

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

S.A. No. 14(C) of 2002-03

(From the order of the Id. ACST, Sambalpur Range,
Sambalpur, in Sales Tax Appeal Case No. AA 7(SAIII-C) of 2000-2001,
on 16.02.2002)

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III**

M/s. Orient Paper Mills,
(Prop: Orient Paper & Industries Ltd.)
P.O.- Brajrajnagar,
Dist.- Jharsuguda. ... Appellant

- V e r s u s -

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

For the assessment year: 1995-96

For the Appellant ... Mr. H.V. Jhunjunwala &
Mr. Mr. B.P. Mohanty, Advocates
For the Respondent ... Mr. D. Behura, S.C.

Date of hearing: 04.09.2019 **** Date of order: 05.09.2019

ORDER

This is an appeal by the dealer against the order of first appellate authority in an assessment u/r.12(5) of the Central Sales Tax (Odisha) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) remanding thereby the matter back to the assessing authority for assessment afresh as per the directions. The impugned order is called in question challenging the findings of first appellate authority

regarding rejection of exemption on claim of export sale even on furnishing of declaration form 'H'.

2. The dealer is a manufacturing unit engaged in manufacturing and sale of paper for the assessment year 1995-96. The dealer was assessed u/r.12(5) of the CST(O) Rules. In consideration of interstate sale and export sale by its own outstate own branch, the assessing authority rejected the claim of concession and exemption in rate of tax in its order dtd.31.03.1999. The dealer was asked to pay balance tax of Rs.8,27,435.00.

In appeal at the instance of dealer, the first appellate authority re-apprised the pleas of the dealer before him. In the impugned order, the first appellate authority held that, the claim of CST sale against declaration form 'C' needs to be scrutinized afresh by the assessing authority but on the other hand he confirmed the order of assessing authority rejecting the claim of exemption u/s.5(3) of the CST Act in spite of the submission of declaration form 'H' with the finding that, the other evidences required as per law to claim exemption u/s.5(3) of the CST Act are not furnished.

3. Being aggrieved, the dealer preferred this appeal and claimed that, the findings of both the fora below as against the claim of export sale and exemption in tax is erroneous. It is contended that, in the case in hand, it is not disputed that, the dealer had filed declaration form 'H' before the fora below. The provision under law as per Rule 12(10)(a) of the CST(O) Rules at the relevant period does not require any other enquiry or document save and except the declaration form 'H'. So, once the declaration form 'H' as produced or furnished, the dealer is under no obligation to furnish any further document. Bare reading of the provision as it mandates the dealer is required to produce declaration form 'H' along with the evidence of such goods.

Learned Counsel for the dealer strenuously argued that, they had furnished the bill of lading, order of exporter, tax invoice besides declaration form 'H' evidencing the fact of export sale. So, no further evidence is required and to that effect the findings of both the fora below are illegal.

4. The claim of the dealer is, it has effected export sales of Rs.12,28,38,571.82. Out of the said amount, goods for Rs.8,00,28,111.66 was claimed as sale in course of export falling u/s.5(1) of the CST Act, whereas, the rest amount was claimed falling u/s.5(3) of the CST Act. The assessing authority has accepted the claim of sale covered u/s.5(1) of the Act of Rs.8,00,28,111.66 as supported with necessary documents. Similarly, the export to Bangladesh through foreign intender such as M/s. Rita International of Bangladesh shipped through Indian exporter was also found in order and accepted. Thus, All the direct export sales effected by the dealer-company were found in order and accepted but the export sales to the extent of Rs.68,81,078.00 as claimed to have covered u/s.5(3) of the CST Act effected through the Indian exporters such as M/s. B.K. Paper Ltd., Bombay, M/s. GIS, Calcutta, M/s. Girnar Exports were found not supported with relevant documents like export invoices, letter of credit, copy of agreement of export etc. It is viewed that, even though the declaration form 'H' were furnished but in absence of other documents, the claim is inadmissible. Similarly, the first appellate authority also disallowed the claim by reiterating the same reasonings such as, the claim of export sales were not supported with the copies of agreement with foreign buyer, letter of credit and export invoice etc.

5. Learned Counsel for the dealer argued that, the dealer had produced all the relevant documents at the time of assessment before both the fora below. It had produced bill of lading and copy of shipping bills etc. obtained from M/s. B.K. Paper Ltd., Bombay, M/s.

GIS, Calcutta, M/s. Girnar Exports. The dealer has furnished a chart depicting the purchase order placed before the dealer by the merchant exporter, the form 'H', bill of lading, export invoice relating to each exporter for consideration.

Law is well settled that, exemption to penultimate sale is subject to the condition like, the sale is for purpose of complying with agreement or order in relation to export and such sale is made after the agreement or order in relation to export and same goods which were sold in penultimate sale should be exported though may not be in same form. In other words, the final exporter should be in possession of the export order from foreign buyer and should take delivery of the goods from the supplier making penultimate sale solely for execution of such export order and export the same goods though not in same form. In other words, when the movement of goods were preceded by existence of a foreign buyer's contract, in compliance of which the goods were sold by dealer to exporter and the goods were ultimately exported out of the territory of India by the merchant exporter, then the requirement of the provision u/s.5(3) of the CST Act is treated to be fully complied with in consonance to Rule 6D of the CST(O) Rules which speaks of movement of goods in a sale. For the purpose we can place reliance in the matter of **Consolidate Coffee Ltd. v. Coffee Board, Bangalore [1980] 164 STC 46**. Similarly, in **K. Gopinath Nayer v. State of Kerala (1997) Vol. 10 SCC 1**, it was held that, Sec.5(3) applies to penultimate sale, if such sale satisfies two conditions (a) that such penultimate sale must take place after agreement or order under which the goods are to be exported and (b) it must be for complying with such agreement or export order.

Further, dealing with a similar case, the Hon'ble Apex Court in **State of Madras V. Radio and Electricals (1966) 18 STC 222 (SC)** has held :

“Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate : but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorized to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate. He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate. There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer”.

6.(a) The impugned order as it revealed, the first appellate authority, without giving any cogent and elaborate reason just confirmed the order of assessing authority on this point.

7. From the facts and circumstances and the well settled principle laid down by the authorities discussed above, here in this case it is held that, if the movement of goods took place in pursuance to the purchase order or agreement between foreign buyer and exporter, in that event the sale by the assessee-dealer is qualified for exemption. The assessing authority is required to determine this question afresh as per the observation hereinabove in the remand assessment. Needless to mention here that, the remand assessment is

already pending before the assessing authority as per the impugned order for verification of declaration form 'C' and genuineness of interstate transactions. In that view of the matter, it is for sake of convenience, the assessing authority should be directed to enquire into the genuineness of the declaration form 'H' and the claim of export sale by the dealer afresh.

Further, it may be clarified here that, though raised in the grounds of appeal but the question of imposition of surcharge is not pressed in the hearing. Hence, the findings in the impugned order on this questions calls for no interference.

In the result, it is ordered.

The appeal is allowed in part on contest. The impugned order is modified to the extent that, in the remand assessment the assessing authority will do well to verify the genuineness of the declaration form 'H' afresh in the light of observation hereinabove along with the acceptance of 'C' declaration form as directed by the first appellate authority. The whole exercise should be completed within a period of four months hence. The dealer is at liberty to appear before the assessing authority without waiting for any further notice of hearing by the assessing authority.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III