



assessment u/s.12(4) of the OST Act was completed on 31.03.2007 which resulted in no demand as there was no sale for the period under the OST Act. Consequent upon receipt of one fraud case report bearing no.34/05-06 dtd.07.12.2005 submitted by the Sales Tax Officer, Investigation Unit, Balasore alleging sale suppression to the tune of Rs.4,49,752.00 in respect of sale of iron ore fines of 4497.520 MT vide bill no.001/15.12.2002 to bill no.369/25.03.2003 unaccounted for in the books of accounts maintained by the dealer and not reflected in the returns filed for the relevant period. Not being convinced with the reply of the ld. Advocate that the iron ore fines are neither raw material nor finished product of the firm and generated in course of use of raw materials (iron ore) which are purchased within the State of Odisha on payment of tax and explanation regarding removal of such debris/waste material through Khokan Babu of Paradeep, a transporter. It is explained that it was not a sale rather removal of debris/waste material having no commercial value at all in the market and mainly responsible for pollution of environment and the said waste material (iron or coal) has been removed from the unit by the transporter without making any payment. The ld. STO came to the conclusion that the sale of iron fine of 4497.520MT worth Rs.4,49,752.00 having not been reflected in the books of accounts maintained in the regular course of business and not admitted in the OST return is nothing but suppression of sale. Accordingly, the ld. STO enhanced the actual suppression of Rs.4,49,752.00 to Rs.8,99,504.00 by applying best of his judgement which resulted in demand of Rs.98,945.16 which is inclusive of penalty of Rs.59,367.00 imposed u/s.12(8) of the OST Act and surcharge of Rs.3,598.00. This led the dealer-assessee to file first appeal.

The ld. DCST due to non-appearance/non-production of books of accounts by the dealer-assessee or his advocate for appeal hearing despite proper service of notice for hearing, disposed of the appeal exparte by dismissing the same basing on the materials available on the record. As the appellant had not accounted for the alleged transaction in it's regular books of accounts and appellant preferred not

to appear and produce the books of accounts and other documents in support of his claim that the materials sold has got no commercial value confirmed the impugned order of assessment holding that the dealer-assessee has no ground to contest the case.

3. Being aggrieved, the dealer-assessee filed second appeal before this Tribunal basing on the following grounds:-

- (i) Confirmation of the assessment order by the ld. First appellate authority is arbitrary, excessive and bad in law.
- (ii) The assessing officer without taking into consideration the submissions made by the appellant and without causing necessary enquiry and verification illegally and arbitrarily reached its conclusion that the suppression of Rs.4,49,752.00 stands established and enhanced the same to Rs.8,99,504.00 which is not justified on the facts and in the circumstances of the case. Hence, the levy of tax and penalty in the assessment order and confirmed by the first appellate authority are liable to be deleted.
- (iii) From the very beginning the appellant contended that the alleged disposed of materials i.e. waste iron ore and waste coal dust are generated in course of use of raw material hence, a debris-a waste materials having no commercial value in the market and in order to maintain the environment clean from pollution, the appellant removed the waste materials from the factory premises by engaging a transporter named as Khokan Babu of Paradeep. In removing the waste materials the appellant had not charged any consideration amount. The assessing officer has filed to take into consideration the aforesaid submission of the appellant and arbitrarily and illegally assessed the appellant authority are liable to be deleted.
- (iv) The appellant purchased the raw materials i.e. iron ore and coal from inside the State of Odisha on payment of appropriate Odisha Sales Tax. If the levy of tax and penalty by the assessing officer and confirmed by the first appellate authority is allowed it amounts to levy of double taxation on the same materials which

is prohibited U/s.8 of the Odisha Sales Tax Act, 1947. Moreover, coal is a declared goods U/s.14 of the ST Act. As the appellant had paid Odisha Sales Tax on purchase of coal even if the appellant sale the coal dust as alleged the same is not liable to tax as per Section 14 of the CST Act. Hence the levy of tax and penalty in the assessment order and confirmed by the first appellate authority are liable to be deleted.

- (v) Levy of penalty is arbitrary, excessive and bad in law. Hence, the penalty so imposed by the assessing officer and confirmed by the first appellate authority are liable to be deleted.
- (vi) There has been non-consideration of facts and law leading to an arbitrary demand of tax and penalty by the assessing officer as well as confirmed by the first appellate authority. Therefore, the order so passed by the forums below are liable to be quashed.
- (vii) There has been violation of principle of natural justice in framing and passing the assessment order and confirmed by the first appellate authority. Therefore, the order so passed by the forums below are liable to be quashed.

4. No cross objection has been filed by the respondent-State.

5. Mr. P.K. Jena, ld. Advocate appearing on behalf of the dealer-appellant reiterated the grounds of appeal filed and vehemently took the contention that the dealer-appellant has already paid tax on the raw-material purchased from dealers inside the State. The items iron ore fines and coal fines are neither the raw materials nor finished product of the firm. These items are generated in course of use of raw-materials (iron ore/coal) which are purchased within the State of Odisha on payment of tax. He vehemently argued that the item coal is a declared good u/s.14 of the CST Act as the dealer-appellant has purchased raw materials i.e. the iron ore and coal from inside the State of Odisha on payment of appropriate Sales Tax, levy of double taxation on the same materials is prohibited u/s. 8 of the OST Act. He vehemently contended that as the goods were waste materials having no commercial value on the market and in order to maintain the environment clean from

pollution the dealer-appellant removed the waste materials from the factory premises by engaging a transporter named as khokan babu of Paradeep without charging consideration amount.

