BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 119(C) of 2015-16

(Arising out of order of the learned Joint Commissioner of Sales Tax, Koraput Range, Jeypore, in 1st Appeal No. AAC(KOR) 13/14-15, disposed of on dated 26.05.2015)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

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

-Versus-

M/s. Sai Cashews, Majurmunda, Koraput. ... Respondent

For the Appellant : Mr. D. Behura, S.C. & Mr. S.K. Pradhan, A.S.C.
For the Respondent : N o n e

Date of hearing:23.06.2022 *** Date of order:29.06.2022

O R D E R

This appeal is directed at the instance of the State against the order dtd.26.05.2015 passed by the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter referred to as, the learned FAA) in 1st Appeal No. AAC(KOR) 13/14-15, thereby reducing the demand to

Rs.2,66,827.00 from Rs.58,92,045.86 raised by the Deputy Commissioner of Sales Tax, Korput Circle, Jeypore (hereinafter referred to as, the learned AA) for the tax period 01.04.2008 to 31.03.2010 in the assessment framed u/r.12(4) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST Rules).

2. The facts of the case in brief are that, the dealer is a manufacturer of cashew kernel out of raw cashew nuts and sells the same inside the State as well as outside the State. The assessing officer on scrutiny of the returns filed under the CST Act by the dealer-assessee found that although the dealer avail concessional rate of tax did not furnish the required 'C' declaration forms. So it initiated assessment proceeding u/r.12(4) of the CST(O) Rules for the above period and issued notice to the dealer-assessee. Pursuant to such notice, the dealer did not appear on account of which the learned assessing authority proceeded with the assessment proceeding exparte and raised demand of Rs.58,92,045.86 which includes penalty of Rs.39,28,030.58. The dealer challenging the demand raised by the assessing authority preferred appeal before the first appellate authority who taking into consideration 17 nos. of 'C' declaration forms in original for Rs.2,72,74,159.00 filed by the dealer reduced the tax demand to Rs.2,66,827.00.

3. The State being aggrieved with the reduction of demand raised by the assessing authority filed the present second appeal.

4. When the appeal is called for hearing, none appeared on behalf of the respondent-dealer despite due service of notice, so this forum proceeded to hear the appeal exparte in presence of the learned Standing Counsel for the Revenue. It was vehemently urged by the learned Standing Counsel for the Revenue that the learned Joint Commissioner of Sales Tax had no authority to hear the appeal as the assessment order was passed by the learned Deputy Commissioner of Sales Tax. Therefore, the impugned order passed by the first appellate authority is illegal and vitiated under law. He submits to allow the appeal and set aside the impugned order of the first appellate authority and remit back to the appropriate authority for adjudication of the appeal as per law.

5. We have heard the submission of the learned Standing Counsel for the Revenue, gone through the grounds of appeal raised in the memorandum of appeal vis-a-vis the impugned order of the forums below and the materials on record. The only ground raised in the appeal is that, the first appellate authority had no jurisdiction to entertain and adjudicate the appeal which was filed against the order of the learned Deputy Commissioner of Sales Tax. The first appeal was preferred before the first appellate authority u/s.77(1) of the Orissa Value Added

Tax Act, 2004 (hereinafter referred to as the, OVAT Act) read with Rule 22 of the CST(O) Rules. The appeal preferred u/s.77 of the OVAT Act is regulated by Rule 86 of the Orissa Value Added Rules, 2005 (hereinafter referred to as the, OVAT Rules). Rule 22 of the CST(O) Rules provides that the provisions of the OVAT Act and Rules made thereunder shall mutatis mutandis apply in respect of all procedural and other maters incidental to the carrying out for the purpose of the Act for which no provision is made in the Rules or in the Central Sales (Registration & Turnover) Rules, 1957. Undisputedly, there is no provision under the CST Act for regulating the filing of appeal by the aggrieved party against the order of assessment. The order of assessment made u/r.12(4) of the CST(O) Rules is appealable u/s.77 of the OVAT Act and the relevant Rules regulating the appeal is Rule 86 of the OVAT Rules. Rule 86(1)(b) provides that any person aggrieved by an order passed u/s.34, 40, 42, 42A, 43, 44, 45, 49 or 52 may prefer an appeal within thirty days from the date of receipt of such order before the Joint Commissioner of Sales Tax. In the present case the order of assessment has been passed by the Deputy Commissioner of Sales Tax, Koraput Circle, Jeypore which was challenged in appeal before the Joint Commissioner of Sales Tax, Koraput Range, Jeypore who disposed of the same by its order dtd.26.05.2015 reducing the tax demand to Rs.2,66,827.00. The first appellate authority

has exercised the jurisdiction vested on it u/r.86(b) of the OVAT Rules and there is no illegality in the order passed by it. The contention raised by the learned Standing Counsel for the Revenue that the Joint Commissioner of Sales Tax, Koraput Range, Jeypore had no jurisdiction to hear the appeal against the order passed by the Deputy Commissioner of Sales Tax, Koraput Circle, Jeypore is misconceived one and contrary to the provisions contained in Rule 86 of the OVAT Rules.

6. In view of the discussion made above, the second appeal filed by the State being devoid of merit stands dismissed and the impugned order of the first appellate authority stands confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I