

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

**S.A.No.39(C) of 2012-13 &
S.A. No.100(C) of 2012-13**

(Arising out of the orders of the learned DCST, Jajpur Range,
Jajpur Road, in First Appeal Case Nos. AA-122-KJ(C)-10-11 & AA-122-
KJ(C)-10-11, disposed of on 26.06.2012 & 30.08.2012)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-II

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha, Cuttack. ... Appellant.

-Versus -

M/s. Tata Iron Steel Ltd.,
Joda, Keonjhar. ... Respondent.

For the Appellant: : Mr. D. Behura, Id. S.C. (CT).
: Mr. M.L. Agarwal, Id. S.C. (C.T.)
For the Respondent : Mr. A. Das, Id. Advocate

Date of Hearing: 17.01.2023 *** Date of Order: 08.02.2023

O R D E R

The State prefers second appeals in SA No.39(C) of 2012-13 and SA No.100 (C) of 2012-13 against the orders of the Deputy Commissioner of sales Tax, Jajpur Range, Jajpur Road (hereinafter called FAA) passed in the first appeal orders No.AA-122-KJ(C)-10-11 dated 26.6.2012 and No.AA-122-KJ(C)-10-11 dated 30.8.2012 in case of M/s Tata Iron Steel Limited, Joda, Keonjhar, R.C. No.KJC-196 for the assessment period 2003-04 u/r

10 of the CST(O) Rules. During the course of hearing, it is noticed that there has been two first appeal orders passed on 26.6.2012 and 30.8.2012 relating to the same business concern for the same assessment period u/r 10 of the CST (O) Rules. The State has also filed two second appeals separately before this forum as mentioned supra. On perusal, it is unraveled that the narration made in both the first appeal orders is of the same verbatim save and accept the dates of order. Hence, both the appeals filed by the State are tagged together and heard analogously.

The State in the instant appeals assails the orders passed by the Ld. FAA allowing the defective declaration form 'F' submitted by the dealer company at assessment as acceptable is sheer transgression of the statute mandated under the CST Act.

2. It is apt to provide a brief fact of the case for better appreciation. The dealer-respondent was assessed u/r 12(5) of the CST (O) Rules on 20.2.2006 for the assessment year 2003-04. The assessment passed u/r 12(5) was reopened by the learned STO u/r 10 of the CST (O) Rules due to under-assessment meted out at assessment on acceptance of 25 numbers of defective 'F' forms as was pointed in Audit. The re-assessment resulted in demand of Rs.65,57,690.00.

3. The dealer-company on being aggrieved, preferred first appeal before Ld FAA. It is averred in the first appeal order that the

legal requirement of incorporating transactions pertaining to receipt of stock transfer during one calendar month as per proviso to Rule 12(5) of the CST (R & T) Rules under the declaration to be made in form 'F' is with regard to receipt of goods transferred to the branch, Agent or Principal as the case may be and not on the basis of calendar month denoting dispatch of stock of goods which is clearly revealed from the Form 'F'. The ld. FAA has accordingly holds that the appellant has not violated the provisions of section 6-A(1) of the CST Act and the conditions of declaration form 'F' as its branches/consignments agents have duly accounted for the certification made in the declaration form 'F'. The Ld. FAA has therefore accepted the declaration forms 'F' and quashed the demand of Rs.65,57,690.00 raised by the Ld. STO at reassessment. This apart, the ld. FAA directed the ld STO for verification afresh in respect of two 'F' forms out of the alleged 25 nos of 'F' forms bearing No.134587 & 134589 held as not related to the dealer-respondent.

4. The State being not satisfied with order of the Ld.FAA passed on 26.6.2012 preferred second appeal before this Tribunal. The grounds of appeal are summarized as follows:-

(i) That the finding of allowing the claim of branch transfer by accepting the declaration form 'F' on receipt basis is contrary to law which is to be on despatch basis as per the provisions of section 6A of the CST Act read with rule 12(5) of the CST (R & T) Rules,1957.

The abstracts of the aforesaid provisions have been enunciated in the grounds of appeal.

