

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

**Misc. Application No.16/2019
(Arising out S.A. No. 40(C) of 2018**

M/s. Diamond Engineering,
Plot No.142, Cuttack Puri Road,
Bhubaneswar.

... Appellant

- V e r s u s -

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

... Respondent

Order
dtd.23.09.2019

This review application at the instance of the appellant-dealer u/s.81 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act) read with Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) at the instance of the appellant is taken up, heard and decided as follows.

1. It is vide order dtd.27.08.2019, the matter is remanded back to the assessing authority with a direction to scrutiny about the genuineness of the declaration forms C/E-1 produced by the dealer in support of the claim exemption in rate of tax relate to sale in transit. In the Review Petition, the dealer has contended that, on the date of final hearing, it had filed an application for acceptance of the statutory declaration forms as additional evidence. Though in the body of the petition it has stated about declaration forms to the tune of Rs.1,35,50,551.00 relates to sale in transit for exemption u/s.6(2) of the CST Act but in the list of documents at the foot of the petition, the dealer has also mentioned about furnish of declaration forms 'C' against interstate sale. While passing the final order, this forum has

taken into consideration of all the declaration form E-I and C to the tune of RS.1,35,50,551.00 but as it was not prayed for acceptance of the other declaration forms relating to inter-State sale those were not considered as not noticed. Hence, the dealer has prayed for re-consideration of the final order for modification/amendment to the extent of acceptance of the declaration form 'C' against CST sale.

The prayer is objected orally by the Revenue stating the review jurisdiction cannot be invoked after final order in the case in hand in particular.

3. The dealer had knocked the door of this Tribunal by way of second appeal with a prayer for exemption/concession in rate of tax in case of CST sale or sale in transit relatable to sec.3 and sec.6(2) of the CST Act. The grievance before the Tribunal was, sufficient opportunity was not provided to the dealer by the forums below. The final order as it revealed, this Tribunal has allowed the prayer of the dealer by accepting the declaration forms in shape of additional evidence. Though the dealer has not categorically mentioned about filing of declaration form 'C' relates to CST sale in the body of the petition dtd.27.08.2019, but the fact remains, the dealer has mentioned about deposit of declaration form 'C' against CST sale at the foot of the petition. The dealer is found casual in mentioning the number and value of the declaration form 'C' against CST sale. The matter was not considered as not prayed and not bring to the notice of the Tribunal before final order. As mentioned above, the claim of the dealer right from the assessing authority to first appellate forum is based on concession based on declaration form. The declaration form is the documents based on which the appeal stands. The declaration forms are necessarily issued by purchasing dealers, so it is not within the capacity of the dealer to procure and furnish at the time of assessing in each and every case. For that reason, the authorities have allowed the dealer to furnish the declaration forms even at the appellate stage. In the case in hand, when the declaration forms are

already filed but not brought to the notice of the Bench in the final hearing. In that case, it is believed that, this is an unintentional omission which led to a mistake apparent on the face of the record, thereby the review jurisdiction of the forum should be extended. It is beneficial construction of the provision is required for the ends of justice when it is pitted with mere technicalities. The Hon'ble Supreme Court in **Rajendra Singh v. Lt. Governor, Andaman & Nicobar Islands and Others (2005) 13 Supreme Court Cases 289**. While dealing with a matter similar to the matter in hand has held that, the review jurisdiction can be invoked in such type of cases to avoid immeasurable loss and injury to a party. Further, **In Vispro Foundry Engineers Limited vs Commercial Tax Officer, Adyar 1991 81 STC 169 Mad** it is held that:

“Advertising to the impugned order, it is clear that the assessing authority found that there is no provision to reopen the assessment already made and that is why he turned down the request of the petitioner to reopen the assessment. There he has clearly fallen in error. The petitioner is entitled to seek reopening of the final assessment. The only thing that will determine whether the assessment will be reopened or not is the existence of "sufficient cause" to the satisfaction of the assessing authority. The assessing authority was, however, required to consider the case and to say whether the cause in his opinion was sufficient to reopen the assessment or not. In view of my conclusion above, this writ petition is allowed and the impugned order is quashed. The matter is remitted to the respondent for rehearing and disposal in accordance with law. No costs.”

4. Taking cue from the authority above, I am of the considered view that, the Review Application as brought by appellant is maintainable in the case in hand.

5. The final order dtd.27.08.2019 be amended to the extent that, in the remand assessment the assessing authority will extend

liberty to the dealer to furnish declaration forms 'C' against the inter-State sale before him and in consideration of the genuineness of the declaration form, the same should be allowed by extending concession in rate of tax. The amended final order accordingly be read as follows:-

“The appeal by the dealer is allowed in part. The dealer is not liable to pay penalty u/r.12(3)(g) of the CST(O) Rules as imposed. The matter is remitted back to the assessing authority for` acceptance of declaration forms furnished and will be furnished by the dealer on proper utilization of correctness and genuineness.”

Dictated & corrected by me,

(S. Mohanty)
1st Judicial Member

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