

Rs.1,26,06,750.00 U/s.5(3) of the CST Act due to submission of incomplete "H" forms as well as non-submission of copies of the contracts/agreements etc. made between the exporter and the foreign buyers.

3. On being aggrieved the dealer has preferred first appeal before the Ld. FAA who in his order has confirmed the demand raised on account of non-submission of form "C" and submission of counter foils of "C" declarations. However with regard to the demand raised on account of certificates in form "H" the Ld. FAA has allowed the exemption as claimed by the dealer after allowing the dealer to rectify the defects in such "H" forms as noticed by the Ld. STO. In accepting the said claim of exemption the Ld. FAA was of the opinion that production of copies of the agreement with the foreign buyer is not mandatory when the "H" forms are produced. By deciding the same the Ld. FAA has relied upon the judgement of the Hon'ble Madras High Court in case of V.Win Garments Vrs. Additional Deputy Commercial Tax Officer, Central I Assessment Circle, Tirupur, reported in 2011) 42 VST 330 (Mad). Resultantly the Ld. FAA has also deleted the penalty imposed U/r.12(3)(g) of the CST(O) Rules.

4. On being aggrieved with the aforesaid order passed by the Ld. FAA, the Appellant State has filed the present appeal with the grounds that unless the copies of the agreements with foreign buyers are produced, it becomes impossible to ascertain whether the condition precedent for penultimate sale has been fulfilled or not, and as such, merely by producing the "H" forms the dealer cannot be entitled for exemption. Accordingly the Appellant-State has sought for restoration of the order of the Ld. STO.

5. In response to the appeal preferred by the State, the dealer-respondent had filed cross objection stating inter-alia that the allowance of the claim of exemption U/s.5(3) of the CST Act by the Ld. FAA in view of the aforesaid decision of the Hon'ble Madras High Court is judicious and requires no interference. However with regard to the demand upheld by the Ld. FAA on account of non-submission of "C" forms the respondent

has sought for intervention of this forum as no sufficient opportunity in this respect was allowed.

6. Heard the case from both the contesting parties.

7. Although in the cross-objection filed, the dealer respondent has raised the issue of non-extension of reasonable opportunity for submission of wanting declaration forms in "C"; it could neither submit further declaration forms before this forum nor pressed for the issue anymore. Hence the demand determined by the Ld. FAA in this score stands confirmed.

8. With regard to the issue involving allowance of exemption against form "H" without supporting copies of the agreements between the exporter and the foreign buyers, the counsel of the appellant State averred that the same are mandatory in nature to ascertain the fact of fulfilment of the preceding conditions as laid down U/s.5(3) of the CST Act. It was contested that merely by producing certificates in form "H" the dealer is eligible to avail exemption unless all the conditions are fulfilled.

Per contra the Ld. Counsel of the Respondent dealer has referred to the decision of the Hon'ble High Court of Orissa in STREV No.64 of 2017 in case of M/s. General Traders, Berhampur Vrs. State of Odisha, (Commissioner of Commercial Taxes, Cuttack) reported in 2023 (I) IRR-CUT-321. At para 6.9 of the said judgement, which is worth mentioning here, the Hon'ble High Court have been pleased to observe that:-

"... Conjoint reading of aforesaid provisions makes it clear that exemption from payment of Central sales tax on the transactions falling under the sub-section (3) is available to the selling dealer on compliance of the terms of sub-section (4) of the Section 5 of the CST Act read with Rule 12(10). In other words, in order to avail benefit of exemption from payment of Central sales tax on transaction of sale to the exporter under sub-section (3) of the Section 5, sub-section (4) ibid. read with Rule 12(10) of CST (R&T) Rules explicitly requires furnishing of a declaration in Form 'H' duly filled and signed by the exporter to whom the goods are sold. Minute scrutiny of Form 'H' makes it clear that the exporter who declares the goods sold by the

penultimate seller has been exported out of the territory of India and fills in the information, like purchase order number with date, challan number with date. The exporter is obliged to fill in the agreement number and date entered into between the exporter and the foreign buyer. As per certificate-I appended to Form H, the exporter certifies that the very goods purchased from the penultimate seller is for the purpose of complying with the agreement for or in relation to such export. Descriptions as regard goods and details of transport are required to be furnished by the exporter as required under the Schedule appended to said Form 'H'. The exporter is also required to supply copy of consignment note/bill of lading / railway receipt / goods vehicle record/postal receipt, etc. Nothing in the said Form 'H' is required to be done by the penultimate selling dealer. 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 the 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."

Further in Para 6.17 of the same judgement, the Hon'ble High Court is of the opinion that :-

"... In view of provisions of the statute and the decisions referred to above, this Court is of the considered opinion that the petitioner has discharged its burden in the instant case and the authorities could very well have ascertained from the details mentioned in the Certificate of Export in Form 'H' supported by bill of lading and purchase order whether the agreement /purchase order preceded the procurement of goods by the Indian Exporter from the petitioner-penultimate seller. There being no adverse finding of any sort in this regard, this Court is, therefore, comes to conclusion that mere non-production of agreement entered into between the Indian Exporter and the Foreign Buyer would not invalidate the claim of the petitioner-penultimate seller for exemption under section 5(3) of the CST Act. Furthermore, the authorities have not complained that the petitioner

has not complied with the terms of sub-section (4) of Section 5. The disallowance of claim of the petitioner under Section 5(3) of the CST Act has been made by the Assessing Authority and confirmed by the Appellate Authority and the Odisha Sales Tax Tribunal was on account of non-production of copy of agreement between the Indian Exporter and the foreign buyer. In view of discussions made supra, there is no scope for this Court left but to overrule the view expressed by the authorities. Therefore, this Court is inclined to set-aside the Order dated 18.5.2017 passed by the learned Odisha Sales Tax Tribunal, in S.A.No. 58(C) of 2015-16.

Since the case in hand is akin to the case law cited by the Ld. Counsel of the Dealer Respondent, we do not see any cogent reason to interfere in the order passed by the Ld. FAA in deleting the assessment on the limited issue of non-production of copies of agreement with Indian Exporter and the foreign buyer. There being no other issue raised by the Appellant State we are not inclined to interfere with the impugned order passed by the Ld. FAA in deleting tax assessed on the above account and the consequential penalty U/r.12(3) (g) of the CST (O) Rules.

8. In the result, the appeal preferred by the Appellant State is dismissed and the order passed by the Ld. FAA stands confirmed. Cross objection filed by the Dealer-Respondent is also disposed of accordingly.

Dictated and corrected by me,

(S.R.Mishra)
Accounts Member-III.

(S.R.Mishra)
Accounts Member-III.

I agree,

(G.C.Behera)
Chairman.

I agree,

(S.K.Rout)
2nd Judicial Member.