BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 183(C) OF 2006-07

(Arising out of order of the learned ACST, Jajpur Range,
Jajpur Road in First Appeal Case No. AA- 57/KJC/2005-06
disposed of on dated 27.10.2006)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/s. Kusum Powerment (P) Ltd.,
Kutugaon, Keonjhar ... Appellant

-Versus-

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

For the Appellant : Sri P.K. Jena, Advocate.
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 27.11.2020 ***** Date of order: 29.01.2021

O R D E R

Instant appeal under Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rule') read with Section 78(1) of the Odisha Value Added Tax Act, 2004(in short, 'the Act') is at the behest of the dealer assessee questioning the legality and the judicial propriety of the impugned order dated 27.10.2006 promulgated in Appeal Case No.AA.57/KJC/2005-06 by the learned Assistant Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short,

'FAA'), who allowed its claim in part and reduced the demand to the extent indicated vis-a-vis assessment dated 08.02.2006 passed under Rule 12(5) of the Rules for the tax period 2003-04 by the learned Sales Tax Officer, Keonjhar Circle, Keonjhar, (in short, 'AA'),who raised additional demand of ₹54,57,604.00 on the grounds inter alia the order of assessment as framed is otherwise bad in law and hence, not sustainable and therefore, liable to be interfered with.

2. In fact, the dealer assessee is a private limited company incorporated under the Companies Act, 1956 and its main object is to carry on business in manufacturing sponge iron, iron and steel goods in all forms. It is also revealed from the record that the dealer assessee has a manufacturing unit in the district of Keonjhar. According to the dealer assessee, in response to a notice under the Rules, it entered appearance before the AA and produced all relevant books of accounts to explain its business vis-a-vis return filed and during such examination, no any error or omission in accounts was noticed but IST (V) alleged that the stock transfer to one of its consignment agents was indeed an inter-State sale falling under Section 3A of the Central Sales Tax Act, 1956 (in short, 'the CST Act'). As per the dealer assessee, not only the above, the AA also disallowed export sales despite submission of 'H' Forms and the FAA without examining each and every transaction as is required under law confirmed such non-acceptance which is ex-facie illegal, arbitrary and deserves to be set aside.

3. .On the other hand, the State justified the impugned decision of the authorities below by contending that as to the consignment transfer of

stocks, there was evidence aplenty to show and clearly establish that the clandestine transactions were not really consignment transfers but inter-State sales between the parties. It is again contended that no wrong has been committed in disallowing the export sales in corroboration of which the dealer assessee did not submit documents, such as, bill of lading, purchase order before the authorities below. The aforesaid aspects of the matter are to be gone into and critically examined by the Tribunal in order to satisfy itself as to the correctness or otherwise of the impugned order dated 27.10.2006.

4. It is contended that the despatches effected were pure and simple consignment transfers and sales by the consignment agent of the dealer assessee are in usual course of business activities and the observation of the AA to the contrary for levy of tax is not true and correct, inasmuch as, there was neither any agreement nor correspondences with the factory/plant or the latter was aware as to whom and when despatched goods were likely to be sold by the consignment agent. The learned Counsel for the dealer assessee painstakingly explained the concept and dynamics of consignment transfer vis-a-vis the ownership of the goods despatched till the time it is sold. In course of argument from the side of the dealer assessee, a decision of the Hon'ble Apex Court in the case of Bengal Immunity Company Vrs. State of Bihar reported in (1955) 6 STC 446 (SC) has been cited, while debating on sale which could be said to be in the course of inter-State trade on fulfilment of the basic requirements. Also relied upon Ballabhagas Hulaschand Vrs. State of Odisha reported in (1976) 37 STC 207 (SC)

claiming that the dealer assessee's case falls under the illustration in Case No.II in order to satisfy the Tribunal that the alleged despatches were nothing but consignment transfers. Besides the above, one more ruling of the Hon'ble Apex Court in State of Andhra Pradesh Vrs. NTPC Ltd. reported in (2002) 127 STC 280 (SC) was referred to, wherein, there has been an elaborate discussion with regard to inter-State sale and what does it really mean. With regard to the export sales relying upon a decision of the Hon'ble Madras High Court in the case of V. Win Garments Vrs. Additional Deputy Commercial Officer, Central I Assessment Circle, Tirupur reported in (2011) 42 VST 330 (Madras), it is contended that no rule lays it mandatory to produce agreement entered with the foreign buyers, rather, production of 'H' form has become mandatory ever since 2006 which by itself sufficient to establish export sales and therefore, the finding of the FAA in that respect is clearly untenable in law. Lastly, an earlier order of the Tribunal dated 07.10.2020 in S.A. No. 82(C) of 2005-06 is cited in order to justify its claim.

