

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 80 (C) of 2018

(Arising out of order of the learned Addl. CST (Appeal), South Zone, Berhampur in Appeal Case No. AA (CST) 12/ 2016-17 disposed of on dated 20.8.2018)

Present: **Shri A.K. Das, Chairman**

M/s. Royal Touch Granite Pvt. Ltd.,
At- Rajjholo, PO- Kukudakhandi,
Dist. Ganjam ... Appellant

-Versus-

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

For the Appellant : Sri S.K. Patel, Advocate.
For the Respondent : Sri M.S. Raman, Addl. SC (CT)

Date of hearing: 28.04.2021 *** Date of order: 03.05.2021

O R D E R

The order impugned in the present appeal is the order dated 20.08.2018 passed by the learned Addl. CST (Appeal), South Zone, Berhampur (hereinafter called as 'first appellate authority') in Appeal Case No. AA (CST) 12/ 2016-17 partly allowing the appeal filed by the dealer appellant and thereby reducing the tax demand to ₹1,48,888.00.

2. The facts relevant for adjudication of this appeal are that the appellant M/s. Royal Touch Granite Pvt.

Ltd., Raijholo, Kukudakhandi is a registered dealer registered under the jurisdiction of the DCST, Ganjam-II Circle, Berhampur (in short, 'assessing authority'), who carries on business in manufacturing of granite slabs out of raw granite blocks purchasing the same from local mine owners. The appellant submitted return for the period from 01.04.2015 to 31.03.2016 before the assessing authority, who on scrutiny of the return found that it (appellant) had not submitted required declaration forms and certificates in relation to the CST transactions made during the relevant tax period. So, he issued notice to the dealer u/r. 12(1) of the CST (O) Rules, 1957. In response to such notice, the dealer did not appear and file necessary declaration forms/certificates before the assessing authority, who in the absence of such declaration forms and certificates, completed the assessment. The assessing authority on scrutiny of the return filed by the dealer found that the during the period from 01.04.2015 to 31.03.2016, the dealer effected CST transactions worth ₹87,01,830.00 against declaration Form-C on which CST was collected for ₹1,09,837.00; that the dealer had also made CST transaction worth ₹42,64,376.00 u/s. 5 of the CST Act

against Form-H and that the dealer did not furnish the declaration forms/certificates in support of CST transactions made during the relevant tax period as required u/s. 7A of the CST (O) Rules, 1957. So, the assessing authority took the entire turnover of the dealer under the CST Act as GTO and levied tax after deducting ₹1,09,837.00 paid towards CST raising demand of ₹16,40,601.00 u/r. 12(1) of the CST (O) Rules 1957.

2(a). The dealer appellant challenging the order of the assessing authority raising demand of ₹16,40,601.00 towards CST, filed appeal before the first appellate authority u/s. 77 of the OVAT Act, 2004 read with Rule 22 of the CST (O) Rules on the ground that the assessing authority did not give him sufficient opportunity to file the required Form-C and Form-H and illegally rejected the dealer's prayer for adjournment. It is pertinent to mention here that the dealer appellant submitted 'C' form and 'H' form before the first appellate authority for its consideration. The first appellate authority on scrutiny of the 'C' form and 'H' form filed by the dealer reduced the demand of tax of ₹16,40,601.00 to ₹1,48,888.00. The dealer appellant being aggrieved with such demand filed the present appeal.

3. The learned Counsel for the appellant vehemently urged before this Tribunal that the dealer appellant filed some 'C' form and 'H' form before the first appellate authority, who on scrutiny of the same, reduced the tax demand to ₹1,48,888.00. He could not file all the 'C' form or 'H' form before the first appellate authority as the same were not supplied to him by the purchasing dealer. The learned Counsel for the appellant further submitted that he has filed an application for additional evidence to accept the 'C' form and 'H' forms which he could not file before the first appellate authority. If these documents are taken into consideration, the appellant would be exonerated from paying the tax demand raised by the first appellate authority. He submits to allow the appeal and set aside the impugned order passed by the forum below.

4. Learned Addl. Standing Counsel (CT) appearing on behalf of the State supporting the impugned order in terms of the cross-objection argued that the dealer appellant was given ample opportunity to file all the relevant documents before the assessing authority as well as the first appellate authority. But, unfortunately, the appellant did not avail the said opportunity and in order to avoid the

payment of tax, filed the present application for additional evidence along with purported 'C' form and 'H' forms without assigning any reason for non-filing of the same before the forum below. He submits that the dealer appellant having failed to avail the opportunity given to him and having failed to offer any plausible explanation for non-filing of the required 'C' form and 'H' forms before the forum below, the application for additional evidence should not be entertained and the appeal should be dismissed confirming the order of the first appellate authority.

5. The only dispute in the present appeal is regarding non-filing of 'C' form and 'H' form by the dealer appellant before the forum below. On perusal of the impugned order of the assessing authority, I find that no concession was given to the dealer appellant for inter-State sale transaction as he did not produce the required 'C' form and 'H' form before him. Before the first appellate authority also the appellant dealer filed 'C' form and 'H' form in respect of some transactions basing on which the tax demand was reduced by the first appellate authority from ₹16,40,601.00 to ₹1,48.888. Now, the question arises whether under these circumstances, the application for

additional evidence filed by the dealer-appellant to accept 'C' form and 'H' forms in respect of inter-State sale transactions is to be considered or not. It is settled position of law that this Tribunal being the final court of fact has ample discretion to accept any document, which is relevant for effective adjudication of the dispute if reason for non-filing of the same before the forums below is assigned. In the present case, it was submitted by the appellant that those forms were not issued in his favour at the time of appeal for which the same could not be filed before the forum below. There is no dispute that in case of acceptance of the 'C' form and 'H' forms filed by the appellant, he is entitled to payment of tax at concessional rate or exemption thereof as envisaged u/s. 8(1) read with Section 8(4) of the CST Act. Therefore, I am of the humble view that an opportunity should be given to the dealer appellant to file 'C' form and 'H' forms in original in support of CST transactions before the assessing authority, who shall examine the genuineness of those documents before taking the same into consideration, otherwise the appellant dealer will be seriously prejudiced. Under the provisions of the Sales Tax Law, a registered dealer is entitled to effect inter-State sale at a concessional rate of tax

on the basis of 'C' declaration form. Likewise, the registered dealer is also entitled to get exemption of tax on production of 'H' declaration form towards sale in course of export. It reveals from the impugned order that the first appellate authority observed that the appellant failed to produce 'C' declaration form for ₹1,51,250.00 and 'H' declaration form in respect of export sales worth ₹4,65,170.00. The appellant has filed one 'C' form and two 'H' forms which he could not file before the first appellate authority. If the declaration forms filed by the dealer appellant are accepted, no doubt he will be liable to pay less amount of tax than the demand raised by the first appellate authority. But, if the declaration forms filed by the dealer appellant are discarded, he will be liable to pay the tax as per the demand raised by the first appellate authority. Therefore, under these circumstances, I am of the humble opinion that the matter should be remanded to the assessing authority to examine the genuineness of the 'C' form and 'H' forms to be filed by the dealer appellant in original and thereafter determine his tax liability afresh as per law.

6. In view of the foregoing discussions, the appeal filed by the dealer appellant is allowed. The

impugned order passed by the first appellate authority is hereby set aside. The matter is remitted back to the assessing authority with a direction to determine the tax liability of the appellant afresh taking into consideration the 'C' form and 'H' forms to be filed by the dealer appellant in original. The assessing authority is to complete the entire exercise within a period of three months from the date of receipt of this order. The cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

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(A.K. Das)
Chairman