

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

**Present: Smt. Suchismita Misra, Chairman,  
Sri Subrata Mohanty, 2<sup>nd</sup> Judicial Member  
&  
Sri R.K. Rout, Accounts Member-II**

**S.A. No.95 (C) of 2008-09**

(From the order of the Id. ACST, Puri Range, Puri,  
in First Appeal Case No. AAC/PUIIC)244/05-06,  
disposed of on dtd.30.08.2008)

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

**- V e r s u s -**

M/s. Sun Granite Export Ltd.,  
Paniora, Khurda. ... Respondent

**S.A. No.96 (C) of 2008-09**

(From the order of the Id. ACST, Puri Range, Puri,  
in First Appeal Case No. AA-C-12(PUIIC)/05-06,  
disposed of on dtd.30.08.2008)

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

**- V e r s u s -**

M/s. Sun Granite Export Ltd.,  
Paniora, Khurda. ... Respondent

**S.A. No.97 (C) of 2008-09**

(From the order of the Id. ACST, Puri Range, Puri,  
in First Appeal Case No. AA-82 (PUCII)/07-OPUCII/07-08,  
disposed of on dtd.30.08.2008)

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

**- V e r s u s -**

M/s. Sun Granite Export Ltd.,  
Paniora, Khurda.

... Respondent

For the Appellant : Mr. M.L. Agarwal, S.C.  
For the Respondent : Mr. R.K. Maharana, A/R.

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Date of Hearing: 01.02.2019 \*\*\*\* Date of Order: 01.02.2019  
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**ORDER**

All three appeals above are preferred by the Revenue against the order of the First Appellate Authority/Asst. Commissioner of Sales Tax, Puri Range, Puri (in short, FAA) dtd.30.08.2008 modifying- reducing the liability of the dealer on acceptance of 'H' form by extending exemption u/s.5(3) of the Central Sales Tax Act, 1956 (in short, CST Act) reversing the order of the Assessing Authority/Sales Tax Officer, Puri II Circle, Jatni relating to the assessment year 2000-01, 2002-03 and 2003-04 respectively of the dealer.

For sake of convenience, all three appeals are taken up and decided by this common order. S.A. No.95(C) of 2008-09 relates to the assessment year 2000-01, S.A. No.96(C) of 2008-09 relates to the assessment year 2002-03 and S.A. No.97(C) of 2008-09 relates to the assessment year 2003-04.

2. The factual backdrop giving rise to these appeals are in a narrow compass, the dealer being a penultimate seller of the export sale availed benefit u/s.5(3) of the CST Act, whereas on regular assessment is u/r.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules) the assessing authority extended the exemption to the dealer but in a later period on the basis of A.G. audit with the allegation that there was irregular allowance of exemption in absence of supporting documentary evidence of export, the assessments were reopened invoking Rule 10 of the CST(O) Rules. In the reassessment proceeding, the assessing authority found the dealer failed to furnish declaration form 'H' as follows:-

For the tax period 2000-01 – declaration form 'H' amounting to

	Rs.69.61.127.00
For the tax period 2002-03 –	declaration form 'H' amounting to Rs.66,51,522.00
For the tax period 2003-04 –	declaration form 'H' amounting to Rs.44,08,031.00

In the result, the dealer was denied exemption in absence of declaration form 'H' and the tax due was accordingly calculated as follows:-

For the tax period 2001-01	-	Rs.2,68,906.00
For the tax period 2002-03	-	Rs.19,36,242.00
For the tax period 2003-04	-	Rs.49,82,919.00

The dealer, being aggrieved with the demand raised in the reassessment proceeding knocked the door of the first appellate authority. The first appellate authority in all three appeals verified the purchase order, agreements between the exporter and the overseas purchaser and other connected documents inextricably connected to the penultimate sale and thereafter allowed the exemptions to the dealer on acceptance of the 'H' form produced before him. As a result, there was redetermination of tax liability by the first appellate authority and the demand reduced accordingly for the tax period 2000-01 at Rs.2,68,906.00, 2002-03 at Rs.19,36,242.00 and 2003-04 at Rs.49,82,919.00 respectively.

3. When the matter stood thus, Revenue being aggrieved with such reduction of tax due on acceptance of form 'H' preferred these three appeals. The contention of the Revenue are, the fora below has not examined the purchase order of the foreign buyer and the purchase order placed before the instant dealer which are relatable to purchase order of the foreign buyer. So, acceptance of 'H' form being mechanical and when there is no evidence in support of sale attracting provision u/s.5(3) of the CST Act, the deletion of demand by the fora below is illegal.

4. The appeal is heard with cross objection from the side of the dealer. The dealer has taken a consistent plea that, the declaration forms wanting were duly produced before the first appellate authority who on scrutiny accepted those and thereby the tax due became reduced. So, the appeals are baseless.

5. The essential question raised for decision in these appeals are, whether the first appellate authority had committed wrong both in law and fact by extending exemption u/s.5(3) of the CST Act to the dealer in all these three cases.

6. At the outset, learned Standing Counsel, Mr. M.L. Agarwal orally submitted that the first appellate authority has mechanically accepted the declaration forms produced before him. Since the declaration forms were not duly filled and some of the declaration forms are filed in duplicate which are inadmissible, in that case acceptance of the declaration forms and exemption thereby is wrong and illegal. Relevant provisions for the purpose of the appeal are Sec.5(3), Rule 10(a) of the CST(R&T) Rules, 1957, Rule 6D(1) of the CST(O) Rules. The provision requires a preexisting foreign buyer before movement of goods in penultimate sale and the sale must have completed between the seller and exporter supported by declaration form 'H'. If we look at the grounds in appeal as taken by the Revenue, it is contended that the purchase order of the foreign buyer of the exporter were not verified by the first appellate authority. However, the impugned orders as it revealed, the first appellate authority has in express term mentioned about the verification of purchase orders. As per the order, the first appellate authority has verified the copy of the agreement of the foreign buyers, consent letter received from foreign buyers, proof of payment, shipping bill and bill of lading. However, on verification of the declaration form 'H' and connected documents including orders, it is found that some of the forms are not dully filled in and some are not in original. On that case, it is found necessary to verify the genuineness of the declaration forms which were accepted by the first appellate authority afresh.

To sum it up, it is held that the genuineness and correctness of the declaration forms need to be scrutinized afresh. In that view of the matter, it is held that these are fit cases where the matter should be remitted back to the assessing authority for the limited purpose of verification of genuineness and correctness of the declaration form 'H' only and in that event the dealer should be given opportunity to furnish, to

rectify and to substantiate the genuineness by adducing further evidence, if any found required. Accordingly, it is ordered.

7. All these appeals are allowed. The matters are remanded back to the assessing authority with a direction for assessment afresh on verification and consideration of the declaration form as per the observation above. The whole exercise should be completed within a period of three months from the date of receipt of this order. The dealer is directed to appear before the assessing authority for further instruction without waiting for a notice.

Dictated & corrected by me,

Sd/-  
(Subrata Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(Subrata Mohanty)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(R.K. Rout)  
Accounts Member-II