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

S.A. No. 42(C) of 2010-11

(Arising out of order of the learned JCST, Koraput Range, Jeypore, in First Appeal Case No. AAC- (KOR) 23/09-10, disposed of on dt. 31.05.2010)

Present : **Smt. Suchismita Misra**, **Chairman**
Shri Subrat Mohanty, 2nd Judicial Member
&
Shri Prabhat Ch. Pathy, Accounts Member-I

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

- V e r s u s –

M/s. Maruti Cashew Industries, At- Majurmunda, PO- Ambaguda, Dist. Koraput. . . . Respondent

For the Appellant … Mr. S.K. Pradhan, Addl. S.C. (CT)
For the Respondent … Mr. N. Ananda Rao, A/R

Date of hearing: 03.04.2019 **** Date of order: 03.04.2019

O R D E R

This appeal is directed against the order dated 31.05.2010 passed by the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, "first appellate authority") in First Appeal Case No. AAC- (KOR) 23/09-10 reducing the assessment made by the Sales Tax Officer, Koraput Circle, Jeypore (in short, 'assessing officer') in respect of the business concern of the dealer-assessee u/R. 12(4) of the

Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the tax period 01.07.2006 to 31.10.2008.

2. The facts as revealed from the case record are that the dealer-assessee runs a cashew industry availing concessional tax benefit as a SSI Unit. The assessing officer had accepted his returned GTO at `98,17,950.00 pertaining to the relevant assessment period but in absence of 'C' declaration forms he levied tax @ 4% on `30,61,500.00 and @ 12.5% on `67,56,450.00 and then made a demand of `23,04,753.75 inclusive of penalty of `15,36,502.50 from the dealer-assessee.

Being aggrieved with the said order, the dealer-assessee had preferred an appeal before the first appellate authority while contending before him that the assessing officer had passed the order of assessment without considering 'C' forms and 'F' forms which it (the dealer-assessee) of course, filed before the first appellate authority for consideration. Accordingly, the first appellate authority considered those 'C' forms as well as 'F' forms and reduced the assessment to `41,907.00 in place of `23,04,754.00 as demanded by the assessing officer in terms of his assessment order.

3. Being aggrieved with the aforesaid order of the first appellate authority, the State came up with this appeal. Learned Addl. Standing Counsel (CT) appearing on behalf of the State fairly submitted that the first appellate authority accepted the 'C' forms as well as one 'F' form at a belated stage which the assessing officer could not accept because there was prescribed/stipulated time as per law for filing of those forms at the time of computation of tax liability which was subsequently lifted by virtue of a Circular issued in this matter.

4. In course of hearing of the appeal it is also found that the dealer-assessee had preferred a second appeal before this Tribunal against the very same order of the first appellate authority which is now under challenge in the present appeal and in the said appeal this Tribunal had remitted back the matter to the first appellate authority while giving instruction to give an opportunity to the dealer-assessee to rectify the 'C' form within three months from the receipt of the order and if the rectification is done then the dealer can avail the benefit as provided under law. Learned authorized representative for the dealer-assessee also filed a copy of the order passed in S.A. No.50(C)/2010-11 i.e. on the second appeal preferred by him.

Under such circumstances learned Counsel appearing from both the parties submitted that the instant appeal has become infructuous and as such be dismissed in limine.

5. In the result, as per the discussion made above, this appeal is dismissed.

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/-
(Prabhat Ch. Pathy)
Accounts Member-I