



(Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the tax period 01.11.2006 to 17.02.2010 raising demand of ₹6,24,548.00 including interest of ₹21,159.00 levied u/r.8(1) of the CST(O) Rules.

2. The brief fact of the case is that, the appellant in the instant case M/s. Swastik Traders having TIN-21301905447 is engaged in trading of seasonal goods like turmeric, dead turmeric, niger seed, black nut, mango kernel, tamarind, oil cake, sal seed etc. The learned first appellate authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur while disposing while disposing the Appeal Case No. AA (CST) 02/2011-12 set aside the earlier assessment and remanded the matter to the learned assessing authority with certain directions. Pursuant to such direction, learned assessing authority initiated reassessment proceeding u/r.12(3) of the CST(O) Rules against the dealer and raised the demand as mentioned above.

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

4. 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 the course of argument, the learned Counsel for the appellant vehemently contended stating that the forums below were not justified for non-acceptance of the

valid declaration forms filed as per the provisions of the CST Act and Rules. Learned assessing authority as well as the learned first appellate authority have not given any reason for non-acceptance of declaration forms filed with all supporting documentary evidence and documents. The appellant was not a direct exporter and it (appellant) had sold the goods through form 'H' conditions and produced all the form 'H' along with supporting documentary evidence like bill of lading, copies of sales contract or agreement etc. but the learned assessing authority did not give sufficient opportunity for submission of such documents for balance amount.

7. Per contra, learned Addl. Standing Counsel for the Revenue argued stating that the dealer-appellant had furnished anticipated copy of 'C' forms instead of original statutory forms required for assessment for which the photocopy of the statutory forms were rejected by the learned assessing authority as well as by the learned first appellate authority and accordingly tax and interest were calculated as per the statute. The learned first appellate authority found that the dealer-appellant had not taken any additional ground to contradict the observation of the learned assessing authority made in the reassessment order and also the dealer had not submitted any supporting documents justifying the stand taken in the grounds of appeal. The grounds raised in the appeal petition are misconceived and liable to be dismissed.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal and the orders of the

fora below. From the rival contentions of the parties, three issues emerge for adjudication such as:

- (i) Whether tax on 'black nut' is to be calculated @ 12.5% or @ 4%?
- (ii) Whether under the facts and circumstances of the case the lost declaration forms with supporting documentary evidence should be considered pursuant to the circular of the Commissioner No.9248-CT dtd.30.03.1965 and No.31989/CT dtd.12.10.1972?
- (iii) Whether non-acceptance of the declaration forms 'H' by the forum below for want of copy of agreement and bill of lading etc. is genuine?

9. After have a glance to the order of the learned first appellate authority, it reveals that due to non-acceptance of the attested 'C' forms instead of original 'C' forms and non-submission of declaration form 'C' of ₹16,75,053.00 towards interstate sale of goods and inappropriate collection of CST on the sale of black nut, less amount shown in some declaration form 'C' furnished against its actual sale, less payment of CST during April and May'2008, disallowance of claim of export sale due to non-furnishing of supporting documentary evidences and disclosure of excess value at RMC Checkgate against the invoice value in course of interstate sale of goods, the impugned demand has been raised. This apart, it also reveals from the order of the learned first appellate authority that in course of appeal hearing the dealer had not submitted any supporting documents justifying the stand taken in the grounds of appeal for which during course of reassessment

learned assessing authority had examined all the submissions of the dealer-appellant in details on its merit and accordingly took the decision with the provisions of the CST Act and Rules.

10. With regard to issue No.(i) as to what rate the tax of 'black nut' is to be calculated. To support such claim the dealer has relied upon the order of this forum passed by the Division Bench in S.A. No.95(C) of 2016-17 dtd.25.01.2018 decided in the case of M/s. Siddhartha Agencies v. State of Odisha. After have a glance to the order of the Division Bench of Odisha Sales Tax Tribunal in para-7 of the said order makes it clear that, tax rate of black nut is @ 4% and not to be taxed @ 12.5%. Accordingly, the issue is answered.

11. With regard to issue No.(ii), first have a glance to the circular of the Commissioner No.9248-CT dtd.30.03.1965 and No.31989/CT dtd.12.10.1972. It becomes evident that the Commissioner has specified that the duplicate copy of declaration forms may be accepted in case of any doubt the same may be verified from the concerned State issuing authority in case of any doubt of acceptance. But in the instant case learned assessing authority has not issued any other documents for acceptance and also has not asked the dealer to submit any more documents to this effect. So, in view of this circular the same is binding on the learned assessing authority and accordingly this issue is answered.

12. With regard to issue No.(iii) regarding acceptance of 'H' forms without asking any documents, this issue has been recently settled by the Hon'ble High Court of Orissa decided in the case of M/s. General Traders, Berhampur v. State of Odisha represented by the commissioner of

commercial Taxes, Cuttack in STREV No.64 of 2017 dtd.08.12.2022 in which Hon'ble Court at paragraph-6.9 (page 15 & 16) have held that the penultimate selling dealer is only required to furnish the Certificate of Export in Form 'H' as received from the exporter to the prescribed authority with the copies of documents as specified in said Form 'H'. Neither the statute nor the rules or the contents of Certificate of Export in Form 'H' requires the penultimate selling dealer to furnish "the agreement copies or sale contract or purchase order of the foreign buyer with the Indian Exporter". In view of the above verdict of the Hon'ble Court furnishing of form is the only requirement to prove the export sale. Accordingly, this issue is answered.

13. In the result, the appeal preferred by the dealer is partly allowed and the orders of the fora below are hereby set aside. The case is remitted back to the learned assessing authority for fresh computation of tax in the light of the observations made above within a period of three months of receipt of this order giving the dealer an opportunity of being heard. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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