

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 123 (C) of 2012-13

(Arising out of order of the learned JCST, Sundargarh Range,
Rourkela in First Appeal Case No. AA- 4(RL-I-C) of 2011-12
disposed of on dated 02.01.2013)

Present: Shri R.K. Pattanaik,
Chairman

M/s. National Enterprises,
Anand Bhawan Lane, Rourkela ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 09.03.2021 ***** Date of order: 08.04.2021

ORDER

Dealer assessee filed the instant appeal in terms of Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') assailing the impugned order dated 02.01.2013 promulgated in Appeal Case No. AA- 4(RL-IC) of 2011-12 by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'FAA') confirming the order of assessment dated 30.03.2009 passed under Rule 12(5) of the Rules by the learned Sales Tax, Rourkela-I

Circle, Uditnagar (hence called 'AA') for tax period 2005-06 on the ground that there remains no liability under the CST Act, 1956 payable.

2. In fact, the dealer assessee is a trader in timber, kendu leaves effecting sale of the same in course of inter-State trade and commerce. As per the record, the AA examined the books of account and ultimately assessed the dealer assessee by raising a demand of ₹1,35,041.00 which was challenged in appeal before the FAA, but then, it was confirmed. The dealer assessee disclosed its gross sale turnover at ₹1,22,51,197.00 which included export sale of ₹81,52,584.00 and inter-State sale worth of ₹27,29,433.00. It is also made to suggest that the dealer assessee furnished 'C' forms for ₹25,78,676.00 and failed in respect of ₹1,50,757.00 which was taxed at the appropriate rate. The dispute which is raised by the dealer assessee is in respect of inter-State sale of goods i.e. kendu leaves worth of ₹12,60,000.00 which has been disallowed by the AA on the ground that it has failed to furnish declarations in Form-C. The FAA confirmed the said assessment by holding that the dealer assessee sold the goods in course of inter-State trade and commerce and also failed to submit the 'C' forms for availing the tax benefit.

3. None appeared for the appellant dealer assessee, as a result of which, the appeal was heard exparte by order No. 18 dated 09.03.2021 of the Tribunal.

4. From the grounds of appeal, it is made to reveal that the dealer assessee claimed to have paid the CST in respect of the goods for an amount of ₹1,01,661.00 vide money receipt No. 2620 dated 01.12.2005 while selling it to M/s.

Traders King, Vanni Jai Ram Nagar, Gandhi Nagar for ₹12,60,000.00. According to the contention of the learned Standing Counsel (CT) for the State, the dealer assessee was required to submit the declarations in Form-C as the goods were sold in course of inter-State trade and commerce. It is also made to understand that the goods were originally purchased by the dealer assessee for the purpose of export. As per the AA, on verification of the documents, it was noticed that during the month of January, 2005, the dealer assessee had purchased kendu leaves from M/s. OFDC, Balangir in five lots and despatched it to Chennai for export to foreign buyers, who, however, refused to accept the same due to its inferior quality. It was also found that under such circumstances, the dealer assessee was forced to effect CST sale for ₹12,60,000.00. The State demands that the tax of ₹1,01,661.00 was paid, while purchasing goods for export which was later sold in course of inter-State trade and commerce and when the dealer assessee failed to submit the declarations in Form-C, rightly, the AA disallowed the claim and demanded tax @ 10% as per Section 8(2)(a) of the CST Act.

5. In view of the claim of the dealer assessee that CST was paid for the goods sold in inter-State trade and commerce, but was denied on the ground that tax at appropriate rate had to be levied, when inter-State sale was effected without furnishing declarations in Form-C, in the considered view of the Tribunal, the matter needs a re-examination. In other words, having regard to the rival claims and especially considering the contention of the dealer assessee that CST was, in fact, paid while selling the goods in course of inter-State trade and commerce, it is

required to be duly verified by referring to the material documents on record and therefore, the matter to suffer a remand to the AA and accordingly, it is directed.

6. Hence, it is ordered.

7. In the result, the appeal stands allowed. As a logical sequitur, the impugned order dated 02.01.2013 passed in Appeal No. AA- 4(RL-I-C) of 2011-12 is hereby set aside. Resultantly, the matter is sent back to the AA for a fresh decision on CST payable vis-a-vis goods sold at ₹12,60,000.00 for the tax period 2005-06 after considering the materials on record and by providing an opportunity of hearing to the dealer assessee and then to pass appropriate order according to law, preferably, within a period of three months from the date of receipt of the above order. The cross-objection filed by the State is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman