

BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 106(C)/2012-13

(From the order of the Id.DCST, Ganjam Range, Berhampur, in
Appeal No. AAC.29/2010-11, dtd.17.11.2012,
confirming the assessment order of the Assessing Officer)

P R E S E N T :

Smt. S. Misra Sri S. Mohanty & Sri R.K. Rout
Chairman Judicial Member-II Accounts Member-II

M/s. Bimal Enterprises,
At/P.O. Balliguda,
Dist. Kandhamal.

... Appellant

-Versus -

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

... Respondent

Appearance :

For the Appellant ... Mr. R.P. Sahu, Advocate

For the Respondent ... Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2005 to 30.11.2009)

Date of Hearing: 23.08.2018

Date of Order: 23.08.2018

ORDER

This second appeal is directed against the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, FAA/DCST) whereby, the FAA has confirmed the order of Assessing Authority/Asst.Commissioner of Sales Tax, Phulbani Circle, Phulabni (in short, AA) passed in proceeding u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules denying the concession in rate of tax for want of

declaration form against the export sale by the dealer during the assessment period from 01.04.2005 to 30.11.2009.

2. The appellant-dealer was engaged in trading of seasonal goods. The STO, Audit team had reported that, the dealer had effected total inter-state sale of Rs.1,57,18,830/-, which includes taxable inter-state sale of Rs.88,22,090/-, tax exempted inter-state sale of Rs.29,81,740/- and export sale of Rs.39,15,000/-. In the proceeding u/s.12(3) of the CST(O) Rules, the AA found that, the dealer had furnished declaration Form in 'C' worth of Rs.85,31,590/-. The dealer had failed to furnish declaration form against sale of Rs.2,90,500/- (Rs.88,22,090 – Rs.85,31,590). So the AA imposed tax @10% on this differential amount treating it as an inter-state sale without declaration Form 'C' not entitled to tax concession. Similarly as against the claim of export sale of Rs.39,15,000/-, the dealer has produced Form 'I' issued by one M/s. RSV Exim (P) Ltd. for Rs.9,30,000/-, but failed to produce any declaration form for rest of the amount i.e. Rs.29,85,000/- (Rs.39,15,000 – Rs.9,30,000). In absence of any declaration form by the dealer, the claim for exemption in tax was rejected and the dealer was levied with full rate of tax i.e. 10%. As a result, the total tax due payable by the dealer was calculated at Rs.5,35,497/-. In addition to that, penalty u/r.12(3) of the CST (O) Rules i.e. twice of the tax due was also imposed. As a result, the total due such as tax with penalty was calculated at Rs.10,06,493/-.

3. As against the order of the AA, the dealer had preferred first appeal. Ld.DCST, Ganjam Range, Berhampur as First Appellate Authority (FAA) has held that, the dealer had effected total export sale worth of Rs.39,15,000/-, but had failed to furnish Form 'I' for Rs.9,30,000. Similarly, learned FAA has also found the dealer has not furnished declaration in Form 'C' for inter-state transaction of

Rs.29,85,000/-. As a result, he confirmed the order of FAA thereby the demand remained unaffected.

4. Being aggrieved the dealer has preferred this appeal. It is contended by the dealer that, proper opportunity was not provided to the dealer for production of declaration forms and levy of penalty is not taxable in law. However, in course of argument, the dealer through his Counsel disputed the rate of tax imposed by the fora below.

5. The appeal is heard without cross objection. State has filed cross objection with the contentions like submission of statutory form at belated stage is not permissible as per Rule 12(7) of the CST (R&T) Rules.

6. At the outset, it is pertinent to mention here that, though the dealer has taken a plea of non-extension of sufficient opportunities to produce the declaration forms, but the fact remains, even before this forum also the dealer could not produce any declaration form as against the claim of exemption. So question of furnishing declaration form and its acceptance in accordance to law, does not arise here in this appeal. Learned Counsel for the dealer argued that, the dealer is not an exporter. So he had not made any export sale. On the contrary, learned Addl. Standing Counsel draws the attention of the Court to the orders of fora below and argued that, it is the dealer himself had availed concession in rate of tax on furnishing declaration Form-I. Principle is well settled that, Form-I was issued by the dealer in special academic zone and it has got exemption as good as export sale. The orders of both the fora below are silent about the purchasing dealer belonged to a special academic zone. However, presumption can be drawn from the fact that, the dealer has claimed exemption on furnishing Form-I. As a result, the plea of the dealer's counsel during hearing is found to be self-contradictory and without any basis.

7. The next plunk of argument by the learned Counsel for the dealer is, the rate of tax imposed by both the fora below even without giving any concession is erroneous. It is found that, the fora below has imposed tax @10% on sal seeds and nigar seeds. Provision u/s.14 Clause-VI contains nigar seeds under sub-clause 'X' and sal seeds under sub-clause 'XVII'. Both these goods are there under Entry Sl.No.82 of the rate chart under OVAT Act. Sec.8(1) speaks of the calculation tax rate on inter-state sale. It has undergone amendment w.e.f.01.04.2007. Thus, the rate of tax prior to the amendment coming to effect from 01.04.2007 was different from the period after amendment.

8. In view of the provision under law as mentioned above, we found there is considerable force in the argument of the learned Counsel. Learned Addl. Standing Counsel has fairly conceded that, the rate of tax as imposed should be revised in accordance with the rate chart and provision under law discussed above. In consequence thereof, we are of the consensus view that, the dealer is not entitled to any kind of concession as per the claim of sale to the dealer under special academic zone without any declaration Form-I and the dealer is liable to pay tax at the appropriate rate. However, the rate of tax imposed being not appropriate, it needs fresh calculation. Be that as it may, we are of the view that, this is a fit case where the matter should be remitted back to the AA for calculation of tax afresh.

9. While observing as such, when it comes to the question of imposition of penalty, we are of the view that, the principle is now well settled in view of the decision rendered by the Hon'ble Court in **Gujarat Ambuja Cement Ltd. and Another Vrs. Assessing Authority-cum-Assistant Excise and Taxation Commissioner and Others** reported in **(2000) 118 STC 315 HP** and in view of the Circular

issued by the Commissioner of Commercial Taxes, Odisha, Cuttack vide No.42/CT/No.III(I)38/09 dtd.20.04.2015, the dealer is not liable to pay penalty for not furnishing declaration form. Accordingly, it is ordered.

The appeal is allowed in part on contest. The matter is remitted back to the AA for assessment afresh in the light of the observation above.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Smt. S. Misra)
Chairman

I agree,

Sd/-
(R.K. Rout)
Accounts Member-II