BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 37 (C) of 2020

(Arising out of order of the learned Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar in Appeal No. AA (CST) 46/BH-IV/2018-19, disposed of on 29.10.2019)

Present: **Shri G. Sharma, Chairman**

M/s. Escorts Limited,
Plot No.221/1234, Khata No.221/647,
Mouza-Khanjiama, N.H.-5, Khurda,
Bhubaneswar, Odisha-752005. ... Appellant

-Versus-

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

For the Appellant : Mr. P.K. Panda, Advocate
For the Respondent : Mr. N.K. Rout, Addl. S.C. (CT)

Date of hearing : 31.08.2026 *** Date of order : 29.09.2026

O R D E R

Challenging the legality and propriety of order dated 29.10.2019 passed by the Addl. Commissioner of Sales Tax (Appeal), Bhubaneswar (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA (CST) 46/BH-IV/2018-19, this appeal has been filed by M/s. Escorts Limited (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal run thus–

The Dealer deals in receipts of goods, i.e. manufactured tractors of it's own company brand "Escorts". Basing on the Audit Visit Report (in short, 'AVR'), the Deputy Commissioner of Sales Tax, Bhubaneswar IV Circle, Bhubaneswar (hereinafter referred to as 'Assessing Authority')

initiated assessment proceeding U/r.12(3) Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST(O) Rules') for the period 01.07.2007 to 31.03.2012. Since the Dealer did not furnish the required declarations in Form 'F' to the tune of ₹2,63,89,541.00 for the claim of stock transfer, the Assessing Authority completed the assessment and raised tax demand along with penalty of ₹31,66,745.00 for the impugned period. Being aggrieved with the order of assessment, the Dealer preferred first appeals before the First Appellate Authority. The First Appellate Authority after accepting some 'F' forms amounting to ₹1,97,89,431.00 filed by the Dealer reduced the demand by imposing penalty and interest thereon at ₹8,57,398.00, hence this appeal.

3. In course of hearing, the learned Counsel for the Dealer submits that mere non-submission of wanting statutory declaration forms before the Assessing Authority or First Appellate Authority does not attract imposition of penalty as per settled law, accordingly, learned Counsel prayed for deletion of penalty in the interest of justice. He further submitted that the First Appellate Authority did not consider the deposit amount of ₹1,05,558.00 for filing of appeal while computing the liability of the Dealer.

4. Per contra, the Addl. Standing Counsel (CT) appearing for the State supported the order of the First Appellate Authority to be just and proper on the ground that the Dealer failed to submit the wanting declaration for the claim of branch transfer despite opportunities granted, and thus, the demand raised by the First Appellate Authority does not warrant interference in appeal.

5. Admittedly, in the present case, the Dealer could not be able to produce wanting statutory declarations in Form-F towards the claim of stock transfer before the Assessing Authority, but produced some declaration forms before the First Appellate Authority. As a result, the First Appellate Authority levied penalty u/r.12(3)(g) of the CST(O) Rules for the period under assessment and the same has been challenged as illegal and unlawful

by the Dealer. Even before this forum, the Dealer is unable to furnish any such wanting declaration forms. In this context, I am alive of the legal principle enunciated by the Hon'ble High Court of Orissa in the case of ***M/s. General Traders, Berhampur v. State of Odisha (STREV No.64 of 2017***, dated 08.12.2022), wherein the Hon'ble Court considering the Circular dated 20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha have held that-

> "7.4. In view of the aforesaid Circular issued by the Commissioner of Commercial Taxes, instructing not to enforce penalty under Rule 12(3)(g) in the circumstance where there was non-filing of declaration forms in respect of *bona fide* transactions, particularly in absence of substantive provision for such imposition under Section 9(2) of the CST Act, this Court is of the considered opinion that the First Appellate Authority was justified in deleting penalty as imposed by the Assessing Authority while finalizing Audit Assessment."

In view of such settled position of law, I am of the humble opinion that imposition of penalty u/r.12(3)(g) of the CST(O) Rules by the forum below for non-furnishing of statutory declarations is liable to be deleted in the ends of justice.

Furthermore, the Dealer claim to have deposited the amount of ₹1,05,558.00 while filing the appeal, but the First Appellate Authority did not allow the credit of the same before computing the demand in appeal, which requires reconsideration by the Assessing Authority on remand.

As such, the matter is required to be remitted back to the Assessing Authority for deletion of penalty as well as due credit of the deposit of ₹1,05,558.00 made by the Dealer in filing the appeal and issue of demand notice thereof afresh as per law.

6. In the result, the appeal filed by the Dealer stands allowed and the order of the First Appellate Authority is hereby set aside to the above extent. The matter is remanded to the Assessing Authority for re-computation of tax liability by deleting penalty as well as for credit of deposit made at the time of filing of appeal keeping in view of the observations made supra within a period of three months from the date of receipt of this order.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman