita Misra)
Chairman.

I agree,

(Smt. Sweta Mishra)
2nd Judicial Member.

I agree,

(Rabindra Ku. Pattnaik)
Accounts Member-III.