- (ii) That in view of the above, transfer so effected during one calendar month shall cover one 'F' form. The receipt of goods thereafter may be within the said calendar month or after the said calendar month. Each of the period (month) is separate and independent. The exemption of tax is taken on the transfer of goods in the said one month on which the despatch is made and goods are not available for sale in the said month. The liability of taxation if any will be for the said period of month only and not otherwise.
- (iii) That the exemption can only be allowed on the prescribed method as cited above. This has been highlighted in Sigal Trading Co Vrs State of Orissa (1988) 69 STC 329. Further, it is well settled that deduction/exemption on the defective form cannot be allowed unless it is rectified in accordance with the law.
- (iv) That the FAA has transgressed the provisions of law and held a contrary view which is not permissible and sustainable as per the provisions of the Act.

No cross objection has been filed by the dealer-company.

5. The contention of the Ld. Counsel representing the State challenging acceptance of defective 'F' forms by the Ld.FAA is heard. The order of re-assessment order passed u/R 10 of the CST (O) Rules, first appeal order, grounds of appeal and the materials

on record are perused vividly with reference the statute mandated in the CST Act & Rules made there-under.

Sub section (1) of section 6A of the CST Act, 1956 provides as under:-

“Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods, and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.”

Further, Rule 12(5) of the CST (R & T) Rules, 1957 reads as follows:-

“The declaration referred in sub-section (1) of section 6A shall be in Form ‘F’.

Provided that a single declaration may cover transfer of goods, by the dealer, to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month.”

6. On a bare reading of the provisions prescribed in the aforesaid Act & Rules, it is of the opinion that a single declaration in Form ‘F’ is required to be issued to cover all transfer of goods by a dealer to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month. A question crops up here that under which month the Form ‘F’ has to be issued by the recipient state for such goods i.e. the calendar month of dispatch or calendar month of receipt. The first appeal passed by the Ld.FAA holds that the declaration to be made in form ‘F’ is with regard to receipt of goods transferred to the branch, agent or principal as the case may be, and not on the basis of calendar month denoting dispatch of stock of goods. But, in this regard, it is held that the statute puts burden on the dealer (Transferor) to prove that the movement of goods was not by reason of sale and for that purpose he may produce declaration in Form ‘F’ issued by the other State and the said declaration shall be valid relating goods delivered in calendar month based either on dispatch

date of goods or based on receipt date of goods in other State or combination of both. In other words, a single declaration in Form 'F' shall cover the entire transfer of goods to any other branch of the dealer effected in a calendar month regardless of the fact that whether it is on dispatch date basis or receipt date basis as the case may be.

The Ld. FAA appears to have not verified the Forms 'F' which were declared defective by the Ld. STO at reassessment in view of the same having covered more than one calendar month. The codal prescriptions enshrined under section 6A (1) of the CST Act read with Rule 12(5) of the CST (R & T) Rules, 1957 are pivotal and cannot be violated. A single declaration in Form 'F' is to be issued to cover all transfer of goods by the dealer to his any other place of business/agent effected during a period of one calendar month. The Ld. FAA has failed to look into this aspect of mandatory codal prescription.

7. We are therefore of the views that since the fora below have not looked into the aspects of the mandatory requirements provided under section 6A (1) CST Act read with Rule 12 (5) of the CST (R & T) Rules as discussed in the foregoing paras, the Ld. FAA is required to re-examine the case afresh in accordance with the provisions of statute mandated under CST Act & Rules made thereunder. Further, as for the two 'F' forms said to have been not

related to the dealer company, the ld. FAA may verify the same and do the needful.

8. Accordingly, it is ordered.

The appeals filed by the State in SA No.39(C) of 2012-13/and SA No.100(C) of 2012-13 which are heard together are allowed and the impugned orders are hereby set aside with directions to the ld. FAA to re-examine the acceptability of the 'F' form in the light of the observation made in the foregoing paras and dispose of the case preferably within three months from the date of receipt of this order.

Dictated & Corrected by me

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(G.C. Behera)
Chairman

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