

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 20(C)/2016-17**

(From the order of the Id. JCST, Sundargarh Range,  
Rourkela, in Appeal No. AA3 (RL-II-C) of 2014-15,  
dtd.28.05.2016 modifying the assessment order of the  
Assessing Officer)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

M/s. Sanghamitra Alloys Pvt. Ltd.,  
Bijabahal, Kuarmunda,  
Dist. Sundargarh. .... Appellant

**-Versus-**

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

For the Appellant : Mr. D. Pati, Advocate  
For the Respondent : Mr. M.S. Raman, A.S.C.(C.T.)

(Assessment Period : 01.04.2011 to 31.03.2013)

Date of Hearing: 12.06.2019 \*\*\* Date of Order: 12.06.2019

**ORDER**

The present second appeal has been directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/JCST) in reducing the extra demand raised on the dealer passed by the Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AA/STO) from Rs.2,26,577/- to Rs.79,925/- in the assessment order for the assessment period from 01.04.2011 to 31.03.2013

u/r. 12(3) of the Central Sales Tax (Orissa) Rules, 1956 (in short, CST(O) Rules.

2. The facts leading to the case in short is that :

The dealer-appellant in the present case being a manufacturer of M.S. Ingot having its business premises at Kuarmunda in the district of Sundargarh in the name and style of M/s. Sanghamitra Alloys Pvt. Ltd. is using sponge iron, pig iron, C.I. Scraps, Boric Acid, Silco Manganese, M.S. Rod etc. as consumables. For this purpose, the dealer effected purchases and sales both inside and outside the State of Odisha. Basing on the Audit Visit Report (AVR) received from STO, Audit, Rourkela-II Circle, Panposh, the AA/STO, on non-submission of declaration in Form 'C' by the dealer in support of his claim towards sales of goods, initiated proceeding u/r.12(3) of the CST (O) Rules. The AA after scrutinizing the purchase and sale register and other books of account of the dealer-appellant, found the dealer during the entire period from 2011 to 2013 has effected total sale of goods worth of Rs.3,78,02,231/- at concessional rate against declaration in Form 'C'. During the course of hearing, the dealer-appellant produced declaration Form 'C' only to the extent of Rs.3,41,35,767/-, but failed to produce the said declaration Form 'C' for the balance amount of Rs.36,66,464/- as those were furnished in duplicates. The AA taking all these facts into consideration, taxed the said balance amount of Rs.36,66,464/- at appropriate rate, which led to total tax

demand of Rs.73,326/-. Further, the AA imposed penalty twice on the said amount of demand u/r.12(3) of the CST(O) Rules calculating to Rs.1,46,652/- along with interest of Rs.6,599/- u/r.8(1) of the CST(O) Rules respectively which ultimately comes together at Rs.2,26,577/- which the dealer is required to pay as per the assessment order.

3. Being aggrieved with such whimsical and arbitrary order of assessment passed by the AA, the dealer-appellant preferred appeal before the learned FAA/JCST, Sundargarh Range, Rourkela for anticipation of relief from such illegal demand.

4. The learned FAA in course of hearing the appeal at the first appellate stage, deleted the penalty completely, at the same time upheld the original tax demand and interest imposed by the AA in the assessment order.

5. Being further aggrieved, the dealer-appellant chose to file second appeal before this Tribunal with the contention that, sufficient opportunity was not granted by the learned Forum below for production of wanting declaration in Form 'C' under the CST Act for the balance amount of Rs.36,66,464/- for claiming payment of tax at the concessional rate. Hence, the AA disallowed the same amount for wanting of 'C' declaration Form as those were produced in duplicates and taxed the same at appropriate rates.

6. Appeal is heard with cross objection from the side of the State. Heard counsels from both the sides. Learned Counsel Mr. D. Pati appeared for the dealer-appellant, whereas Mr. M.S. Raman, learned Addl. Standing Counsel was present on behalf of the State-respondent. In the cross objection, the plea of the State is that, the dealer has claimed erroneous claim of deduction by not furnishing declaration in Form 'C' covering transaction worth Rs.36,66,464/-. Hence, the dealer is liable to pay penalty equal to twice the amount of tax assessed u/r.12(3)(g) of the CST(O) Rules along with levy of interest. In this context, justifying his argument learned Counsel for the State cited the decision of **Gupta Trading Co. Vrs. The State of Odisha** which reveals that, non-submission of declaration form leads to automatic payment of interest. Also he has cited the decision in **CCT Vrs. Control Switch Gera Co. Ltd. (2011) 10 VST 18 (ALL)**, wherein it is held that – “Even though declaration form for claiming exemption/concession may be required to be filed during the course of assessment proceeding but, in case of non-furnishing thereof, tax has to be levied at normal rate..”

On the contrary, learned Counsel representing the dealer-appellant during the course of hearing argued vehemently and took notice of this Tribunal to Sec.8(1) of the CST Act which envisages :

**8. Rates of tax on sales in the course of inter-State trade or commerce.-**

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three per cent of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower;”

Further he has put forth his argument by referring Section 8(4) of the CST Act which reads as follows :

8. (4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority at the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

*Provided that* the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.]”

7. At the outset, it is pertinent to mention here that, the order of the FAA, which is under challenge in this appeal is regarding deletion of penalty of Rs.1,46,652/-. After careful scrutiny of the grounds of appeal advanced by the learned Counsel and countering to it, cross objection filed by the State-Revenue, I am of the opinion that, as it revealed from the orders of both the fora below, the dealer has although furnished declaration in Form ‘C’ towards inter-state sale of Rs.3,41,35,767/-, but failed to submit the declaration in Form ‘C’ for the rest amount of Rs.36,66,464/- at the first appellate stage. But however, during the course of hearing before this Tribunal, he was able to produce the same for the remaining amount of his sale in xerox. So, keeping in view the aforementioned

discussions, if the dealer has furnished declaration Form 'C', the presumption is definite in favour of the dealer's claim of inter-state sale. However, if the authorities want to verify the same, it can scrutinise or verify the same by summoning the dealer to cause production of the documents in original in order to ascertain whether the claim of the present dealer is genuine or not. Because of the fact that, the dealer could not produce the declaration Form 'C' before both the fora below, but produced the same before this forum, in that event, the dealer's claim of exemption cannot be denied.

With the observation above, it is held that, this is a fit case where the matter should be remitted back to the AA with a direction to verify the genuineness of the declaration form and in the event it is found to be correct, the dealer should be given exemption in sale as per provision u/r.12(1) of the CST(O) Rules.

In the result, the appeal is allowed on contest. The impugned order is set-aside. The matter is remitted back to the AA for assessment afresh on verification of the declaration Form 'C' as observed above.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