6. Per Contra, Mr. M.L. Agarwal, Ld. Standing Counsel (C.T.) appearing on behalf of the State supported the impugned orders of the forums below as just and proper. He argued that the goods purchased by the dealer-appellant are iron ore and coal but the item iron ore fines and coal fine are not same thing but are distinct commodities as per the common parlance. He took the contention that the dealer-appellant should have incorporated the transactions in its regular books of accounts and should have reflected the sale turnover in the periodical returns filed under the OST Act. He further stated that the cashier-cum-accountant of the limited concern admitted before the Inspector of Sales Tax of Investigation Unit, Balasore on 03.12.2004 that the dealer-assessee effects sale of sponge iron to buyers of both inside and outside the State of Odisha apart from effecting stock transfer to their branch at Jamshedpur and also effects sale of coal and iron fines to different parties of inside the state of Odisha raising invoices. He further stated that the Director of the Firm also admitted before the STO Investigation, Balasore on 01.12.2005 that one sale register (Mini Brand) for iron ore fines during 2002-03 with 14 written pages showing sale of iron ore fines vide bill no.001 dtd.25.12.2002 to 369 dtd.25.03.2003 totally 4497.520MT valued Rs.4,49,752.00 was seized from the business premises. The bunch no-2 i.e. Lever Arch File contains all these challan-cum-invoice issued by the firm in favour of M/s. Khokan Babu of Paradeep. Neither sales tax has been collected on such sales nor the sales turnover reflected in OST returns filed in Mayurbhanj Circle. The Director of the concern Mr. Bikash Singh only stated that iron fines are waste materials gathered during the process. The size of the same remains unchanged from iron ore. They normally buy 5.18 mm size of iron ore with 5% allowable of less sizes. The iron ore having less 5 mm sizes is iron fines. This clear cut admission by the Director goes a long way in proving that the dealer has effected sale of different goods

without showing the same in regular books of accounts maintained in respect of the business and without reflecting the same in the OST returns. Hence the findings of the forums below ought to be sustained/upheld.

7. Heard both the parties. Gone through the impugned orders of appeal and assessment, grounds of appeal filed, records of appeal and assessment along with the records of fraud case report. Now, the dispute before the Bench is whether the first appeal order passed by the Id. DCST can be sustained in the eyes of law? From the records available it transpire that the (Mini Brand) sale register relates to sale of iron ore fines from bill No.001 dtd.25.12.2002 to bill no.369. dtd.25.03.2003 for 4497.520 MT for Rs.4,49,752.00 to one M/s. Khokan Babu of Paradeep. The Id. STO has taken into consideration the sales of coal fines contained in the Jitendra Brand cover file containing 99 numbers of written pages on the ground that the item was purchased from registered dealers of Odisha and was subjected to tax at the first point of sale inside the State. Thus, the Id. STO has only taken into consideration the sale suppression involved in the case of iron ore fines. The Id. Advocate could not adduce any evidence in respect of purchase of the goods claimed and sales admitted before the Investigating sales tax authorities not to have been incorporated in the books of accounts and not reflected in the periodical returns filed. From the returns available in record and the notes in the order sheet available in the OST assessment record it is found that the dealer has effected purchase of raw materials to the tune of Rs.5,57,54,791.24 and has disclosed inter State sale of goods worth Rs.4,65,29,561.99 excluding branch transfer of goods effected to the tune of Rs.2,99,00,489.00. No sale has been effected under the OST Act. We came to the definite findings that it is a clear cut case of sale suppression of distinct item by the dealer-appellant which was neither incorporated in the books of accounts nor reflected in the OST returns for the dealer has filed nil returns for the period in question under the OST Act. However, neither the Id. STO nor the Id. DCST has given any

cogent and valid reason for enhancement of suppression found to the tune of Rs.4,49,752.00 to Rs.8,99,604.00. For the item which is involved in this case is explained by the dealer-appellant to be a waste material generated in course of use of raw materials for manufacturing finished goods. As the item iron ore fines is neither a raw material nor a finished product of the dealer-assessee and the surprise visit was conducted by the Intelligence/Investigating Officers during 2003-04 and all the transactions of sale were detected in one sale register (Mini Brand), it is considered reasonable to meet the end of justice by limiting the amount to actual suppression of sales to the tune of Rs.4,49,752.00. For the aforesaid reasons the order of the ld. DCST warrants interference.

8. In the result, the appeal is partly allowed. The order of the ld. DCST is set-a-side. The ld. STO is directed to re-compute the tax liability of the dealer-appellant in the light of aforesaid observations within a period of three months from the date of receipt of this order.

Dictated and corrected by me,

**Sd/-**  
**(P. C. Pathy)**  
**Accounts Member-I**

I agree,

**Sd/-**  
**(P. C. Pathy)**  
**Accounts Member-I**

**Sd/-**  
**(Subrat Mohanty)**  
**Judicial Member-II**