

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 118 (C) of 2015-16

(Arising out of order of the learned JCST, Koraput Range,
Jeypore in First Appeal No. AAC- (RGD) 05/2014-15,
disposed of on dated 11.03.2015)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S.M. Dash, Accounts Member-III

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

-Versus-

M/s. Satyam Packers & Processors (P) Ltd.,
Kadambariguda, Rayagada ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri M.S. Raman, Addl.SC (CT)
For the Respondent : Sri N. Ananda Rao, A/R

Date of hearing: 21.12.2021 *** Date of order: 27.12.2021

O R D E R

The State has preferred this appeal assailing
the order dated 11.03.2015 passed by the learned Joint
Commissioner of Sales Tax, Koraput Range, Jeypore
(hereinafter called as 'first appellate authority') in Appeal No.
AAC- (RGD) 05/2014-15 thereby setting aside the order of
assessment dated 30.07.2014 passed by the Deputy

Commissioner of Sales Tax, Rayagada Circle, Rayagada (in short, 'assessing authority') raising tax and penalty of ₹49,87,536.00 for the tax periods 01.04.2006 to 31.03.2011 u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

2. On perusal of the record, it is found that the present second appeal has been inadvertently registered under OVAT Act vide S.A. No. 55 (VAT) of 2015-16 even though matter was under the CST Act, which is now rectified and renumbered as S.A. No. 118(C) of 2015-16 for the sake of disposal as per law.

3. The State in the present appeal challenged the order of the first appellate authority only on the ground that the first appellate authority committed illegality in accepting 'C' forms covering an amount of ₹3,50,47,058.00 received from the purchasing dealer and treating the same as inter-State sale. It was vehemently urged by the learned Standing Counsel (CT) for the State that the assessing authority rightly discarded 8 nos. of 'C' form submitted by the dealer-assessee for an amount of ₹3,50,47,058.00 as the dealer was not a registered dealer u/s. 7 of the CST Act. The

assessing authority did not commit any illegality in accepting the audit objection and raising tax demand of ₹49,87,536.00 treating the amount covered under 'C' forms as intra-State sale but the appellate authority under misconception of law interfered with the order of assessing officer and illegally accepted C forms. He submitted to allow the appeal.

4. On the other hand, learned Authorized Representative for the dealer-assessee supporting the impugned order of the first appellate authority vehemently urged that the assessing authority under misconception of law and in contravention of sub-rule (6) of Rule 12 of the CST (R&T) Rules discarded the 'C' forms even though there was no infirmity in the said declarations forms and it was rightly issued by M/s. Ballarpur Industries Ltd., Gaganapur, which is a registered firm u/s. 7 of the CST Act. The first appellate authority taking note of explanation to sub-rule (6) of Rule 12 of the said Rules rightly accepted 'C' forms and annulled the assessment order. There is no illegality or impropriety in the order of the first appellate authority warranting interference of this Tribunal.

5. We have heard learned Counsel for the parties, gone through the orders passed by the fora below, grounds of appeal vis-a-vis the materials on record. The assessment proceeding u/r. 12(4) of the CST (O) Rules was initiated against the dealer-assessee on receipt of A.G. objection which reads as follows :-

“... allowance of concessional rate of tax against those eight ‘C’ declaration forms, covering ₹3,50,47,058.00 cannot be accepted as inter-state sales and may be treated as intra-state sales and exigible to tax as the differential tax rates. This resulted in short-levy of tax of ₹16,62,512.00 (₹12,82,094.01 + ₹3,80,417.65) i.e. differential rate of 8% (10-2)% on ₹16026175.20 for the year 2006-07 + differential tax rate of 2% (4-2)% on ₹1,90,20,882.80 for the year 2007-08 and 2008-09). Besides the dealer was also liable to pay a penalty of ₹33,25,024.00 as per the provisions of Rule 12(3)(g) of the C.S.T. (O) Rules, aggregating the total tax and penalty to ₹49,87,535.00.”

Learned assessing authority accepted A.G. objection and disallowed the ‘C’ form transactions made within the State of Odisha i.e. between the dealer-assessee and M/s. Ballarpur Industries Ltd., Gaganapur, Jeypore during the assessment

period in question, raising tax demand of ₹16,62,512.00 and penalty of ₹33,25,024.00 against the dealer-assessee. The first appellate authority taking note of the explanation to sub-rule (6) of Rule 12 of the CST (R&T) Rules annulled the order of assessment accepting the transactions covered under 'C' forms. For better appreciation of the issue involved in the present second appeal, sub-rule (6) of Rule 12 is quoted below :-

“Form 'C' referred to in sub-rule (1), or as the case may be Form 'F' referred to in sub-rule (5) shall be the one obtained by the purchasing dealer or, as the case may be, the transferee in the State in which the goods covered by such form are delivered.

Explanation :- Where, by reason of the purchasing dealer not being registered under Section 7 in the State in which the goods covered by Form 'C' referred to in sub-rule (1) are delivered; he is not able to obtain the said form in that State, Form 'C' may be the one obtained by him in the State in which he is registered under the said section.”

6. It is crystal clear from the aforementioned provision that when a dealer is not registered u/s.7 of the CST Act, he can obtain 'C' form from the State in which he is registered. In the present case, the dealer-assessee, which is

a manufacturer of corrugated boxes and laminated wrappers, sold the goods to M/s. Ballarpur Industries Ltd., which has a branch at Vizianagaram in Andhra Pradesh where it is not registered u/s. 7 of the CST Act. So, M/s. Ballarpur Industries Ltd. at Gaganapur being the principal place and registered under the CST Act, issued 'C' forms in respect the sale transactions made from Rayagada to Vizianagaram. In view of such transactions and explanation to sub-rule (6) of Rule 12, learned first appellate authority accepted the 'C' forms. We do not find any illegality or impropriety in the order of the first appellate authority in accepting the 'C' forms and annulling the order of assessment. Moreover, in view of Section 3 of the CST Act, the goods having moved from State of Odisha to State of Andhra Pradesh, it is an inter-State sale on which the dealer-assessee is entitled to concessional rate of tax as allowed in the original order of assessment u/r. 12(3) of the CST (O) Rules. The assessing authority passed the order of assessment without discussing the explanation to sub-rule (6) of Rule 12 of the CST (R&T) Rules and illegally raised demand of ₹49,87,536.00 which includes penalty of

₹33,25,024.00. The order passed by the assessing authority being in contravention of the provisions of Rule 12(6) of the CST (R&T) Rules, the same cannot sustain in the eye of law. Learned first appellate authority was fully correct in its approach in allowing the appeal filed by the dealer-assessee thereby annulling the order of assessment.

7. For the foregoing discussions, the second appeal preferred by the State being devoid of any merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(S.M. Dash)
Accounts Member-III