BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 52 (C) of 2019

(Arising out of order of the learned Addl. CST (Appeal), South Zone, Berhampur in Appeal No. AA- (CST) 334/2011-12, disposed of on 29.12.2014)

Present: **Shri G. Sharma, Chairman**

M/s. Shree Jyoti Resources (P) Ltd.,
Plot No. 20, Ashok Nagar,
Bhubaneswar, Dist. Khordha ... Appellant

-Versus-

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

For the Appellant : Sri N.K. Dash, Advocate &
Sri K.R. Mohapatra, Advocate
For the Respondent : Sri N.K. Rout, Addl. S.C. (CT)

Date of hearing: 10.08.2026 *** Date of order : 07.09.2026

O R D E R

Challenging the legality and propriety of order dated 29.12.2014 passed by the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA- (CST) 334/2011-12, this appeal has been filed by Shree Jyoti Resources (P) Ltd. (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal run thus–

In the present case, the Dealer is engaged in trading of iron ores. The assessment u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the period 01.04.2005 to 31.03.2006 was completed on 31.03.2008. Basing on the Tax Evasion Report (TER), the Deputy Commissioner of Sales Tax, Bhubaneswar II Circle, Bhubaneswar (hereinafter referred to as 'Assessing Authority') initiated assessment proceeding u/r. 12(8) of the CST (O) Rules for the impugned period. On examination of books of account with reference to the TER, the Assessing Authority found the Dealer to have failed produce Form 'H', copy of contract/agreement of the exporter with foreign buyer, purchase order and copy of bill of lading in support of sale in course of export u/s. 5(3) of the CST Act, accordingly established sale suppression of iron ores worth ₹2,44,34,552.00 and treating the turnover as inter-State sale levied with tax @ 10%, thereby resulted in demand of tax and penalty of ₹61,08,638.00 on the Dealer for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority confirmed the assessment order and dismissed the appeal, hence this appeal.

3. The learned Counsel appearing on behalf of the Dealer submitted that disallowance of the claim of exemption in respect of sale in course of export u/s. 5(3) of the CST Act for an amount of ₹2,44,34,552.00 on the face of production of declaration in Form 'H' and other required documents except copies of agreement with foreign buyer by the authorities below is against the settled principles of law. Relying on the decision of the Hon'ble High Court of Orissa in the case of ***M/s. General Traders, Berhampur Vs. State of Odisha*** (**STREV No. 64 of 2017**, decided on 08.12.2022); orders of this Tribunal passed

in **S.A. No. 74 (C) of 2015-16** dated 01.09.2023 (***State of Odisha v. M/s. Basa Foods Pvt. Ltd.***); and **S.A. No. 103 (C) of 2013-14** dated 22.08.2024 (***State of Odisha v. M/s. Shree Maa Jagulai Enterprisers***), the learned Counsel for the Dealer prayed for setting aside the orders of the fora below as unlawful.

4. Per contra, learned Addl. Standing Counsel (CT) appearing for the State supported the orders of the fora below to be just and proper. He submitted that claim of exemption u/s. 5(3) of the CST Act basing on the documents filed, i.e. two declarations in Form 'H' in original, agreement between the exporter and the foreign buyer as well as the contract between M/s. Global Chem, Chennai and the instant Dealer, before the First Appellate Authority, is not tenable in law on the ground that the Dealer's sale to the exporter predates the exporter's own agreement with the foreign buyer by more than a month, which is impossible for the former to make compliance with the latter's order. He argued that the Certificate I of the declaration forms remains unfilled and the documents, i.e. chalans and bills, filed by the Dealer do not corroborate to the sale in course of export. Relying on the decision of the Hon'ble High Court of Orissa in the case of ***Krishi Enterprises v. Commissioner of Commercial Taxes***, **[2011] 44 VST 292 (Orissa)**, learned Addl. Standing Counsel (CT) pleaded for dismissal of appeal having no merit.

