

IN THE HIGH COURT OF ORISSA AT CUTTACK

OTAPL No. 24 of 2008

M/s. National Aluminium Company Ltd. ***Appellant***

Mr. Sudeepta Kumar Singh, Advocate
-versus-

Commissioner of Commercial Taxes, Cuttack and others ***Respondents***

Mr. S.K. Pradhan, Additional Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
06.12.2022**

Order No.

21. 1. This appeal is directed against an order dated 12th January, 2007 passed by the Commissioner of Commercial Taxes, Cuttack in Revision Case No.BH-II-4/97-98 whereby the order dated 31st August, 1995 of the First Appellate Authority allowing the appeal filed by the present Appellant/Assessee and reducing the impugned assessment and directing refund of amount of Rs.3,62,485 was sought to be revised suo motu.
2. The reason for exercising the suo motu revisional power was that the Appellant had allegedly suppressed turnover relating to sale of 'Exim Scrips' for the year 1991-92 and this factor was not considered by either in the original assessment order dated 15th

December, 1992 or by the First Appellate Authority in the order dated 31st August, 1995.

3. It was specifically contended before the Commissioner by the present Appellant that it had merely surrendered the Exim Scrips to the State Bank of India (SBI) and that such surrender of the Exim Scrips would not attract the description of 'Sale' and, therefore, no tax liability arose as a result of such surrender of Exim Scrips.

4. The above contention was negated by the Commissioner in the impugned order.

5. The question whether the mere surrender of Exim Scrips would attract the definition of 'Sale' was considered by the Supreme Court of India in ***Commercial Tax Officer v. State Bank of India (2016) 10 SCC 595*** in the context of the expression used in the Bengal Finance (Sales Tax) Act, 1941. There, the Supreme Court categorically held in para 38 of the Judgment as under:

“38. Thus analyzed, the replenishment licences or Exim scrips would, therefore, be “goods”, and when they are transferred or assigned by the holder/owner to a third person for consideration, they would attract sales tax. However, the position would be different when replenishment licences or Exim scrips are returned to the grantor or the sovereign authority for cancellation or extinction. In this process, as and when the goods are presented, the replenishment licence or Exim scrip is cancelled and ceases to be a marketable instrument. It becomes a scrap of paper without any innate market value. SBI, when it took the said instruments as an agent of RBI did not hold or purchase any goods. It was merely acting as per the directions of RBI, as its agent and as a participant in the process of cancellation, to ensure that the replenishment licences or Exim scrips were no longer

transferred. The intent and purpose was not to purchase goods in the form of replenishment licences or Exim scrips, but to nullify them. The said purpose and objective is the admitted position. The object was to mop up and remove the replenishment licences or Exim scrips from the market.”

6. In the present case, it is not disputed factually that the Appellant had merely surrendered the REP licence/Exim Scrips to SBI. This was not a sale which would attract tax. Since the position is now settled in the aforementioned decision of the Supreme Court of India, the Court has no hesitation in setting aside the impugned order. Accordingly the order dated 12th January, 2007 passed by the Commissioner of Commercial Taxes, Cuttack in Revision Case No.BH-II-4/97-98 is hereby set aside and the order of the First Appellate Authority is restored to file.

7. Since the matter has been decided on merits itself, the Court is not considering the other plea raised by the Appellant that the reopening of the matter by way of a suo motu revision was itself time barred.

8. The appeal is accordingly allowed in the above terms but in the circumstances with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge