

1957 (hereinafter referred to as, the CST(O) Rules) for the tax period from 01.04.2013 to 31.03.2014 raising demand of ₹15,19,408.00 including interest.

2. The brief fact of the case is that, the dealer in the instant case M/s. Devkee Nandan Enterprisers having TIN-21242800693 being a proprietorship concern is engaged in trading of waste paper. On scrutiny of the periodic returns, learned assessing authority found that the dealer-appellant had disclosed value of the goods sold in course of interstate trade and commerce at ₹2,94,26,922.00 during the period under challenge, but did not produce the declaration in form 'C' in support of its claim. So, the dealer was called upon to produce the requisite 'C' declaration forms and as such notice in form IIB was issued to the dealer for the period under challenge. But the dealer did not respond the notice for which the learned assessing authority treated such transactions as sale in course of interstate trade and commerce and initiated assessment proceeding u/r.12(1) of the CST(O) Rules. Then by applying State rate of 5% under the OVAT Act, total demand of tax and interest was raised as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the tax 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 contended stating that the dealer had submitted declaration form 'C' before the assessing authority but the same was intentionally overlooked. Further contention of the dealer-appellant is that all the required declaration form 'C' for the period from 01.04.2012 to 31.03.2013 and 01.04.2013 to 31.03.2014 in original were submitted before the assessing authority. Since the declaration form 'C' in original had already been submitted before the assessing authority in compliance to the notice now the dealer is submitting the photocopies of the declaration form 'C' with indemnity bond. The last submission raised on behalf of the dealer-appellant is that, learned first appellate authority also overlooked the matter without giving any opportunity which is illegal.

7. Per contra, learned Standing Counsel for the Revenue argued stating that the order passed both by the assessing authority and the first appellate authority are quite genuine as the dealer-appellant failed to produce documentary evidences in this connection to substantiate his claim. In absence of production of documentary evidences towards submission of original declaration form 'C' before the learned assessing authority as well as the learned first appellate authority, photocopies of the statutory form 'C' submitted by the dealer-appellant should not be accepted by this Tribunal. The learned first appellate authority has rightly passed the order taking into facts and circumstances of the case as per the provision of law. In absence of proof of submission of statutory form 'C' in original at the time of assessment as

claimed by the dealer, the learned first appellate authority has rightly not considered such claim of the dealer-appellant.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis grounds of appeal and the cross objection including orders of the fora below. After have a glance to the order of the learned first appellate authority, it becomes quite evident that during the time of hearing of the first appeal the dealer-appellant failed to produce any 'C' declaration form against interstate sale involving ₹2,94,26,922.00. This apart, it also reveals that as per the say of the dealer-appellant notice was issued to it (appellant) by the then assessing authority of Puri Circle for provisional assessment under CST Act for the period from 01.04.2012 to 31.03.2014 and accordingly the dealer-appellant had appeared and submitted the original 'C' declaration forms before the assessing authority at the time of assessment hearing for the period 01.04.2012 to 31.03.2014, but the assessing authority passed the assessment order for the period 01.04.2012 to 31.03.2013. But on this score no reliance can be placed upon the statement of the dealer-appellant as it failed to adduce or produce necessary documentary evidence in support of its statement. Bereft of such, the assessment order as well as the notice issued to the dealer make it clear that the dealer had not produced any statutory form 'C' in support of its claim of the goods dispatched outside the State by way of sale within the statutory period for which there was violation of the provision u/s.6 & 8 of the CST Act r/w. Rule 7A & 12(1) of the CST(O) Rules. If this being so and when no original 'C'

declaration forms were submitted before the learned assessing authority as well as the first appellate authority and no evidence is also adduced on that score, at no point of time it can be believed or any reliance can be placed upon the statement of the appellant that it had submitted the original 'C' declaration forms before any forum. In view of such the learned assessing authority applied tax rate @ 5% i.e. rate applicable to the goods covered under interstate sale under OVAT Act to the turnover of ₹2,94,26,922.00 which was not supported by declaration in form 'C' which is quite genuine as per the provisions of law. This apart, when the dealer had not paid the tax on the due date, naturally it (appellant) is liable to pay interest on the said tax @ 1% per month as per the provision entailed u/s.9(2) of the CST Act r/w. Rule 8(1) of the CST(O) Rules. The view of the learned assessing authority is also rightly appreciated by the learned first appellate authority which is in conformity with the provisions of Act and Rules and as such 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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