5. Before delving into the merit of the case, it is felt apposite to refer the non-obstante provision of Section 5(3) of the CST Act, which prescribes that the last sale or purchase preceding the sale or purchase occasioning the export of goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose complying with, the

agreement or order for or in relation to such export. In order to qualify the sale in course of export of goods out of the territory of India within the meaning of Section 5(3), three conditions laid down in the said provisions are to be satisfied. They are –

(i) transaction of such last sale or purchase must take place after the agreement or order received by the exporter from his various buyers;

(ii) the last purchase must have been taken place after entering into the agreement with the foreign buyer; and

(iii) the transaction of such last sale or purchase was entered into for the purpose of complying with the agreement order received by the exporter from his foreign buyer.

Therefore, to claim exemption within the meaning of Section 5(3), the transaction between the exporter and the foreign buyer must be entered into first and thereafter, the exporters should enter into the transaction with penultimate seller with a view to fulfilling the commitment with the foreign buyer. The further requirement u/s. 5(3) is that both the goods should be the same goods.

6. On perusal of first appeal record made available by the Revenue, it transpires that there was an agreement between the foreign buyer, M/s. Islamic Republic of Iran Shipping Lines, Tehran and the Indian exporter, i.e. M/s. Global Chem, Chennai (exporter) dated 04.08.2005, and also FOB contract entered into by M/s. Global Chem, Chennai (exporter) with the instant Dealer on 01.07.2005. Basing on such contract entered into with the exporter on 01.07.2005, the Dealer claimed to have sold the goods, i.e. iron ore fines, in course of export to the tune of ₹2,44,34,552.00 against the two declarations in Form 'H' issued by the exporter. Before this forum, Revenue challenges the

exemption claimed u/s. 5(3) of the CST Act against Form 'H' by the Dealer to be improper on the ground that the impugned sale turnover of goods to the exporter by the Dealer predates the agreement made by the exporter with the foreign buyer by more than a month. Further, Certificate-I of Form 'H' is left blank without mentioning the purchase order No. and date relating to the goods supplied. Besides, the delivery challans dated 05.09.2005 and bills dated 13.09.2005/31.12.2005 issued by the Dealer refer to the order dated 19.09.2005 are not genuine documents to qualify the exemption as claimed.

In the context of exempted sale u/s. 5(3) of the CST Act, the Hon'ble Court in the case of ***M/s. Krishi Enterprises***, as relied on by the Revenue, have been pleased to decide as under :-

> "11. In the instant case, we find that the foreign buyer placed purchase order with M.S.P.L. Ltd., Karnataka on 18th January, 2010, whereas M/s. Saha Brothers, Jharkhand raised Bills in the name of the petitioner on 04.11.2009, 24.11.2009, 06.12.2009, 27.12.2009, 08.01.2010 (Annexure-5 series) which is prior to the purchase order placed by the foreign buyer on M/s. MSPL Ltd., Karnataka. We further notice from copy of Form 'H' in Sl. No. F 176853 at page-93 to the writ petition that M/s. MSPL Ltd., Bangalore has purchased the goods from the petitioner vide Cash Memo No. 1 dated 21.08.2009. Thus, the claim of the petitioner that its sale to M/s. MSPL Ltd. is in course of export and fall within the ambit of Section 5(3) of the C.S.T. Act is not tenable."

In the above cited case, the Hon'ble Court categorically observed that the bills were raised by the petitioner prior to the purchase order placed by the foreign buyer on the exporter and also the exporter purchased the goods from the petitioner prior to order placed by the foreign buyer, accordingly held that the impugned sale in course

of export was untenable in law. But, in the present case, the exporter-M/s. Global Chem, Chennai made FOB contract with the instant Dealer prior to one month of the contract entered with the foreign buyer for export sale of goods and the Dealer raised bills, as it appears, after the contract entered with the foreign buyer by the exporter. Further, it is not disputed that the declarations in Form 'H' supplied by the exporter to the Dealer remained unfilled the 'Certificate I' relating to purchase order No. and date. It is found that the documents, i.e. challans, bills and bill of lading available in first appeal record, are not corroborative to the sale in course of export. These are the infirmities now pointed out by the Revenue before this forum to counter the claim of the export sale of the Dealer against Form 'H'. Admittedly, the First Appellate Authority disallowed the claim of export sale u/s. 5(3) of the CST Act in absence of books of account and copies of agreement with the foreign buyer and ultimate exporter without considering the infirmities pointed out by the Revenue herein this forum.

