

submitted raising the following allegations, covering the period from 01.04.2005 to 31.03.2010.

(1) Physical stock discrepancy –	Rs. 74,99,970.00
(2) Suppression of production of sponge iron (from 01.09.2009 to 15.12.2009)-	Rs. 694,73,955.00
(3) Claims of interstate sale were rejected and hold as sale inside the state rejection of –	Rs.11,95,94,169.00
(4) Claims of sale in course of export U/s. 5(3) of CST Act, reject and hold as sale Inside the State	Rs. 1,13,39,166.00
Total :	Rs.20,79,07,260.00

In the assessment proceeding, the learned STO completed the assessment exparte relying upon the report, the escaped turnover was determined at Rs.20,79,07,260.00, VAT @4% was levied and was calculated at Rs.83,16,290.00, interest was charged arriving the same at Rs.17,17,029.00. Accordingly, the learned STO completed the tax liability of the dealer appellant and raised a demand of Rs.2,66,65,899.00 including penalty of Rs.166,32,580.00 for the material period.

3. After the assessment, being aggrieved with the order of learned DCST, the appellant dealer preferred an appeal before the learned Addl. CST (North Zone) challenging the assessment on the ground that the demand raised is illegal, arbitrary and liable to be quashed. Learned Addl. CST (North Zone) after patient hearing, allowed the appeal partly by reducing the demand to Rs.56,58,723.00. At the first appellate stage, the appellant dealer does not stress on claim of relief other than point No.2: i.e. allegation of production Rs.4,30,22,300.00 which has been raised estimating the sales accepting the method of SION (standard input and output norms).

4. Still being not satisfied with the aforesaid order of learned Addl. CST (North Zone) the appellant has filed the second appeal before this Tribunal mainly on the ground that the learned Addl. CST has grossly erred in agreeing with the visiting officials that there was out of production of 4613.597 MT of sponge iron basing on the formula of standard input/output ratio. The finding of the learned first appellate authority has come on the following grounds:

- (a) The director stated that they need 1.7 to 2.1 MT of iron ore and 1.5 MT to 2 MT of coal for production of 1 MT of sponge iron.
- (b) Raw materials are purchased from open market generally from traders where Fe contents is as low as 57%.

Therefore reaching to the conclusion of out of account production on this basis cannot stand to the test of law and fact in as much all the facts were not considered. The appellant dealer has given the graph of requirement of iron ore for production of 1 MT of sponge iron and the learned Addl. CST has not commented on it.

Iron Ore consumption in respect of 1 MT of sponge iron:

2005-06	1.45MT
2006-07	1.557 MT
2007-08	1.746 MT
2008-09	1.658 MT

When a ratio is taken it arrives at 1.60 MT approximately. Therefore, it was incumbent on the part of the first appellate authority to consider the situation in its entirety and not on piecemeal basis. The average determined for a smaller period of one quarter cannot lead to the conclusion for the entire period. This conclusion leads to absurdity. The appellant dealer had explained how “SION” is not reliable along with number of case laws decided by this forum but interestingly the first appellate authority has not rebutted the findings

of the Tribunal and silently confirmed the findings of the assessing authority.

5. However, the revenue has not filed cross objection against the appeal of dealer company and supported and defended the order of learned Addl. CST to be just and proper in the facts and in the circumstances of the case.

6. We have carefully heard on the matter from both the parties present, gone through the orders of both the forum below, written submission filed by dealer company and materials on record. From the aforesaid rival contentions of the parties, the following points arises for consideration.

(a) Discrepancy in physical stock reduced from Rs.73,35,630.00 to Rs.27,21,240.00 by the learned Addl. CST. Here in this issue we do not wish to differ from that of learned Addl. CST because the learned Addl. CST in his order observed that when materials suppression is noticed in Iron ore, the valuation should be made on actual discrepancy in Iron ore and not on sponge iron that could have been produced from utilising the excess stock of Iron ore.

(b) Shortage of sponge iron of 10.956 MT is valuing of Rs.1,64,340.00 and reduced to Rs.1,09,560.00 by learned first appellate authority who has revalued Rs.10,000/- PmT and suppressed value on this score come down to Rs.1,09,560.00. Therefore, we agree with the action of learned first appellate authority which is reasonable.

