

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

S.A. No. 5(C) of 2008-09

(From the order of the Id. ACST, Cuttack I Range,
Cuttack, in First Appeal Case No. AA-(C)29/CUIW/06-07,
disposed of on 31.12.2007)

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 2nd Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III**

M/s. Orissa Forest Development
Corporation Limited,
A/84, Kharvel Nagar,
Bhubaneswar.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant

...

Mr. S.R. Mishra, Advocate

For the Respondent

...

Mr. S.K. Pradhan, A.S.C.

Date of hearing: 10.04.2019

Date of order: 11.04.2019

ORDER

This is a second appeal against the order of first appellate authority in an assessment u/s.12(4) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) relating to the assessee-dealer M/s. Orissa Forest Development Corporation Ltd., a registered dealer, Government of Odisha undertaking engaged in sales of kendu leaves and other forest products.

2. The case of the taxing authority is, the dealer was registered centrally under the CST Act at Cuttack, whereas it was registered under Sambalpur I Circle, Rourkela I Circle, Koraput I Circle effective from different dates of registration. Besides, the dealer was also registered under the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) at nine numbers of circles of the State. In an assessment u/s.12(4) of the CST(O)

Rules for the tax period 2003-04, the assessing authority found the dealer had already assessed u/s.12(4) of the OST Act under nine circles above. It had disclosed GTO at Rs.150,26,82,923.81 including CST and TTO of Rs.144,48,86,307.81. In addition to that, the dealer disclosed export sale of Rs.12,01,54,452.50. On scrutiny of the different assessment orders under the OST Act, the assessing authority found, there was mentioning of export transaction and non-inclusion of the same under the GTO in those assessments. The assessing authority discarded the assessments by other assessing authorities under OST Act to the extent of sales covering under CST Act more to say the export relatable to turnover u/s.5(3) of the CST Act. Thereafter, on scrutiny, the assessing found the dealer unable to furnish the declaration forms and in four numbers of cases the declaration forms furnished by the dealer were declared obsolete by due notification as a result, the assessing authority re-determined the TTO at Rs.162,28,37,376.31. Deduction of Rs.5,77,96,616.00 towards CST collected was given, thereby the net taxable turnover was raised at Rs.156,500,40,760.31. It levied the tax under the CST Act, surcharge on the tax which together aggregated to Rs.7,39,01,327.92. The tax already paid at the time of filing of return mentioned above was deducted and accordingly the balance tax due raised at Rs.1,61,04,709.00.

3. Being aggrieved with the assessment as above, the dealer preferred appeal before the Asst. Commissioner of Sales Tax/ACST, Cuttack I Range, Cuttack as first appellate authority. Before the first appellate authority the dealer furnished four numbers of declaration forms 'C' but could not succeed in his attempt to justify the exemptions falling u/s.5(3) of the CST Act in absence of any valid declaration forms. The first appellate authority returned the view as adopted by the assessing authority held that, the assessment under OST Act by different circles will not qualify the dealer for exemption under CST assessment. However, the first appellate authority recalculated the tax due as it has accepted four numbers of declaration forms. Finally, the demand against the dealer was reduced to Rs.139,72,480.00.

4. When the matter stood thus, the dealer preferred this appeal with the contentions like, the orders of both the fora below are not

sustainable in law as the orders are not based on settled principle of law and the facts and circumstances of the case.

5. **Rival contentions:-**

The case of the taxing authority is, the dealer had failed to produce the declaration forms against the claim of exemption in the assessment. Further the assessing authorities under the OST Act being found adopted wrong method of assessment, the dealer cannot be left free from statutory obligations under the CST assessment.

6. Denying the allegations inter alia, the contentions of the assessee are, the mode of assessment for the particular year was not new as the authority had been assessing the dealer for years preceding to the year of assessment in the same method. Further, once the dealer could furnish the declaration forms and could able to satisfy the authority in the assessment under the OST Act regarding the claim of exemption against export sale then, the same authority in the assessment under CST Act cannot the dealer for want of declaration forms or for want of any evidence regarding the claim of export sale.

7. From the rival contentions above, it is to be decided that,

- (i) Whether the act of the taxing authority in not allowing the exemption u/s.5(3) of the CST Act even otherwise when the dealer could satisfy the claim in the OST assessment?
- (ii) Whether the authority under CST assessment can declare the authority under OST assessment as without jurisdiction and not binding ?

8. This is a peculiar case, where it is noticed that, the dealer had registered itself under the OST Act at 9/11 places, whereas the dealer has centrally registered under the CST Act at Cuttack. Later, it also got OST registration at some more places in Odisha. For the assessment period in question, the dealer was subjected to assessment under the CST Act. In the OST assessment, the assessing authority had accepted the claim of the dealer regarding the turnover of export sale or interstate sale. The assessing authority did not include the turnover of export sale in the GTO and TTO. On the other hand, under the CST assessment it is the authority found the method adopted by the assessing authorities under the OST Act are faulty.

At this juncture, it can be said that, the view of the assessing authority in this case is correct to the extent that, claim of exemption under the CST Act should be decided in the CST assessment and when the dealer fails to establish his claim in the CST assessment, he can be made liable under the OST assessment as a consequential effect to it.

9. In the case in hand, the assessing authority took cognizance of the dealer's claim and accepted the same in the assessment u/s.12(4) of the OST Act. On the other hand, the authority under CST assessment raised claim of tax as there was no sufficient evidence furnished before him against the claim of exemption. This is an intradepartmental irregularity. It is found that, the similar mode of assessment had been continuing during the previous periods relating to the same dealer without objection. If that be, what is the fault of the assessee-dealer ? If the authority had adopted wrong procedure it should have taken up in the administrative side with a direction to discontinue such irregularities but, for the reason of such irregularities the dealer cannot be punished. The authority under the CST Act should have called for and verified all the assessments under the OST Act and there, if it was found that, the authorities had accepted the claim of the dealer regarding export sale or interstate sale as the case may be, then the assessing authority in CST assessment had no option but not to raise any demand against the dealer. In such view of the facts and circumstances in the case in hand as discussed above, it is held that, the matter need to be remitted back to the assessing authority for the limited purpose of verification such as, if the claim of export sale/exempted sale under CST Act were taken into consideration by the assessing authorities under the OST Act in the OST assessment u/s.12(4) of the OST Act or not. If it is found this aspects were taken care of expressly or impliedly, in that event no further tax liability can be imposed against the dealer. Accordingly, it is ordered. Pertinent to mention here that, the dealer has furnished photostat copy of the assessment orders under the OST Act. Hence ordered.

10. The appeal is allowed. The impugned order is reversed. The matter is remitted back for assessment afresh as per the observation above. The assessee-dealer is directed to appear before the assessing authority within a period of one month without waiting for any notice of hearing and

the assessing authority thereafter is requested to complete the remand assessment within a period of four months hence.

Dictated & corrected by me,

(Subrata Mohanty)
2nd Judicial Member

(Subrata Mohanty)
2nd Judicial Member

I agree,

(Suchismita Misra)
Chairman

I agree,

(R.K. Pattnaik)
Accounts Member-III