5. Section 6A of the CST Act deals with transfer of goods claimed otherwise than by way of sale. It envisages that a dealer is not liable to pay tax in respect of any goods which has moved from one State to another and occasioned by reason of transfer of such goods at its instance to any other place of own business or to its agent or principal, as the case may be and not by reason of sale. In such a case, burden of proof lies on the dealer to prove and establish the stock or consignment transfer and if it could not be proved so, then the movement of such goods by a deeming fiction shall be held as to have been occasioned as a

result of sale under the CST Act. An enquiry is enjoined in sub-Section (2) of Section 6A of the CST Act, which the assessing authority may undertake as deemed necessary to find out and ascertain the correctness as to the claim of the dealer assessee vis-a-vis stock or consignment transfer of goods. In the instant case, it is alleged by the State that the dealer assessee managed to dispose of goods by way of inter-State sale in the guise of consignment of transfer to its agent, namely, M/s. K.M. Steel Traders, Jamshedpur which is established by certain correspondences allegedly exchanged between it and the agent, who instructed to supply 300 MT of sponge iron for the Month of October, 2003 to the buyer, namely, M/s. TISCO Ltd.. The above fact was elicited by the Vigilance Squad referring to the correspondences dated 11.04.2003 and 10.04.2003. Said is the only piece of evidence relying upon which it is claimed that the dealer assessee clandestinely effected inter-State sale instead of consignment transfer. The FAA relied upon a decision of the Hon'ble Apex Court in the case of M/s. Sahney Steel and Press Works Ltd. and Another Vrs. Commercial Tax Officer and Others reported in 60 STC 301, while arriving at a conclusion that the case of the dealer assessee regarding movement of goods is actually an inter-State sale instead of consignment transfer. The learned Counsel for the dealer assessee contended that essential conditions of inter-State sale as elaborated in Bengal Immunity Company case are totally absent. It is also contended that on an instruction/ request received from the consignment agent, the alleged consignment of goods were despatched which occurs in a normal course of business and thus, cannot be alleged as inter-

State sale. Indeed, according to the dealer assessee keeping in view the request of the consignment agent which depends on the demand of goods in the local market, the despatches were made, which is what revealed in the correspondences of 11.04.2003 and 10.10.2003. As per the learned Counsel for the dealer assessee, the consignment agent had only intimated to despatch goods to meet the requirements of the buyers and hence, in absence of the elements of inter-State sale, both the authorities below committed serious illegality in treating the despatches of goods not as consignment transfer but as an inter-State sale. It is a settled law that if a direct request is received from a buyer or through its agent with earmarked specifications of goods and accordingly, tailor made goods are manufactured and despatched to another State, it would be a case of consignment transfer, even though, the goods are delivered via its agent. But, in circumstances, where only a request or instruction is received from a consignment agent without any demand on specification of goods and such request is made for its immediate despatch or on a priority basis, as is the present case, in the humble opinion of the Tribunal, it cannot be treated as inter-State sale. That apart, there is no evidence at all to establish that any such direct indent or request for manufacture of special goods or goods of different kind or make was received by the dealer assessee directly or indirectly through its consignment agent from its buyer, namely, M/s. TISCO Ltd. Merely by referring to the correspondences which are nothing but receiving instructions from the consignment agent about the supply of goods when such supply depends on local market demand, it would not be correct at all to

