

**BEFORE THE FULL BENCH, ODISHA SALES TAX  
TRIBUNAL: CUTTACK**

**S.A. No. 99(C) of 2010-11**

(Arising out of order of the learned Joint Commissioner of  
Sales Tax, Balangir Range, Balangir,  
in First Appeal Case No. AA-3 (BPCII) of 2010-11,  
disposed of on dated 02.12.2010)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri S. Mishra, Accounts Member-II**

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

**-Versus-**

M/s. G.K.W. Ltd.  
(Powmex Steels Division),  
At:- Turla, P.O.-Titilagarh,  
Dist.- Balangir. ... Respondent

For the Appellant : Mr. D. Behura, S.C. &  
For the Respondent : Mr. K.R. Mohapatra, Advocate

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Date of hearing: 14.03.2022 \*\*\* Date of order:17.03.2022  
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**ORDER**

The State has preferred this appeal challenging  
the order dtd.02.12.2010 passed by the Joint  
Commissioner of Sales Tax, Balangir Range, Balangir  
(hereinafter referred to as, the learned FAA) in First

Appeal Case No. AA-3 (BPCII) of 2010-11, thereby reducing the tax demand to Rs.57,514.00 from Rs.2,93,330.00 raised by the Sales Tax Officer, Kantabhanji Circle, Kantabanji (hereinafter referred to as, the learned assessing authority) for the assessment year 2005-06 invoking power u/r.12(4) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. The facts of the case in nutshell are that, the dealer-respondent is a large scale industry established under IPR'86 for the purpose of manufacturing high speed steel and alloys by effecting purchase of raw materials from outside the State and importing from outside the country. It manufactures high speed steel and alloys in a sophisticated mechanism for specific purpose and utilises raw materials like scraps, ferrow alloys, ferrow moly, cobalt, ferrow baladium etc. In response to the notice issued u/r.12(5) of the CST(O) Rules, the authorised representative along with the Advocate of the dealer-assessee appeared before the assessing officer and produced the books of account relating to the assessment year 2005-06 for verification. The assessing officer on examination of the books of account produced by the dealer-company found that the dealer-respondent has disclosed finished products to the tune of Rs.116,62,11,820.00 and out of total sale it had made

export sale directly for Rs.19,91,61,767.00 and through merchant export for Rs.8,21,17,149.00 duly supported by 'H' declaration form, bill of lading, shipping bill etc. So the assessing authority accepted the claim of the export sales of Rs.28,12,78,918.00 and allowed deduction from the GTO. The assessing authority also accepted the claim for sales returns amounting to Rs.1,17,92,028.00. As regards interstate sale, it observed that the dealer-respondent filed valid 'C' declaration form for Rs.86,77,90,047.00 which was inclusive of 4% CST. After deduction of CST of Rs.3,33,76,540.00, the net value was worked out at Rs.83,44,13,507.00 which was taxed @ 4%. The assessing authority also took the view that the dealer-respondent failed to file 'F' form with regard to claim of interdivision sale of Rs.1,56,780.00 and taxed the same @ 8%. Similarly, for want of 'C' form, tax was levied @ 8%. The assessing authority calculated the total tax at Rs.3,37,94,626.00 and determined the balance tax due at Rs.2,93,330.00. The dealer-respondent being further aggrieved with the aforesaid demand raised by the assessing authority, filed appeal before the first appellate authority u/r.22 of the CST(O) Rules in which the first appellate authority reduced the tax demand to Rs.57,514.00.

3. The State being aggrieved with such order of the first appellate authority has preferred the present second

appeal. The learned Standing Counsel challenged the impugned order of the first appellate authority on the ground that in case of interstate sale and branch transfer, form 'C' and 'F' should be filed within three months from the period for which the relevant form relates as per Rule 12(7) of the CST(R&T) Rules but the first appellate authority without any inquiry accepted the 'C' and 'F' forms submitted by the dealer-respondent before it and thereby illegally allowed the concessional rate of tax on interstate sale and exemption of branch transfer. He submits to set aside the impugned order of the first appellate authority which is contrary to law and restore that of the assessing authority.

4. Per contra, the learned Counsel for the dealer-respondent supporting the impugned order of the first appellate authority vehemently argued that the dealer-respondent due to some unavoidable circumstance could not file statutory forms before the assessing authority to claim concessional rate of tax in case of interstate sale and exemption in case of branch transfer. He filed those documents before the first appellate authority which was duly accepted by it (first appellate authority) and claim of concessional rate of tax and exemption was allowed. There is no illegality and infirmity in the impugned order of the first appellate authority in accepting the statutory form submitted by the dealer-respondent before it (first

appellate authority). He submitted to dismiss the appeal and to confirm the order of the first appellate authority.

5. We have heard the rival submissions of the parties, gone through the impugned orders of the forums below, grounds of appeal vis-a-vis the materials on record. The only ground which was agitated before this forum was that the first appellate authority committed illegality in accepting statutory forms submitted by the dealer-respondent without assigning any reason in contravention of Rule 12(7) of the CST (R&T) Rules r/w. Rule 7(a) of the CST(O) Rules, 1957. There is no dispute in the present case that the present dealer-respondent is a manufacturer of high speed steel and alloys by effecting purchase of raw materials from outside the State and importing it from outside the country and that the assessing authority considering the claim of the dealer-respondent as genuine allowed its deduction towards export sale of finished products accepting the 'H' declaration forms and concessional rate of tax in respect of interstate sales accepting the 'C' declaration forms. The impugned order of the assessing authority clearly reveals that the dealer-respondent could not furnish all the 'C' forms in respect of interstate sales and 'F' form in respect of interdivision sales and for non-submission of such statutory forms tax was levied @ 8%. In the appeal, the dealer-respondent produced 'C' declaration forms which was verified

minutely by the first appellate authority and was accepted granting concessional rate of tax. Accordingly, the first appellate authority raised tax demand of Rs.3,36,36,826.28 against which the dealer-respondent had paid Rs.3,35,79,312.00 and the balance tax was calculated at Rs.57,514.00. On perusal of the order of the first appellate authority, we find that the State did not dispute the genuineness of the 'C' form filed by the dealer-respondent for which the same was accepted by the first appellate authority after due verification. When the statute extends certain benefits to the dealer-respondent, the same cannot be taken away merely because of delay in submission of the statutory forms. The first appellate authority did not commit any illegality in accepting the statutory forms 'C' filed by the dealer-respondent after due verification. The learned Standing Counsel representing the State in course of hearing the appeal could not justify any reason for interfering with the impugned order of the first appellate authority. It has accepted the 'C' forms after due verification on being satisfied about the genuineness of the same. So, there is no illegality or impropriety in accepting the statutory forms.

6. For the foregoing discussions, we are of the unanimous view that the first appellate authority did not commit any illegality in accepting the 'C' forms submitted by the dealer-respondent at the appellate stage and

allowing the concessional rate of tax. The appeal filed by the State, being devoid of merit, stands dismissed and the impugned order of the first appellate authority stands confirmed.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II