

**BEFORE THE DIVISION BENCH-I, ODISHA SALES TAX
TRIBUNAL: CUTTACK**

S.A. No. 60 (C) of 2015-16

(Arising out of order of the learned JCST, Sundargarh Range,
Rourkela in First Appeal No. AA- 67 (RL-II-C) of 2013-14,
disposed of on dated 08.08.2015)

Present: **Shri A.K. Das, Chairman**
&
Shri M. Harichandan, Accounts Member-I

M/s. T.R. Chemicals Ltd.,
Barpali, Rajgangpur,
Dist. Sundargarh ... Appellant

-Versus-

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

For the Appellant : Sri P.S. Patra, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 26.05.2022 *** Date of order: 06.06.2022

O R D E R

The dealer-assessee has preferred this second appeal assailing the order dated 08.08.2015 passed by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal No. AA- 67 (RL-II-C) of 2013-14 thereby reducing the demand to ₹3,53,224.00 from ₹6,09,292.00 raised by the Sales Tax Officer, Assessment Unit,

Rajgangpur (in short, 'assessing authority') for the period 01.04.2013 to 30.09.2013 in the assessment framed u/r. 12(1) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

2. The facts of the case leading to filing of the present second appeal, in brief, are that the dealer-assessee carries on business in manufacturing of sponge iron and effects sale of its finished goods both in course of inter-State and intra-State trade and commerce as well as in course of export. Learned assessing authority during verification of the returns filed by the dealer-assessee found that it had effected sales worth ₹10,26,49,480.00 against declaration in Form-C as against which it failed to submit declaration in Form-C for an amount of ₹1,70,80,801.00. The dealer further despatched goods worth ₹1,65,04,676.00 otherwise than by way of sale u/s. 6A of the CST Act as against which, it failed to produce declaration in Form-F for ₹19,36,752.00. Therefore, the assessing authority initiated proceeding u/r. 12(1) of the CST (O) Rules and issued statutory notice to the dealer-assessee. The dealer inspite of due service of notice did not appear before the assessing authority, for which the assessment was completed exparte raising demand of ₹6,09,262.00.

2(a). The dealer-assessee challenging the demand raised by the assessing authority, preferred appeal before the first appellate authority on the ground that the assessing authority did not allow sufficient opportunity to furnish statutory forms. Learned first appellate authority considering 4 nos. of 'C' form for an amount of ₹93,45,521.00 submitted by the dealer before it reduced the tax demand to ₹3,53,224.00. The dealer-appellant being further aggrieved with such demand, filed the present second appeal.

3. In course of hearing of the second appeal, the dealer produced declaration in Form-H for an amount of ₹19,36,752.00 along with an agreement for sale and purchase of iron ore fines, copy of bill of lading before this forum and submitted that the first appellate authority did not give sufficient opportunity to produce the statutory forms at its level and deprived it (dealer) of reasonable opportunity to substantiate the claim of inter-State and export sales. He further submitted that the 'H' form filed by him being genuine should be taken into consideration for recomputing its tax liability under the CST Act and to allow the appeal recalculating the tax liability of the dealer-assessee accepting the 'H' form.

4. On the other hand, learned Standing Counsel (CT) for the revenue in terms of cross-objection filed by it, objected to filing of 'H' form at this stage on the ground that there is inordinate delay in filing the statutory form which was required to be filed before the assessing authority. The dealer did not assign any reason for non-furnishing of statutory form before the forums below. He submitted to reject the 'H' form filed by the dealer-assessee before this forum and confirm the order of the first appellate authority.

5. We have heard the rival submissions of the parties, gone through the grounds of appeal vis-a-vis the impugned orders of the forums below and the materials on record. In course of hearing of the appeal, the dealer-assessee fairly conceded that it cannot file declaration in Form-C any more and the 'H' form could not be submitted due to delay on the part of the purchasing dealer to supply the same. It is seen from the impugned order of the first appellate authority that the appellant sold goods worth ₹10,26,49,480.00 at the concessional rate of 2% against declaration in Form-C and ₹1,65,04,676.00 in course of export. The appellant at the assessment stage produced 'C' forms for ₹8,55,68,679.00 which were accepted and the

balance turnover of ₹1,70,80,801.00 was taxed at the appropriate rate. So far as the export sale is concerned, the appellant could furnish declaration in Form-H for ₹1,45,67,924.00, which was accepted being in order and deduction was allowed to that effect. The balance turnover of ₹19,36,752.00 was taxed at the appropriate rate on account of non-submission of Form-H. The dealer-assessee before the first appellate authority produced 4 nos. of 'C' form for ₹93,45,521.00 which were accepted being in order. But the 'H' form for ₹19,36,742.00 could not be furnished before the first appellate authority. At this stage, the appellant furnished the 'H' form and other supporting documents. Of course, there is some delay in submission of 'H' form and supporting documents by the dealer-assessee, but on that ground, it cannot be deprived of the right available to it under the statute. If the 'H' form submitted by the dealer-assessee is found to be correct, genuine and in order, the dealer is necessarily entitled to deduction of that amount. Therefore, under the circumstances, we are inclined to remit the matter back to the assessing authority where the dealer shall produce the 'H' form in original and other supporting documents, which it (dealer-assessee) filed before this

forum, for necessary verification by the assessing authority before accepting the same.

6. For the foregoing reasons, the appeal is allowed in part and the impugned order of the first appellate authority is hereby set aside to the extent indicated above. The matter is remitted back to the assessing authority with a direction to it to allow opportunity of hearing to the dealer-assessee to produce the 'H' form in original and other relevant documents and after necessary verification of the statutory form and other documents, the assessing authority shall recompute the tax liability of dealer-assessee in accordance with law. The entire exercise shall be completed within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I