BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

Present: **Shri G.C. Behera, Chairman**
Shri Sanjeeb Dubey, 1st Judicial Member
&
Shri S.S. Roy, Accounts Member-II

S.A. No. 127(V) of 2018
(Arising out of order of the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur, in First Appeal Case No. AA 88/JSG/VAT/2016-17, disposed of on dated 29.01.2018)

S.A. No. 73(ET) of 2018
(Arising out of order of the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur, in First Appeal Case No. AA 89/JSG/ET/2016-17, disposed of on dated 29.01.2018)

M/s. SMC Power Generation Ltd.,
At/P.O.- Hirma,
Dist.- Jharsuguda. ... Appellant

-Versus-

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

For the Appellant : Mr. D.K. Mohanty, Advocate
For the Respondent : Mr. D. Behera, S.C.

Date of hearing: 17.03.2025 *** Date of order: 28.03.2025

O R D E R

Both these appeals are being disposed of by this composite order as the same involve same parties, tax periods and issues. However, the assessments are under two different laws i.e. Odisha Value Added Tax Act, 2004 (OVAT Act) and Orissa Entry Tax Act, 1999 (OET Act) for the period 01.04.2011 to 30.06.2013.

2. The dealer-appellant has preferred these appeals challenging the order dtd.29.01.2018 passed by the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur-first appellate authority in First Appeal Case Nos. AA 88/JSG/VAT/2016-17 and AA 89/JSG/ET/2016-17.

3. The relevant facts necessary for disposal of the appeals are as follows:-

The appellant-dealer being a limited company was engaged in manufacture of sponge iron, MS billet and TMT bars and production of electrical energy in the captive power plant. In order to manufacture MS billets, the dealer used to utilize sponge iron, pig iron and silico manganese as raw materials. Similarly, for production of sponge iron, the dealer used iron ore, coal and dolomites as raw materials. During the tax period in question, the dealer had effected purchase of raw materials from the registered dealers within the State of Odisha and sold the finished goods within the State as well as outside the

State. It also exported its finished products to different countries.

On the basis of fraud case report submitted by the Special Investigation Team constituted under the direction of the Hon'ble Court, learned Deputy Commissioner of Sales Tax, Jharsuguda Circle, Jharsuguda-assessing authority initiated two separate assessment proceedings u/s.43 of the OVAT Act and u/s.10 of the OET Act against the dealer on the allegation of sale suppression. On being noticed, the dealer appeared and produced the relevant books of account before the assessing authority, who after due hearing, determined the tax liability of ₹9,87,091.00 along with penalty of ₹19,74,182.00 i.e. twice the tax payable under the OVAT Act. Further, tax of ₹2,28,638.00 and penalty of ₹4,57,276.00 was raised under the OET Act.

4. Being aggrieved, the dealer preferred First Appeals as mentioned in the cause title. The learned first appellate authority dismissed the appeal filed under the OVAT Act and thereby confirmed the assessment order. So far as the other appeal, the learned first appellate authority reduced the demand to ₹6,85,254.00 in the light of observations made in the impugned order.

5. The respondent-State has filed cross objections in both the appeals.

6. It was argued by the learned counsel for the dealer that the assessment proceedings have been

conducted in a most arbitrary and casual manner having no sufficient evidence to substantiate the alleged sale suppression. The assessing authority has proceeded to conclude the proceedings on mere surmises and conjectures sans materials in support of sale suppression. In addition to this, the learned counsel also challenged imposition of penalty by submitting that the same has been imposed in a very arbitrary manner without assigning any reason for the same. The dealer relied upon the decisions rendered in **M/s. Lachminarayan Sawalram v. State of Orissa and others in OJC No.286 of 1968, M/s. Utkal Jewel House v. State of Orissa, in SJC No.208 of 1976, 9 of 1977 and SJC No.209 of 1976, Mahabir Rice Mill v. State of Orissa, Commissioner of Income Tax v. Utkal Alloys Ltd. (2009) 319 ITR 339 (Ori.), M/s. Radhakeshav Rice Mill Pvt. Ltd. v. State of Odisha, 2022 (II) ILR-CUT-300, Gupta Distributors v. State of Orissa, Om Shri Ashirbad v. State of Odisha (2023) 111 GSTR 42 (Ori.), K.P. Varghese v. Income Tax Officer, Ernakulam & Ors. (1981) 131 ITR 597 (SC), Girdhari Lal Nannelal v. The Sales Tax Commissioner, M.P. (1977) 39 STC 30 (SC), The Commissioner of Income Tax v. Balaji Wire Pvt. Ltd. (2008) 304 ITR 393 (Del.), National Aluminium Company Limited v. Deputy Commissioner of Commercial Taxes, Bhubaneswar-III Circle (2021) I**

OLR 828 (Ori.) and **M/s. M.G. Electronics v. State of Orissa in S.A. No.16(VAT) of 2006-07**.

On the other, the learned Standing Counsel for the Revenue supported the impugned orders by submitting that there are sufficient evidence on record which justifies sale suppression. He further countered the dealer's contention as regards imposition of penalty with an argument that penalty has been rightly imposed as malafides of the dealer can well be deduced from the established clandestine sale.

7. Indisputably, the SIT visited the business premises of the dealer on 25.06.2013 and on that very day took physical stock position of sized iron ore, dolomite, silico manganese, coal, mill scale, MS billets and iron ore fines. The said physical stock position was compared with the closing balance of the stock of each of the above goods in the books of account as on 24.06.2013. On such cross verification, the investigating team detected shortage of physical stock in sized iron ore, dolomite, silico manganese, coal, mill scale and MS billets. The physical stock of iron ore was found to be excessive. Considering such shortage in physical stock of raw materials, the assessing authority inferred excess production of finished products leading to sale suppression. Accordingly, total sale suppression of ₹2,18,76,661.00 was determined and added to be GTO for calculation and levy of tax.

8. While considering the contention raised by the dealer, it is necessary to refer to some of the judgments relied on. It has been consistently held by the Hon'ble Court in the cases of M/s. Radhakeshav Rice Mill Pvt. Ltd. (supra), Gupta Distributors (supra), Om Shri Ashirbad, Lachminarayan Sawalram (supra) and Mahabir Rice Mill (supra) that mere stock deficiency by itself could not be sufficient unless it is specifically shown that the suppressed stock was, in fact, sold by the assessee. In the instant case, though discrepancy in stock i.e. physical shortage of stock is stated to have been established, there is no material brought on record from the side of the Revenue in order to substantiate that in fact this shortfall in stock of raw materials was utilized for production and sale of the finished products. There is absolutely no corroborative evidence to establish suppression of production and sale of the finished products. It is quite clear from the impugned orders that both the forums below went ahead holding suppression of sale on mere presumption and surmises. Under such circumstance, the levy of tax on alleged suppressed sale is untenable in law as per the ratio decided by the Hon'ble Court.

9. The allegation of sale suppression having been not established as discussed in the previous paragraph, the imposition of penalty for escaped assessment under the OVAT Act as well as under the OET Act is also not sustainable under the law.

10. Therefore, the impugned orders are not sustainable and accordingly, the same are quashed. Simultaneously, cross objections are hereby disposed of.

Dictated & corrected by me,

Sd/-
(S. Dubey)
1st Judicial Member

Sd/-
(S. Dubey)
1st Judicial Member

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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