

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

**S.A. No.126(C) of 01-02**

(Arising out of the orders of the learned  
Asst.CST, Sundargarh Range, Rourkela in  
First Appeal Case Nos.AA1(RLIC) 95-96  
disposed of on 30.10.2001)

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

M/s. SAIL, Rourkela Steel Plant &  
Fertilizer Plant, Rourkela. .... Appellant.

**-Vs. -**

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

For the Appellant: : Mr. K. Rath, Avocate.  
For the Respondent : : Mr. D. Behura, S.C.(C.T.)  
:Mr. N.K. Rout, A.S.C.(C.T.)

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**Date of Hearing : 13.12.2023 \*\*\* Date of Order : 11.01.2024**  
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**O R D E R**

This second appeal is directed against the order dated  
30.10.2001 of the Assistant Commissioner of Sales Tax,  
Sundargarh Range, Rourkela (hereinafter referred to as '1d.FAA')  
passed in Appeal Case No. AA1(RLIC)95-96 wherein the 1d.FAA  
has remanded the case to the assessing authority for fresh  
assessment of the remand assessment made under Rule 12(5) of

the CST (O) Rules by the Sales Tax Officer, Rourkela I Circle, Uditnagar (in short, 'ld.STO') in pursuance of the directions imparted in S.A. No. 63(C) of 1988-89.

2. The background of the of the case in brief is that M/s Steel Authority of India Limited, Rourkela (SAIL) is a Government of India undertaking registered under the Companies Act. It has two industrial units such as Rourkela Steel Plant and Fertilizer Plant in Rourkela. It carries on business in manufacture and sale of iron and steel products and fertilizers at Rourkela. It effects intrastate as well as interstate sales. The dealer-company was originally assessed under Rule 12(5) of the CST (O) Rules for the year, 1984-85 raising extra demand of ₹3,11,13,046.00. The demand so raised in assessment was enhanced to ₹9,22,12,815.00 in first appeal. Being aggrieved, the dealer-company preferred second appeal in S.A. No.63(C) of 1988-89 against the order of the ld.FAA. The second appeal resulted in remand of the case directing the ld.STO to take up fresh assessment affording reasonable opportunity to the assessee to furnish declarations in Form 'C' and 'D'; to rectify the declarations found as defective and to examine the claim of credit notes issued for an amount of ₹3,45,79,533.19. In the light of the said observation, the ld.STO allowed reasonable opportunity to the

dealer-assessee to furnish the wanting declarations in Form 'C' and 'D'. The declarations in Form 'C' for an amount of ₹1,40,77,252.66 submitted at the first appellate stage earlier were verified to be in order. But there could be no declarations furnished for an amount of ₹3,40,42,054.78 and thus, the same were taxed at the appropriate rate of CST. As against the defective declarations worth ₹64,01,25,987.22 returned for rectification, declarations covering for an amount of ₹62,20,01,245.45 were found in order leaving thereby ₹1,81,24,741.77 still defective despite advancement of opportunity for rectification. The same were taxed at the appropriate rate of CST. As against the credit notes issued for an amount of ₹3,45,79,533.19, credit notes covering for an amount of ₹2,98,758.30 issued on account of cancellation of original invoices and issue of fresh invoices and ₹32,65,231.62 issued on account of diversion of materials to stock yard of the Branch Office were disallowed. Thus, the credit notes worth ₹35,63,989.92 were disallowed in total in remand assessment. On the whole, as a result of the remand assessment for the year under appeal, the dealer-assessee was held entitled to refund of ₹2,78,70,861.00. The first appeal as preferred by the dealer-assessee concluded in remand of the case to the assessing authority for verification of the genuineness of credit notes worth

₹32,65,231.62 issued on account of diversion of materials to stock yard against which, three nos. of Form 'F' for an amount of ₹14,34,844.88 were furnished in first appeal.

3. The dealer-assessee being further aggrieved with the order of the Id.FAA approached this forum again for relief confining to its grievance on rejection of credit note worth ₹32,65,231.62 issued on account of diversion of materials to stock yard and non-release of refund of ₹2,78,70,861.00 allowed in remand assessment by the Id.STO. Mr. Rath argues that disallowance of the branch transfer worth ₹32,65,231.62 by the forums below staking on a vague plea that there were no evidence adduced as to sale of the alleged diverted goods to any other purchasing dealers or to the former indenting dealers is illegal and baseless. Mr. Rath contends that there is no dispute to the fact that the movement of goods from SAIL, Rourkela to outside the state occasioned in terms of prior contracts/purchase orders placed by the purchasing dealers. The goods were transported to the destination state through railway carriage. With the indenting purchasing dealers having refused to accept the goods, the same were shifted to the stock yards of the nearest Branch Office. The forums below are also not in dispute as to the veracity of the diversion of goods to stock yard. Consequently, it is contended

