

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 136 of 2011

AFR

*State of Odisha, represented by the
Commissioner of Sales Tax* *Petitioner*
Mr. S.S. Padhy, Addl. Standing Counsel

-versus-

Ginni Metal Industries (P) Ltd. *Opposite Party*
None

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK

Order No.

ORDER
19.07.2022

06. 1. While admitting this revision petition of the State directed against an order dated 14th February, 2011 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A.No.240(ET) of 2004-05 for the year 2002-03, this Court by an order dated 11th February, 2013 framed the following questions for consideration:

“(i) Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that there was ambiguity in the Finance Department Notification bearing No.14687-CTA-37/2001 (Pt.) F. (SRO No.149/2001) dated 31.03.2001 and required interpretation in favour of the dealer-assessee particularly when plain reading of the said notification would lead to understanding that the dealer-manufacturer is entitled to claim set off of tax on purchase of raw materials separately indicated on the body of the bill/invoice ?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal acted with material illegality and beyond scope and authority of Rule 19 of the Orissa Entry Tax Rule, 1999 ?

(iii) Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal committed error by interfering with the view of the first appellate authority who has confirmed the order passed by the assessing authority on verification and examination of books of account recorded finding that claim of set off of entry tax as made by the opposite party is untenable inasmuch as it could not produce the purchase invoice against the purchase of raw materials?

2. It may be noticed at the outset that when notice was issued to the Opposite Party side, the service of such notice was returned with the endorsement 'refused'. Therefore, the Opposite Party should be taken to have been served. None appears for the Opposite Party.

3. The background facts are that the Assessee manufactures iron and steel goods and has obtained the benefit of set off of tax paid on raw materials in terms of Notes 1 and 2 of List 'C' of the rate chart notified under Section 5 of the Orissa Sales Tax Act, 1947 (OST Act).

4. The case of the Assessee was that it procured raw materials, for the manufacture of iron and steel goods either by paying sales tax at the first point directly from a purchaser or from another registered seller, who has in turn purchased the goods on payment of 1st point tax and advises the seller to consign the goods to its purchaser directly.

5. In some of the second category of transactions, the Assessee purchased the goods from its seller without showing sales tax liability on the body of the bill issued by its sellers, who in turn purchased the goods from Rourkela Steel Plant (RSP) on payment of 1st point tax and advised the seller (SAIL) to consign the goods

directly to the Assessee. In both categories, the Assessee claimed set off for the tax paid on raw materials.

6. The Sales Tax Officer (STO) allowed benefit of the set off only on the transactions of the first point category i.e. the case of direct purchaser from sellers, who collected tax at the first point of sale. In the second category, the benefit was refused on the ground of that the bills issued by the sellers did not reflect the amount of tax “on the body of the bill collected from the Appellant”.

7. The Assessee also claims set off on the basis of straight jacket formula on payment of sales tax on raw materials against the sales tax due on entire sale transaction for the finished goods in that financial year. However, the STO allowed set off only in proportionate to the sales tax paid on raw materials purchased and used in production of finished goods in a particular year against the sales tax due on the sales transaction on finished goods in that particular year.

8. Thirdly, the STO acted on a fraud case report alleging purchase suppression of 9.290 metric ton of coal. Not being satisfied with the Assessee’s explanation, the STO enhanced the gross turnover (GTO) and the taxable turnover (TTO) by Rs.1,00,000/- (rupees one lakh) on the basis of best judgment assessment and rejection of books of account. After the Assistant Commissioner of Sales Tax (ACST) dismissed the Assessee’s appeal, the Assessee went in further appeal before the Tribunal.

9. The Tribunal appears to have accepted the contention of the Assessee that notwithstanding Notes 1 and 2 of List C of the rate chart requiring the payment of sales tax on raw materials to be

shown separately on the body of the bill itself, the expression ‘selling dealer’ would include not only the immediate selling dealer vis-à-vis the Assessee but any of the earlier selling dealers. Consequently, the Assessee was held entitled to set off on the sales tax already paid on the purchase of raw materials.

10. On the second issue also the Tribunal held in favour of the Assessee by holding that the provision does not suggest that raw materials not used in the production of that financial year are not qualified for the purpose of set off. According to the Tribunal, the only meaning emerging from the provision is that set off is to be calculated on the basis of the sales tax paid on purchase of raw materials in a particular financial year against the sales tax due on the entire sales tax transaction of finished goods in a financial year. The Tribunal, however, did not interfere with the enhancement of the GTO and TTO over Rs.1 lakh by rejecting the Assessee’s books of account.

11. Although the Tribunal correctly noted that in taxing statutes a strict interpretation has to be adopted, it expanded the meaning of the expression ‘selling dealer’ to include any selling dealer and not the immediate selling dealer vis-à-vis the Assessee. This despite, Note 1 very clearly stating that the tax collected from the Assessee by the selling dealer has to be shown ‘separately on the body of the bill in respect of sale of raw materials and consumables” subject to tax on sale turnover directly used in the manufacture of such goods.” Note-2 also talks of set off in the following manner:

“(i) The amount of set off claimed shall be limited to the Orissa Sales Tax payable on sale of finished

products manufactured out of such raw materials and consumables.

XX

XX

XX

(iii) In respect of goods exigible to tax on sale turnover of amount of Orissa Sales Tax realized separately from the dealer on the body of purchase invoice in respect of purchases from the registered dealer during a particular year shall be eligible for computation of the amount of set off to which the dealer shall be entitled, during the same year. It is the responsibility of the dealer for proper custody of those purchase invoices to facilitate verification by Sales Tax Officer.”

12. The language of Note (i) being unambiguous, there was no scope for the expression ‘selling dealer’ to include any selling dealer not limited to the immediate selling dealer vis-à-vis the Assessee. The purpose of Note (i) was clearly to imply only the person from whom the Assessee purchased the raw materials and not any previous seller. There was no scope for expanding the expression ‘selling dealer’ to include any selling dealer previous to the involved in a transaction previous to the transaction. Consequently, the Court is not able to agree with the approach of the Tribunal in an interpretation of Note 1. Question (i) is accordingly answered in favour of the Revenue and against the Assessee.

13. As far as Question No. (iii) is concerned, on a collective reading of Clauses (i) and (iii) of Note 2, it is plain that the set off has to be only proportionate to the actual raw material used in production of the finished products of that particular financial year. The approach of the STO as affirmed by the ACST and the interpretation placed on the above clause appears to be correct. Here again, the Court is

unable to concur with the view expressed by the Tribunal. Question No.(iii) is also therefore, answered in favour of the Revenue and against the Assessee.

14. In view of the answers to question Nos.(i) and (iii) the answer to Question No.(ii) is also in favour of the Revenue and against the Assessee. Accordingly, the impugned order of the Tribunal is hereby set aside.

15. The revision petition is allowed in the above terms.



(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.