

as, learned DCST/assessing authority) u/r.12(1) of the Central Sale Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) raising demand of ₹15,76,794.00 including interest of ₹2,62,799.00 for the tax period from 01.10.2015 to 30.06.2017.

2. The case at hand is that, the dealer-company M/s.B & A Packaging India Limited bearing TIN-21131500032 is engaged in the business of manufacture and sale of paper sacks (bags) of different size out of raw materials such as craft paper, foil, laminated paper and consumables such as printing ink, adhesive etc. The dealer-company effected sale of goods both in course of intra-State, interstate trade and commerce and export to outside the territory of India.

3. The dealer has failed to furnish declaration form 'C' in support of concessional rate sale, 'F' form in support of branch transfer, 'T' form in support of sales to SEZ, 'H' form in support of indirect export and supporting documents in support of direct export which was disclosed in the return. In view of such, notice in form 11-8 u/r.12(1) of the CST(O) Rules was issued to the dealer pursuant to which the dealer appeared and produced the books of account maintained by it and on verification of the same it was found that the dealer had effected transactions in course of interstate trade and commerce amounting to ₹87,68,83,753.00. This apart, it was detected during verification that the dealer had disclosed sales of SEZ at ₹15,85,33,476.00 but as per the books of account which was ₹15,59,60,038.00. On confrontation, explanation was given by the dealer that during the month of June, 2017 it had made one indirect export of ₹25,73,438.00 vide invoice

No.519 dtd.09.06.2017 but during the time of filing of return, the same was wrongly disclosed as sales to SEZ. When such explanation was found to be correct after ascertaining its genuineness, the same was accepted and the sale to SEZ was determined at ₹15,59,60,038.00 instead of ₹15,85,33,476.00 and the value of indirect export was determined at ₹7,06,26,163.00 instead of ₹6,80,52,725.00.

This apart, the dealer has made interstate sale to outside the State of Odisha at concessional rate of tax against 'C' form condition for net value amounting to ₹52,25,21,811.00. 'C' forms were produced by the dealer for an amount of ₹48,96,97,736.00. After verification of those 'C' forms it was detected that the value amounting to ₹3,86,921.00 covered in the 'C' forms relates to the period prior to 01.10.2015 and ₹4,36,455.00 does not relate to the dealer for which all total an amount of ₹8,23,376.00 was disallowed. So, the interstate sales amounting to ₹48,88,74,360.00 at concessional rate of tax was allowed. When the dealer-assessee could not furnish 'C' forms for interstate sales amounting to ₹3,36,47,451.00, for which the same was taxed at the appropriate rate i.e. state rate @ 5%. This apart, the dealer had effected interstate sales amounting to ₹50,98,029.00 @ 5% without 'C' form condition. The dealer had also made branch transfer to its branches situated outside the State of Odisha to the tune of ₹9,09,75,097.00. For such transfer original 'F' forms covering an amount of ₹9,03,31,653.00 were produced but failed to produce the balance 'F' forms to the tune of ₹6,43,444.00. So, on verification of 'F' forms and supporting documents, claim of

exemption from tax of ₹9,03,31,653.00 was allowed and when the dealer failed to produce 'F' forms amounting to ₹6,43,444.00, the same was taxed at the appropriate rate of 5%, the tax rate under the OVAT Act.

The dealer had effected SEZ sales to the tune of ₹15,59,60,038.00 against form 'I' to the registered dealers of Special Economic Zone (SEZ) and had produced form 'I' against such sales covering an amount of ₹15,59,21,538.00 which were verified and found to be in order for which accepted. But the balance amount of which the dealer failed to produce 'I' forms amounting to ₹38,500.00 was taxed at the appropriate rate of 5%, the tax rate under the OVAT Act. The direct export amounting to ₹35,50,471.00 u/s.5(1) of the CST Act to different buyer of Nepal were also effected by the dealer and had produced copy of purchase order of the foreign buyers, invoice copy, copy of the ARE-1 duly certified by the office of the Customs Department stating that the goods crossed the customs frontier of India. On verification, such sales appeared to be sale in course of export u/s.5(1) of the CST Act. The dealer had also effected indirect export worth of ₹7,06,26,163.00 u/s.5(3) of the CST Act and had produced original 'H' forms covering an amount of ₹6,52,16,712.00, (b) but failed to produce balance 'H' forms amounting to ₹54,09,451.00.

Apart from this, copy of purchase order, copy of invoice, bill of lading etc. were also produced by the dealer and on verification of the same, claim of deduction of ₹6,52,16,712.00 was allowed towards deduction u/s.5(3) of the CST Act. But the balance amount for which the dealer

failed to produce 'H' forms amounting to ₹54,09,451.00 was taxed at the appropriate rate of 5%, the tax under the OVAT Act. Accordingly, the gross turnover for the tax period under challenge under the CST Act was determined at ₹87,68,83,753.00. Thus, in this way the tax demand as mentioned above was raised against the dealer.

4. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who allowed the appeal in part and reduced the demand as mentioned above.

5. Again, 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.

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

7. Heard the contentions and submissions of both the parties in this regard. Perused the order of the learned first appellate authority vis-à-vis the order of assessment and the other documents available with the case record. On perusal of the order of the learned first appellate authority, it reveals that, during hearing of the first appeal the dealer produced one 'H' form in original bearing No.19081980014807 of ₹19,67,288.00 but failed to submit the declaration form 'H' to the tune of ₹34,42,163.00. Bereft of such, the dealer also produced 22 nos. of declaration form 'C' of ₹1,42,10,247.00 both manually and electronically generated but simultaneously failed to produce the balance amount of 'C' form of ₹1,94,37,204.00 and as such the same was taxed @ 5% with interest and

accordingly calculation was made by the learned first appellate authority which is quite genuine and pursuant to the provisions of law.

8. But the fact remains that during the time of hearing of the second appeal, the dealer has produced 5 nos. of 'C' forms and one 'F' form. If that is so, due consideration must be given to those forms otherwise there will be the violation of natural justice. In view of such, to my considered view, the present case should be remanded to the learned assessing authority for reassessment giving due consideration to the 'C' forms and 'F' forms submitted by the dealer before this forum.

9. In the result, the appeal preferred by the dealer is partly allowed and the order of the learned first appellate authority is hereby set aside. As a corollary, the case is remanded to the learned assessing authority for reassessment giving due consideration to the 'C' and 'F' forms submitted before this forum by the dealer during the time of hearing of this appeal. The dealer is instructed to produce all those original 'C' and 'F' forms before the learned assessing authority during the time of reassessment. Accordingly, the cross objection is disposed of.

Dictated & corrected by me,

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

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