

Uditnagar (hereinafter referred to as, learned DCST/assessing officer) u/r.12(3) of the Central Sale Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the tax period 01.07.2006 to 31.03.2010 raising demand of rs.9,31,785.00 including interest of ₹14,430.00.

2. The case at hand is that, the dealer-appellant in the instant case having TIN-21432000290 deals in iron ore lumps, iron ore fines etc. Pursuant to audit visit report, the learned assessing authority initiated proceeding u/r.12(3) of the CST(O) Rules and raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the demand.

4. Further, being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection in this case is filed by the State-respondent.

6. During course of argument, learned Counsel for the dealer-appellant vehemently contended stating that the findings of both the lower forums are bad in law and not sustainable. Learned Counsel also contended that the learned assessing authority has grossly erred in taxing the turnover of ₹53,33,818.51 at full rate despite the fact that appropriate declaration 'C' form has been issued with the changed name of the buying dealer with

necessary amendment and it does not matter as to what was the date of amendment. The buying dealer is same and 'C' form has been issued to the dealer at a later date with amended name of the business. The learned assessing authority committed mistake in not accepting the 'C' form issued by Maa Ambey Enterprises, Raipur for ₹38,39,815.00 with the observation that this TIN has been issued to Varshman Commercials, Raipur as per TINXSYS. The excess sale of ₹86,28,591.93 should not have been taxed basing on the sales statement of the dealer-appellant but 'C' form for less amount of ₹86,28,591.93 was reduced due to quality of the product. It is the settled law that if 'C' form is issued for a particular amount to a particular dealer for a particular amount that amount alone can be taxed. The dealer-appellant despite of all sincere efforts could not get form 'H', purchase order and bill of lading.

7. Per contra, learned Standing Counsel for the Revenue has argued stating that in this appeal the appellant has challenged the exparte confirmed order dtd.30.09.2019 passed by the learned Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur which should be dismissed in limini. Further contention raised by the learned Standing Counsel for the Revenue is that, the learned first appellate authority has rightly determined the tax liability on the failure to

comply the statute both by submission of statutory forms and non-production of books of account.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record, grounds of appeal, cross objection vis-à-vis the orders of the fora below. After have a glance to the order of the learned first appellate authority it becomes quite evident that sufficient opportunities were afforded to the dealer for submission of required declaration forms. But in spite of such the dealer neither appeared nor produced the required declaration forms and as such the appeal was decided exparte. This apart, the order of the learned first appellate authority reveals that a demand of ₹9,31,785.00 including interest of ₹14,430.00 was raised against the dealer on the ground of non-submission of 'C' and 'H' form. This apart, differential sales amount was also not covered either by proper debit or credit notes. At this juncture after have a glance to the language of Rule 7A of the CST Rules r/w. Rule 12 of the (R&T) Rules, it becomes evident that it is statutory provision to submit the statutory forms like 'C' and 'H' form. But in the instant case the dealer failed to furnish the wanting 'C' and 'H' forms. If that is so, in absence of wanting 'C' and 'H' forms and proper explanation of differential sales amount arising from sales statement vis-à-vis 'C' form and debit/credit notes, the demand raised in the assessment order including interest dues found to be

genuine by adjudication of the learned first appellate authority. Moreover, learned Standing Counsel has also relied upon certain decisions to support his claim and those decisions are such as **Gupta Trading Co. v. The State of Odisha, Royal Boot House v. The State of Jammu & Kashmir** reported in **(1984) 56 STC 2012 (SC) and CCT v. Control Switch Gear Co. Ltd. (2011) 10 VST 18 (All)**. In the case of CCT v. Control Switch Gear Co. Ltd. (supra), it is observed that-

“Even though declaration form for claiming exemption/concession may be required to be filed during the course of assessment proceeding but, in case of non-furnishing thereof, tax has to be levied at normal rate which would become the admitted tax and interest u/s.8(1) of the UP Act would be leviable from the due date of return in which turnover was disclosed and exemption/concession has been claimed. There is no scope for consideration of legitimate expectation or hope or bona-fide plea u/r.8(1) of the Act.”

So, when the matter has properly adjudicated upon by the learned first appellate authority inconsonance with the provisions of law, the same needs no interference.

9. In the result, the appeal preferred by the dealer is dismissed and the orders of the fora below are hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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