

1957 (in short, 'CST (O) Rules') pertaining to the tax period from 01.04.2005 to 31.03.2008.

2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. Maa Naina Devi Minerals (P) Ltd., Bisra Dhara Road, Rourkela" who is the appellant in this case does trading in sized iron ore and iron ore fines both in course of intra-State and inter-State trade and commerce. The aforesaid business concern of the dealer-assessee was verified by the Audit Officials and on verification of the books of account with the returns filed by the dealer in respect of tax compliance the Audit Team found certain anomalies in the transactions carried on by the dealer-assessee and it was found by the assessing officer in course of his assessment under the CST Act that the dealer-assessee had failed to disclose a portion of turnover worth `16,36,470.00 towards export sale pertaining to the tax period 01.04.2005 to 31.03.2006. The dealer-assessee had not disclosed the said turnover at the stage of assessment and had not also claimed exemption u/S. 5(3) of the CST Act. Under such circumstances the assessing officer taxed the aforesaid turnover amounting to `16,36,470.00 at the appropriate rate. Then for the year 2006-07 the appellant was also found to have sold goods worth `54,31,711.00 in course of export and informed that the goods worth `25,05,800.00 were

rejected. However, at the same time it failed to produce any evidence in support of such claim for which the assessing officer did not accept its plea regarding return of goods and determined the tax liability accordingly on the aforesaid amount. As for the balance amount of `28,73,11.00 the appellant produced 'H' forms which were found to be in order the assessing officer allowed deduction of `28,73,111.00 towards export sale exempting the same from levy of tax. The dealer-assessee had sold goods worth `2,59,95,264.00 in course of export during the year 2007-08 but it could furnish 'H' form for `2,52,94,218.00 only. The assessing officer also allowed exemption as per rule in respect of the aforesaid amount i.e. `2,52,94,218.00. For the balance amount of `7,01,046.00 in respect of which the dealer-assessee did not furnish 'H' form tax was levied at the appropriate rate on the said amount. Under such circumstances the assessing officer calculated the total tax payable by the dealer-assessee at `4,47,549.00 and thus imposing penalty of `8,95,098.00 u/R. 12(3)(g) of the CST (O) Rules to be added to the tax leviable raised the demand accordingly.

The dealer-assessee being aggrieved with the aforesaid order preferred appeal before the first appellate authority

while contending that the assessment in respect of its business concern was completed earlier u/R. 12(4) of the CST (O) Rules and order was passed for the period 2005-06. It had submitted all the information and declaration forms during the assessment stage but the dealer-assessee was not afforded with an opportunity to put forth its case before the assessing officer. Further during the year 2006-07 some materials which were rejected and returned with sufficient documents were not taken into account by the assessing officer and further even though the dealer had submitted valid declaration Forms 'H' and 'C' duly filled in and signed by the authority concerned those were not accepted during the assessment in question. In the aforesaid circumstances the dealer-assessee challenged the assessment order on the ground that the same was passed arbitrarily without any basis and as such urged before the first appellate authority to set aside the impugned assessment order with a direction to make fresh assessment.

The first appellate authority after considering the grounds advanced by the dealer-assessee alongwith the order of assessment concluded that the assessment was done correctly and as such he confirmed the same.

3. Being aggrieved with the aforesaid order of the first appellate authority the dealer-appellant came up with this second appeal challenging the same before this forum. It is contended by the

dealer-assessee that the order of assessment was liable to be quashed since the same was passed by the Sales Tax Officer, Rourkela-I Circle, Uditnagar, Rourkela for the period from 01.04.2005 to 31.03.2008 without jurisdiction. The first appellate authority also failed to take notice of the fact that the assessment order which was supposed to have been passed by the Asst. Commissioner of Sales Tax and not by the Sales Tax Officer as happened in this case made the said order of assessment vitiated and as such was liable to be quashed. Thus the first appellate authority confirmed the assessment order erroneously.

4. The State-respondent filed cross-objection stating therein that in the instant case the assessment order u/R.12(4) of the CST (O) Rules was passed by the Sales Tax Officer on 16.04.2010 and by that time the Commissioner of Commercial Tax by notification in SRO No. 177/2009 dated 13.04.2009 had authorized the Sales Tax Officers as the assessing officers in the State within respective jurisdiction w.e.f. 25.02.2009. Therefore, the allegation made by the dealer-appellant that the assessment order was passed without jurisdiction is not correct. That apart the dealer-assessee in this case had participated in audit, audit assessment, reassessment and also in the appeal and it had produced the books of account but nowhere it had ever raised the question of lack of jurisdiction of the assessing officer in the matter. Thus its allegation regarding want of jurisdiction advanced at this

belated stage is an afterthought just to avoid its tax liability. In the instant case the assessing officer and the first appellate authority had completed the assessment basing upon the provisions of law and the appeal was disposed of taking into consideration the factual position as well as the provisions of law involved therein for which those orders cannot be treated as defective and bad in law in absence of any documentary evidence establishing otherwise. The penalty imposed u/R. 12(3)(g) of the CST (O) Rules in this case is mandatory as there was suppression of transactions of export worth `16,36,470.00 by the dealer-assessee. Thus the State submitted for confirmation of the orders of the authorities below.

5. In course of hearing learned Counsel appearing on behalf of the dealer-assessee and learned Addl. Standing Counsel (CT) appearing on behalf of the State advanced their submissions in terms of the grounds advanced by them in the memo of appeal and cross-objection respectively. No further evidence was given by the dealer-assessee to substantiate its claim of exemption in the case. On the other hand its submission regarding furnishing of relevant documents in support of its claim in respect of export sale appears to be only a bald assertion as no such document is there to substantiate its such claim. Besides this it is also found that the assessing officer had verified the books of account basing upon the AVR and other records from which he

could gather that the dealer-assessee had not disclosed certain transactions at the time of assessment for which it claimed concession or exemption at a later stage. The dealer-appellant also failed to explain as to how and under what circumstance it could not furnish proper evidence regarding those sale transactions in order to entitle it for exemption u/S. 5(3) of the CST Act. The assessing officer had rather considered the Form-C for inter-State sale transaction as submitted before him and allowed the concessional rate of tax relating to the period 2006-07 while determining the demand of tax. Similarly the first appellate authority who did not accept one 'H' form and letter from the buyers regarding rejection of goods which were produced before him has also assigned the reason for not accepting the same since those two documents could not be verified in absence of books of account. The dealer-appellant was afforded with opportunity to explain the anomalies found in its transaction by producing the relevant document not only once but on three occasions but it did not respond. In the aforesaid circumstances, the first appellate authority concluded that the claims advanced by the dealer-assessee had no justification in absence of supporting documents such as way bill, lorry receipt, stock register and return of goods worth `25,05,800.00 etc. Due to want of those documents he ultimately found that the assessment order passed by the assessing officer is correct and as per the provisions of law.

6. It is also noticed at present that the dealer-appellant has not substantiated its claim in any manner so as to enable this forum to come to a different conclusion other than as arrived at by the authorities below in respect of the relevant assessment. Therefore, absolutely no reason is found to interfere with the order of the first appellate authority or to disturb the assessment order passed by the assessing officer in the instant case.

7. In the result, as discussed above this forum has no other option but to confirm the order passed by the first appellate authority. Accordingly the appeal is dismissed. The cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III