In the context of disallowance of export sale, keeping in view the decisions of the Hon'ble Apex Court, the Hon'ble Court in the case of ***M/s. General Traders*** cited supra, as relied on by the Dealer, have been pleased to overrule that –

> 6.17. As is revealed from the orders of the authorities in the instant case it is not in dispute that Certificate of Export in Form 'H' as issued to the petitioner-penultimate seller is in order and free from defect. This indicates that the exporter has supplied information with regard to date of agreement with the foreign buyer or the date of purchase order placed by the foreign buyer. Said form also contains details of transport and bill of landing. It is recorded as a matter of fact by the authorities that the petitioner produced purchase order and bill of lading for verification of the

> authorities. In view of provisions of the statute and the decisions referred to above, this Court is of the considered opinion that the petitioner has discharged its burden in the instant case and the authorities could very well have ascertained from the details mentioned in the Certificate of Export in Form 'H' supported by bill of lading and purchase order whether the agreement/purchase order preceded the procurement of goods by the Indian Exporter from the petitioner-penultimate seller. There being no adverse finding of any sort in this regard, this Court is, therefore, comes to conclusion that mere non-production of agreement entered into between the Indian Exporter and the Foreign Buyer would not invalidate the claim of the petitioner-penultimate seller for exemption under Section 5(3) of the CST Act. Furthermore, the authorities have not complained that the petitioner has not complied with the terms of sub-section (4) of Section 5. The disallowance of claim of the petitioner under Section 5(3) of the CST Act has been made by the Assessing Authority and confirmed by the Appellate Authority and the Odisha Sales Tax Tribunal was on account of non-production of copy of agreement between the Indian Exporter and the Foreign Buyer. In view discussions made *supra*, there is no scope for this Court left but to overrule the view expressed by the authorities. Therefore, this Court is inclined to set aside the Order dated 18.05.2017 passed the learned Odisha Sales Tax Tribunal in S.A. No. 58 (C) of 2015-16."

In the above cited verdict, the Hon'ble Court finding that the petitioner has discharged its burden and the authorities could very well have ascertained from the details mentioned in the Certificate of Export in Form 'H' supported by bill of lading and purchase order whether the agreement/purchase order preceded the procurement of goods by the Indian Exporter from the petitioner-penultimate seller and that there

being no adverse finding of any sort in this regard, accordingly held that mere non-production of agreement entered into between the Indian Exporter and the Foreign Buyer would not invalidate the claim of the petitioner-penultimate seller for exemption under Section 5(3) of the CST Act. Furthermore, the authorities have not complained that the petitioner has not complied with the terms of sub-section (4) of Section 5. But, in the present case, there are infirmities in the documents filed by the Dealer in support of export sale claim, as discussed supra, which are not examined by the fora below before disallowing such claim except holding want of agreements without granting opportunity of being heard to the Dealer. Therefore, in the interest of justice, this forum feels it proper to remand the matter to the Assessing Authority to revisit the claim of sale in course of export against Form 'H' with due opportunity to the Dealer in accordance with law.

7. In the result, the appeal filed by the Dealer stands allowed and the order of the First Appellate Authority confirming the order of assessment is hereby set aside. The matter is remitted back to the Assessing Authority for consideration of the 5(3) exemption claimed by the Dealer with due opportunity and recomputation of tax liability thereof as per law keeping in view the observations made supra within a period of three months from the date of receipt of this order.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman