

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

S.A. No. 60 (C) of 2012-13

(Arising out of order of the learned Addl. CST (Appeal), Central Zone, Odisha, Cuttack in First Appeal No. Jajpur AA- 69/08-09, disposed of on dated 13.09.2012)

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. Pawan Kumar Allhuwalia,
At/PO- Barbil, Dist. Keonjhar ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)
For the Respondent : N o n e.

Date of hearing: 21.06.2022 *** Date of order: 30.06.2022

O R D E R

The State has preferred this appeal assailing the order dated 13.09.2012 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (hereinafter called as 'first appellate authority') in Appeal No. Jajpur AA- 69/08-09 thereby reducing the demand to ₹20,94,485.00 from ₹49,27,410.00 raised by the

Asst. Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, 'assessing authority') for the period from 01.07.2006 to 31.03.2007 in the assessment framed u/r. 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

2. The relevant facts giving rise to the present second appeal are that the dealer-assessee is engaged in extraction of minerals from mines and also used to purchase iron ore lumps and crush the lumps in its crusher unit into size iron ore, which are sold both inside and outside the State in course of inter-State trade and commerce. A Fraud Case Report (FCR) was submitted against the dealer-assessee alleging sale suppression during the period from 01.07.2006 to 30.11.2006 and it was suggested for assessment of the dealer for the entire tax period 2006-07. Subsequent to the submission of FCR No. 6 dated 08.05.2007, notice u/r. 12(3) of the CST (O) Rules was issued to the dealer along with copy of the FCR calling upon the dealer to produce the books of account. Pursuant to such notice, one Raj Kishore Das appeared on behalf of the dealer-assessee and caused production of books of account for necessary examination by the assessing authority. At the

time of assessment, the dealer-assessee submitted revised returns for the months ending July,2006; October, 2006; November, 2006 and January, 2007 due to miscalculation of turnover of sales. The dealer-assessee also filed statement of sales against 'C' form along with relevant statutory form and sales in course of export. The Vigilance Authority recommended for revision of sale price at ₹3,077.00 per MT for the tax period 01.04.2006 to 30.11.2006. The assessing authority confronted the dealer with the allegation made in the FCR regarding under invoicing of sale price and thereafter on consideration of the materials on record including FCR and the explanation of Sri Das at the time of hearing held that the allegation of under invoicing of sale price by the dealer stood established. Accordingly, he determined the sale turnover for the month of July, 2006 at ₹2,500.00 per MT and for the balance period from 01.08.2006 to 30.11.2006 at ₹3,077.00 per MT. The dealer disclosed the turnover of 14,386.160 MT of size iron ore during the tax period from 01.07.2006 to 30.11.2006 and total value of 14,386.160 MT of size iron ore @ Rs.3077/- was calculated at ₹4,42,66,214.00. The dealer having shown sale value at ₹2,96,30,704.00, the balance sale value was

determined at ₹1,46,35,510.00. As per the revised return, the dealer admitted to have collected tax to the tune of ₹56,06,684.00, but it paid tax to the tune of ₹54,83,266.00. It withheld tax to the tune of ₹1,23,418.00 on which the dealer was liable to pay interest as provided u/r. 8 of the CST (O) Rules. Learned assessing authority treated the less disclosed sale turnover to the tune of ₹1,46,35,510.00 as sale suppression and enhanced the GTO and TTO by the said amount and taxed the same @ 10%. The dealer-respondent also failed to submit 'C' form for an amount of ₹58,04,535.00 to substantiate its claim of concessional rate of tax. Further, the dealer-assessee though claimed to have sold 1,136.060 MT of iron ore worth ₹4,82,826.00, no 'H' form and other relevant documents were submitted to substantiate its claim. Therefore, the assessing authority taxed the said amount @ 10%. This resulted in additional demand of ₹19,83,523.00 on which interest to the tune of ₹16,785.00 was imposed for belated payment of admitted tax. The assessing authority also imposed penalty to the tune of ₹29,27,102.00 for the dealer's indulgence in sale suppression.