suspect it as a part of inter-State sale. It is rightly contended by the learned Counsel for the dealer assessee that the entire case is built upon presumption, suspicion and surmises. Law is well settled that a suspicion, howsoever, strong cannot substitute legal proof. That apart, the dealer assessee furnished Form 'F' in respect of the transaction which was accepted by the AA. Had there been any suspicion against the dealer assessee vis-a-vis the alleged consignment transfer declared under Form 'F', the AA was statutorily authorised and would have conducted an enquiry in terms of Section 6A (2) of the CST Act. No such action was ever taken against the dealer assessee whose submission of Form 'F' was heartily accepted. It is well settled that the AA without rejecting the declarations in Form 'F' so furnished by the dealer assessee in respect of the alleged transactions could not have turned around and alleged it to be inter-State sale disallowing the claim of the consignment transfer which is clearly impermissible as per the ratio laid down in the case of State of Tamil Nadu Vrs. Shree Munigan Flour Mills (P) Ltd. reported in (2005) 142 STC 399 (Madras). In absence of any such contingency and when no such suspicion loomed large, inasmuch as, the AA on a enquiry and being satisfied about the consignment transfer corroborated by declaration Form 'F' having been accepted as despatch of goods as consignment transfer cannot now be permitted to go back alleging it to be an inter-State sale exigible to tax. The Tribunal in a similarly situated case in S.A. No.82(C) of 2005-06 by order dated 07.10.2020 had the occasion to consider the legality of stock transfer and at the end expressed the same opinion that a stock transfer cannot be turned down and

claimed as inter-State sale without any basis, morefully, when Form 'F' had been accepted and the alleged despatches were never suspected. So, the ultimate conclusion of the Tribunal is that the authorities below fell into grave error to brand the alleged transactions in favour of M/s. TISCO Ltd. as one of inter-State sale, when the materials on record clearly, conspicuously and unerringly pointed towards consignment transfer.

6. With regard to export sale on submission of declaration Form 'H' issued by the exporter, namely, Exfin (India) Mineral Ore Company Private Ltd. for an amount of ₹ 12,97,857.00, both the authorities below disallowed it on the ground that the dealer assessee failed to produce purchase order as well as bill of lading. The learned Counsel for the dealer assessee contended that after necessary correction in respect of original 'H form, when it was produced before the FAA claiming exemption under Section 5(3) of the CST Act, the purchase order could not have been demanded, which the exporter did not supply to maintain confidentiality vis-a-vis the foreign buyer. Referring to the decision of the Hon'ble Madras High Court in V. Win Garments case ibid, the learned Counsel for the dealer assessee further contended that it is not mandatory to produce the agreement entered between the exporter and the foreign buyer. From the impugned order dated 27.10.2006, it is made to suggest that the dealer assessee failed to produce documents like bill of lading and purchase order in support of export sale. It is indeed a requirement under law that along with 'H' form other documents, such as, air consignment note/bill of lading/railway receipt or

documents of similar nature is/are to accompany in order to substantiate an export sale. In fact, Form 'H' demands details regarding export as per Rule 12(10) of the CST (R&T) Rules, 1957. But, no where a dealer assessee is mandatory obliged to produce purchase order of the foreign buyer with the exporter. In the case at hand, the authorities below demanded production of purchase order from the dealer assessee. However, law enjoins that the dealer assessee along with Form 'H' shall have to produce other documents like bill of lading, railway receipt etc. in support of the alleged export sale. The authorities below, if at all, the above documents were not produced were justified in asking for it. As earlier mentioned, perhaps, the dealer assessee did not submit bill of lading and/or similar other documents before the authorities below. Under the above circumstances, the Tribunal is of the humble opinion that the dealer assessee should be allowed to furnish details regarding export with whatever documents, like bill of lading, railway receipts etc. for the consideration of the AA in order to satisfy about the nature of the transaction which would, rather, serve the purpose and meet the ends of justice. It is to reiterate that in case, if the purchase order is produced, it is well and good and if not, then the dealer assessee is not to be insisted upon for the same, since it is not mandatorily required under law save and except when its production is absolutely necessary for the purpose of enquiry.

7. Hence, it is ordered.

8. In the result, the appeal stands partly allowed. As a logical sequitur, the impugned order dated 27.10.2006 passed in Appeal Case No. No.AA-

57/KJC/2005-06 is hereby set aside to the extent indicated above. Consequently, the AA is directed to go for reassessment to consider the tax liability of the dealer assessee in the light of the observations of the Tribunal and in accordance with law by providing the dealer assessee reasonable opportunity of hearing who shall furnish all the necessary documents in support of the alleged export sale and considering and examining which appropriate order shall be passed, preferably, within a period of three months from the date of receipt of the above order..

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Sri A.K. Dalbehera)
1st Judicial Member

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