The next point is suppression in stocks of production:- The inspecting team alleged that during the period from 01.09.2009 to 15.12.2009, an amount of 18062.360 MT s of Iron ores were used and 5993.320 MTs of sponge iron were produced. The team observed that as per the books, the ratio of iron ore was 3.014 MT of Iron ore. Applying the ratio of 1.7 MT of iron ore. 1 MT of sponge iron, they worked out the production of sponge iron of 10624.917 MT. The difference of 4631.597 was held as suppression of production. Hence the total value of suppression arrived at

Rs.6,94,73,955. But the learned Addl. CST has determined the suppressed quantity at 4302.23 MT and total value is arrived at Rs.4,30,22,300.00. The learned Counsel on behalf of company argued that "SION" ratio cannot be applied as manufacturing depends on so many factors i.e., installed capacity, quality of raw materials, labour, uninterrupted power supply, machinery conditions, breakdown and other factors. Purchase of raw materials are from the open market in which Fe content is always less than 62%. In order to get the production of ratio claimed by the revenue, such raw materials should be above Fe contents of more than 67%. The ratio of production accepted by the lower forums are possible in the case of OMDC limited. In fact OMDC Ltd., has best quality of raw materials world over and Fe contents is in excess of 67% where as the appellant dealer has not a single such purchase and entire purchases from local sources, raw materials received were always of poor quality. The entire lower forum has either failed or grossly erred in not investigating this issue. In response to a query made by the commercial tax officer, Rourkela-II Circle, Panposh on the input/output ratio for manufacture of sponge iron, Dr. R.C. Behera, Dean, N.I.T. vide his letter dated 21.04.2004 clarified that there was no direct data available in any reference book dealing with DRI (direct reduced of Iron) on raw materials consumption pattern. This would vary from plant to plant depending on consumption and quality of raw materials and operating conditions. He basing on his knowledge and general discussion with some producer arrive at the production of 1 M.T. of sponge iron against use of 1.5 MT of Iron ore having Fe contents 65%, 1.05 MT of non-cooking coal having minimum 25% of ash content and 25-30 KG of dolomite of size 1-6 M.M. The learned Counsel Shri Agarwal further intimated that if the FE content is less in iron ore and carbon content in coal is more, the consumption of raw materials i.e. Iron ore and coal will be more. The application of "SION" principle cannot be used to fill up the deficiency, if any, in the Act as has been correctly observed by the Hon'ble High Court of

Orissa in the case of M/s.Larsen and Toubro Limited Vrs. State of Orissa and Others as reported in 12 VST (2008) page 31. The appellant dealer has all purchases of coal from MCL very inferior quality having percentage of "Ash" more than 35%. Therefore, under these conditions the quality of production estimated by the visiting officials are only estimated figure on presumption. In the case at hand, we find that while supporting the production ratio, the dealer has given reasonable explanation in support of his stand. In the considered opinion of this Tribunal, the allegation of out of account of sale to such a larger extent by applying "SION" calculation, is not acceptable to be correct. Therefore, the conclusion of the production and sale as per SION was merely arrived at in vacuum and hence not acceptable in view of the Judicial pronouncement of Hon'ble Apex Court and High Court as follows:

- I. Oudh Sugar Mills Ltd. Vrs. Union of India, 1978 (2) ELT (J172) (SC)
- II. Commissioner of Customs, CALCUTTA Vrs. South India Television Ltd. 2007 (214) ELT 3 (SC)
- III. Commissioner of SalesTax, U.P. Lucknow Vrs. Saurashtra Chemicals (1996) 100 STC 48 (Allahabad)
- IV. State of Kerala Vrs. M.M. Mathew and Another (1978) 42 STC, 348 (SC)

In support of his contention, the learned counsel appearing on behalf of appellant dealer has cited the following decisions of this Tribunal. Few of such are:-

- I. S.A.No.517 of 2007-08, Division Bench (Utkal Metaliks Ltd.)
- II. S.A.No.1624 of 2005-06, Division Bench (Pawanjoy Sponge Iron Pvt. Ltd.)
- III. S.A.No.2117 and 2118 of 2005-06, Division Bench (Maa Tarini Industries Ltd.)
- IV. S.A.No.248 (V) of 2012-13, Full Bench (Agarsen Sponge Pvt. Ltd.)

It is found that both the lower forums have proceeded to assess the dealer merely on assumption, presumption and surmises. Under the above discussed facts, we find the addition of Rs.4,30,22,300.00 towards unaccounted for production of sponge iron and sale thereof is not sustainable in law, hence deleted.

7. The rejection of CST sale amounting of Rs.11,95,94,169.00 is deleted from imposed VAT assessment by learned first appellate authority is not interfered by this forum.

Lastly, we find, the learned first appellate authority has rightly disallowed the claim of dealer to the export sales of Rs.12,52,931.00 hence there is no inference from this forum.

8. In the result, the appeal filed by the dealer company is partly allowed and the order of learned Addl. CST is set aside and remanded to the learned assessing officer to recompute afresh the tax liability of the dealer company in the light of our observation made in herein before within a period of three months from the date of receipt of this order.

Dictated and Corrected by me,

(Sri R.K.Rout)
Accounts Member-II.

(Sri R.K.Rout)
Accounts Member-II.

I agree,

(Suchismita Misra)
Chairman.

I agree,

(Sri S.Mohanty)
Judicial Member-II.