that since the interstate sale was not complete as a result of non-acceptance of the goods by the indenting dealers, levy of appropriate tax as of interstate sale is arbitrary and devoid of any legal sanctity. It is further submitted that disallowance of the branch transfer on account of non-production the sale transactions of goods dispatched from SAIL to the other different Branch Offices is unlawful, since the branch transfer as contemplated under Section 6A of the CST Act concluded soon after the goods dispatched from SAIL, Rourkela reached the destination Branch Office irrespective of the fact that whether the alleged goods were sold out or not. The learned Advocate places reliance of the decision of the Hon'ble High Court of Kerala reported in (1987) 67 STC 183 in case of **Madras Rubber Factory Ltd Vs. State of Kerala** and decision of the Hon'ble Supreme Court of India reported in (1973) 31 STC 585 SC in case of **the Sales Tax Officer, Navgoan and another Vs. Timber** and in case of **Fuel Corporation and Commissioner of Sales Tax, MP Vs. Purshottam Premji** reported in (1970) 26 STC 38 SC.

There is no cross objection filed by the State.

4. The orders of the forums below, order of this Tribunal in S.A. No. 63(C) of 1988-89, grounds of appeal and the materials available on record are gone through at length. The contention

taken in the written submission by Mr. K. Rath, learned Advocate for the dealer-company is perused. Record reveals that goods worth ₹32,65,231.62 were consigned to the purchasing dealers stationed outside the state pursuant to prior contracts or purchase orders. The indenting purchasing dealers having refused to accept the goods, delivery of such goods did not take place. It is imperative to say that the both the Id. Assessing authority and the Id.FAA are not in dispute as to the facts of diversion of goods to the stock yard of the Branch Office. The declarations in Form 'F' as furnished are found to have been examined by the Id.FAA. As relied on by Mr. Rath, the Hon'ble High Court of Kerala in their verdict passed in case of **Madras Rubber Factory Vs. State of Kerala** (supra) held that buyer returning the goods without taking delivery of the same does not constitute sale. Similarly, the Hon'ble Apex Court in case of **Fuel Corporation and Commissioner of Sales Tax, MP Vs. Purshottam Premji** (supra) held that mere transfer of property in goods used in the performance of a contract is not sufficient; to constitute a sale there must be an agreement express or implied relating to the sale of goods and completion of the agreement by passing of title in the very goods contracted to be sold.

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

*“ (1) 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.”*

5. With the above discussion in view, it is explicitly clear that transfer of goods based on a contract/purchase order shall not constitute a sale unless the goods are taken delivery by the indenting dealer making payment thereof in cash or deferred payment or for any other valuable consideration. In the instant case, as purportedly admitted by the Id. Assessing authority, the goods have been diverted to the stock yard of the Branch Office due to refusal of the purchasing dealers to accept the same.

Therefore, there is no element of any interstate sale constituted. The dealer-company disclosed the alleged diverted stock as branch transfer in terms of Section 6 A(1) of the CST Act and furnished the requisite declaration in Form 'F' for an amount of ₹14,34,844.88 against the alleged diverted materials worth ₹32,65,231.62 as detailed below:-

<b>No.of 'F' form</b>	<b>Issuing authority</b>	<b>Amount</b>
BB 757477	Branch Manager SAIL, Faridabad	₹2,23,205.21
BB 757476	-do-	₹10,99,927.17
H 673492	Branch manager SAIL, Bangalore	₹1,11,712.50

Submission of declaration in Form 'F' along with the evidence of dispatch is a mandatory requirement as per Section 6 A (1) of the CST Act as has been enunciated above. The ld. ld.STO has not disputed the veracity of dispatch of the alleged goods from SAIL, Rourkela to outside the state. It is needless to mention here that SAIL is a Govt. of India undertaking. It is unlikely to believe that it might defraud deliberately to evade tax unlike other fraudulent dealers. Thus, disallowance of the claim of branch transfer by the forums below despite furnishing of Form 'F' on the plea of non-submission of the evidence of sale of the diverted goods to any other purchasing dealers or to the indenting dealers is not justified. Under the above circumstantial milieu, the claim of branch transfer involving ₹14,34,844.88 on account of diversion



of goods to stock yard of the Branch Office is considered to be as branch transfer in terms of Section 6 A(1) of the CST Act and the balance amount of credit notes worth ₹18,30,386.74 claimed as branch transfer is not considerable for want of any statutory declaration in Form 'F' furnished in support of such claims.

6. In view of the above eventuality, the second appeal filed by the dealer-assessee is partly allowed and the order of the Id.FAA is set aside. The impugned case is remitted back to the Id. assessing authority to re-compute the tax liability of the dealer-company in the light of the observation made in the foregoing paragraph and in case of evolvment of refund of tax on re-computation, the same be refunded to the dealer-company as per the provision of law. The above exercise may be completed within three months from the date of receipt of this order.

**Dictated and corrected by me.**

**Sd/-  
(Bibekananda Bhoi)  
Accounts Member-I**

**I agree,**

**Sd/-  
(Bibekananda Bhoi)  
Accounts Member-I**

**I agree,**

**Sd/-  
(G.C. Behera)  
Chairman**

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