2(a). The dealer-assessee challenging the demand raised by the assessing authority filed appeal before the first appellate authority, who reduced the demand to ₹20,94,485.00 holding that the dealer had shown sale price less than actual sale price of size iron ore (5 x 18 size); that the disclosure of sale price by the dealer-assessee @ 2,060.00 per MT is found to be lower side and that there being fluctuation of market price and there is no uniform rate during the entire tax period, determination of average sale price of size iron ore for the relevant period @ ₹2,500.00 is reasonable. The first appellate authority found the dealer to have understated the sale to the tune of ₹63,34,696.00. Thus, the GTO and TTO was enhanced by ₹63,34,696.00 and interest to the tune of ₹16,785.00 was levied for delay of 408 days in payment of admitted tax to the tune of ₹1,23,418.00. The total tax, penalty and interest was calculated at ₹20,94,485.00.

The State being aggrieved with the order of the first appellate authority reducing the demand to ₹20,94,485, filed the present second appeal. The dealer-respondent filed cross-objection supporting the impugned order of the first appellate authority.

3. When the appeal was called on for hearing, none appeared on behalf of the dealer-assessee despite due service of notice for which the appeal was heard in the absence of the dealer-assessee and in presence of the learned Standing Counsel (CT) for the State.

4. The sole dispute raised in the present second appeal is on the determination of sale price of size iron ore @ ₹2,500.00 per MT by the first appellate authority as against ₹3,077.00 per MT determined by the assessing authority. It was vehemently urged by the learned Standing Counsel (CT) for the revenue that the determination of sale price of size iron ore by the first appellate authority is whimsical, arbitrary and against the materials on record. When there is material on record to show that size iron ore was sold @ ₹3,077.00 per MT for the period 01.04.2006 to 30.11.2006, the first appellate authority was not correct in its approach in reducing the sale price to ₹2,500.00 per MT. He strenuously argued that the purchase order of M/s. Arati Steel & Power Ltd. reveals that the rate of size iron ore (5 x 18 size) was ₹3,200.00 per MT. The first appellate authority neither took such document into consideration nor any other materials on record to come to the conclusion that the

price of the size iron ore was ₹2,500.00 per MT at the relevant time. There is absolutely no rationality in determination of the sale price of the size iron ore at ₹2,500.00 per MT by the first appellate authority. Therefore, the impugned order of the first appellate authority should be set aside and that of the assessing authority should be restored.

5. We have heard learned Standing Counsel (CT) for the revenue, gone through the grounds of appeal vis-a-vis the impugned orders of the forums below and the materials on record. In view of the above contention raised by the State, it is to be seen whether the first appellate authority was correct in its approach in fixing the sale price of size iron ore at ₹2,500.00 per MT as against ₹3,077.00 determined by the assessing authority. On going through the impugned order of the first appellate authority, we find that it has taken note of the remark of the assessing authority in the assessment order wherein it (assessing authority) observed that there is fluctuation in the market price and there was no uniform rate during the entire tax period. The first appellate authority observed that this remark of the assessing authority should be taken into

consideration for determining the average sale rate for the period. It further observed that the rate of size iron ore also depends upon its quality. Verification of certain record would not be sufficient to reach at a definite conclusion. The first appellate authority so observing reasonably determined the sale price at ₹2,500.00 per MT. The assessing authority, on the other hand, has determined the sale price at ₹3,077.00 per MT basing on the materials available in the FCR inspite of its observation in the assessment made u/r. 12(5) of the CST (O) Rules for the tax period 01.04.2006 to 30.06.2006 relating to the instant dealer to the effect that there is fluctuation of sale price in the market. It is pertinent to mention here that the dealer-assessee was also subjected to assessment u/r. 12(5) of the CST (O) Rules for the tax period 01.04.2006 to 30.06.2006, which carried into second appeal vide **S.A. No. 62 (C) of 2012-13** at the behest of the State, wherein also the State questioned determination of sale price at ₹2,500.00 per MT. The Division Bench of this Tribunal vide order dated 27.01.2014 taking note of the decision of the Hon'ble Apex Court in case of **K. P. Varghese Vs. Income Tax officer, 131 ITR 597 (SC)**, upheld the decision of the first appellate authority determining the sale

price of size iron ore @ ₹2,500.00 per MT. There is nothing on record to show that the order of this Tribunal was challenged in higher forum and was set aside. So, in the absence of any contrary material, the determination of sale price of size iron ore @ ₹2,500.00 per MT. for the tax period 01.07.2006 to 31.03.2007 by the first appellate authority is just, proper and reasonable and does not warrant interference of this Tribunal.

6. In above premises, the appeal filed by the State being devoid of any merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed. Cross-objection is disposed of accordingly.

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