

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

S.A.No.187(C) of 2006-07

(Arising out of the order of the learned ACST, Sundargarh Range,
Rourkela, in First Appeal Case No. AA 89 (RL II-C) 2005-06,
disposed of on dtd.30.11.2006)

Present: **Smt. Suchismita Misra**, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member,
&
Shri R.K. Pattnaik, Accounts Member-III.

M/s. Shree Ganesh Metaliks Ltd.,
Shree Complex, Udit Nagar,
Rourkela. ... Appellant

- V e r s u s -

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

For the Appellant : N o n e
For the Respondent : Mr. M.S. Raman, A.S.C.

Date of Hearing: 16.12.2019 **** Date of Order: 27.12.2019

ORDER

This appeal is directed against the impugned order dated 30.11.2006 passed by the learned Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA 89 (RL II-C) 2005-06, wherein he has confirmed the assessment made by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, the learned STO) u/s.12 (4) of the Central Sales Tax (Orissa) Rules, 1947 (hereinafter referred to as, the CST(O) Rules) for the period 2003-04.

2. The appellant-dealer carries on business in manufacture and sale of sponge iron. The appellant-dealer had shown interstate

sale worth Rs.59,56,084.00 by admitting CST @ 4% but failed to produce the required 'C' forms. The appellant-dealer disclosed Rs.49,86,259.00 as consignment sale U/s.6-A of the CST Act and admitted no CST liability by submitting form 'F'. It was found that the appellant-dealer had failed to furnish the details of mode of dispatch of sponge iron from the consignment agent to the ultimate purchaser. It proved that sponge iron had been loaded from the business premises of the appellant-dealer inside the State of Orissa and directly consigned to the ultimate buyer of outside the State of Orissa. The entire claim of Rs.49,86,259.00 was treated as interstate sale coming U/s.3(a) of the CST Act which added to the GTO and NTO and taxed at the appropriate tax rate of 4% being not covered with 'C' form. The GTO was determined at Rs.1,11,79,549.00 and deduction of Rs.2,38,196.00 was allowed towards STC. The NTO was determined at Rs.1,09,41,353.00. Tax @ 4% on Rs.15,86,698.00 and @ 8% on Rs.93,54,655.00 worked out to be Rs.8,11,841.00. The appellant-dealer having paid Rs.2,38,196.00 was required to pay the balance sum of Rs.5,73,645.00 as decided by the learned STO.

3. After the assessment, being aggrieved by the order of the learned STO, the appellant-dealer preferred an appeal before the learned ACST bearing First Appeal Case No. AA 89 (RL II-C) 2005-06. On hearing and on consideration of the materials on record, the learned ACST rejected the contentions of the appellant-dealer and confirmed the order of the learned STO, vide his order dtd.30.11.2006. Thus, again being aggrieved by the said order, the appellant-dealer has preferred this second appeal.

4. No cross objection has been filed by the respondent-State in connection with the appeal.

5. When the matter was taken up for hearing, none appeared on behalf of the appellant-dealer and as such the matter was heard from the side of the State and the matter was disposed of on merit.

6. The appellant-dealer came up with the second appeal on the following grounds:-

- (i) The order of the lower forums are bad in law on the facts of the case.
- (ii) The learned assessing officer has denied an opportunity to submit the original copy of 'C' form against the duplicate submitted and the learned ACST on the other hand denied to accept such forms collected after much pain.
- (iii) The rejection of claim of sale of goods u/s.6A of the CST Act is absolutely discriminatory and the observation of the LAO as well as the learned ACST is without merit. The appellant has furnished all the details of such transactions like sale patties wherein all details of expenses incurred by the agent on account of principal along with commission is furnished and balance amount has been remitted to the principal.
- (iv) In course of rejection of such sale, the assessing officer has to discuss about each transaction individually and individual transactions have to be accepted or rejected and the lower forum having failed to apply this principle, has grossly erred in application of law and such action of the lower forum is unsustainable.
- (v) In order to disallow the stock transfer and consignment sale the assessing officer must prove that the 'F' forms furnished are defective and incorrect. This having not done, the demand on the score is unsustainable. This fact has not been discussed in the assessment order.
- (vi) It is a fit case to be quashed or set aside and remanded back to lower forum to consider the case and accept the 'C' forms available with the appellant the failure of which will prejudice the interest of the appellant.

7. In this case it is seen that, the appellant-dealer has not furnished the 'C' declaration form to avail concession. In the case of **Sahu Trading Co. v. State of Orissa (1983) 54 STC 122**, the Hon'ble High Court of Orissa have held that in the scheme of procedure of assessment under the OST Act, the declarations for claiming deductions on account of sales to registered dealers under Section 5(2)(A)(a)(ii) of the Act are bound to be produced before the assessment is completed in case the assessee is to be given the deductions he claimed. There is however, no provision in the Act or the Rules to the effect that declarations not furnished at the original stage could not be produced later. There may be cases where for some good reasons deductions though claimed could not be supported by production of declarations at the assessment stage. In the absence of any prohibition, they can be certainly produced as evidence before the First Appellate Authority and such additional evidence could be received by the First Appellate Authority. In a suitable case, such declarations can even be produced as additional evidence before the Tribunal in second appeal after complying with the requirement of Rule 61 of the OST Rules, 1947.

In the present case it is seen that, the appellant-dealer has neither produced the 'C' declaration form before the learned ACST nor before this Tribunal for availing the benefit of concessional rate of tax and non-production of the same will debar the appellant-dealer for availing the exemption. The appellant-dealer is supposed to file original copy of 'C' form which he failed and hence 4% CST is not maintainable. The appellant-dealer had disclosed Rs.49,86,269.00 as consignment sale U/s.6A of the CST Act and submitted 'F' form. However, the learned STO found that the appellant-dealer had failed to furnish the details of mode of dispatch of sponge iron from the consignment agent to the ultimate purchaser. Mere submission of 'F' form against transaction of branch transfer and commission sale does not entitle

the appellant-dealer to claim exemption from payment of tax. If the assessing authority is satisfied on the basis of the facts and information that the claimed transactions are actually interstate sale transactions then he can include those transactions as interstate sale without accepting form 'F'. Burden of proof besides furnishing declaration form lies on the dealer claiming the exemption on account of branch transfer or commission sale to the agent and the learned STO is empowered to reject such claim on the basis of his inquiry and satisfaction. The learned STO held that the claim of sale of sponge iron through commission agent is not found to be supported by sufficient documentary evidence for which he rightly disallowed the claim. The entire claim was treated as interstate sale falling U/s.3(a) of the CST Act and added to the GTO and NTO and taxed at the appropriate rate. The computation of the learned STO is correct which was also rightly upheld by the learned ACST. Hence, we are not inclined to interfere with the findings of both the forums below.

8. In the net result, the appeal is dismissed being devoid of any merit. The impugned order is hereby confirmed.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III