BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A. No.125(C) of 01-02

(Arising out of the orders of the
learned Asst.CST, Sundargarh Range,
Rourkela in First Appeal Case
No.AA2(RLIC) 91-92 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.)

Date of Hearing : 13.12.2023 * Date of Order : 11.01.2024**

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 'ld.FAA') passed in Appeal Case No. AA 2 (RLIC) 91-92

wherein the ld.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 (hereinafter referred to as 'ld. Assessing Authority') in pursuance of the directions imparted in S.A. No. 27(C) of 1987-88.

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 ex-parte under Rule 12(5) of the CST (O) Rules for the year, 1983-84 raising extra demand of ₹33,96,25,397.00. The ld.FAA reduced the demand to ₹4,10,96,015.00 and remitted the case back to the Assessing Authority for fresh assessment. Being aggrieved, the dealer-company preferred second appeal in S.A. No.27(C) of 1987-88 against the order of the ld.FAA. The second appeal resulted in remand of the case directing the ld. Assessing Authority to re-look into the

claim of branch transfer involving ₹3,20,66,267.68, sales to registered dealers/Govt. agencies for ₹1,63,43,00,705.61 against Forms 'C' and 'D', sale of fertilizers worth ₹12,00,50,372.50, sale of discarded vehicles and spares for ₹8,77,35,286.00, mispostings of CST sales and OST sales and vice versa involving ₹12,39,644.00 and ₹41,86,906.46 respectively, duplicating invoices for ₹28,92,296.61 and claims of credit notes for ₹3,35,84,056.28 issued on account of diversion of materials to stock yards of the Branch Offices and cancellation of original invoices and issue of fresh invoices.

3. The ld. Assessing Authority took up assessment afresh in the light of the observations set forth in S.A. No. 27(C) of 1987-88. The dealer-company is seen to have filed revised returns disclosing GTO at ₹191,10,02,262.85 deducting there from ₹3,49,70,000.19 towards credit notes, ₹29,18,837.01 towards duplicating invoices and ₹43,70,446.48 towards OST sales wrongly included in CST returns. The ld. Assessing Authority on examination of the books of accounts and other allied documents produced by the dealer-company has arrived at the following derivations.

Out of the claim of credit notes, an amount of ₹2,78,73,380.34 has been claimed towards diversion of goods to stock yard and ₹81,806.40 towards cancellation of original invoices and issue of fresh invoices. As is apparent from the record, pursuant to the prior contracts or purchase orders as the case may be, goods were dispatched to outside the state under interstate sales to the purchasing dealers. Due to non-acceptance of the same by the indenting dealers, delivery of the goods did not take place. In result, the goods were shifted to the stock yard of the Branch Office. The dealer-company submitted Form 'F' along with details of such diversion, original sale invoices and names of the parties who refused to accept the goods in terms of Section 6A of the CST Act. The ld. Assessing Authority disallowed the alleged transactions worth ₹2,78,73,380.00 as branch transfer and treated the same as interstate sales in terms of Section 3(a) of the CST Act holding that there were no evidences adduced as to whether the diverted goods were sold out to the indenting dealers or to other purchasing dealers in the branch offices. Further, as regards credit notes worth ₹81,806.40 issued in respect of goods returned by the purchasing dealers, the ld. Assessing Authority disallowed

the same observing that issuance of credit notes on cancellation of the invoices and issuance of fresh invoices were not brought about within the statutory limit of 6 months as contemplated under the Act.

As to the claim of OST sales worth ₹41,86,906.45 (excluding tax) wrongly included in CST returns, the ld. Assessing Authority upon verification of the OST assessment record could ascertain that an amount of ₹32,35,321.83 of OST sales has been included in the CST sales instead of ₹41,86,906.45. Thus, the differential amount of ₹9,51,584.62 has been added to the GTO and NTO of the remand assessment under appeal. Similarly, as to the claim of CST sales worth ₹12,39,644.80 wrongly included in the OST sales, there being ₹12,28,639.86 shown the reconciliation statement, the differential amount of ₹11,004.94 has been added to the GTO and NTO of the remand assessment under appeal. The sale figure as per the sale ledger was at ₹175,55,84,905.74 as against the sale figure returned at ₹175,50,99,763.26. In consequence, there existed discrepancy of ₹4,85,142.48. The ld. Assessing Authority added ₹4,85,142.48 to the GTO and NTO of the remand assessment under appeal.

With the disallowance of claims as stated supra, the GTO of the dealer-company has been determined at ₹194,04,27,397.85 in remand assessment instead of ₹191,10,02,262.85 disclosed in the revised returns for the year under assessment.

4. The ld. Assessing Authority examined the documentary evidence produced for ₹28,92,295.61 towards issue of duplicating invoices resulting in double entry of sale turnover and payment of tax twice and found that the claim of the dealer-company on this score was genuine and was thus accepted. The sale turnover of fertilizer to the tune of ₹12,00,50,372.50 was taxed at the appropriate rate in demand assessment. The ld. Assessing Authority could find that the sale worth ₹8,77,35,266.40 alleged as sale of discarded vehicles and spares was in fact sale of by-products disclosed against declaration in Form 'C'.

As against the interstate sales worth ₹180,26,72,791.98 claiming concessional rate of tax against declaration in Form 'C' and 'D', the dealer-company could furnish statutory declaration to the tune of ₹175,64,38,618.34 in remand assessment. Thus, there existed ₹4,62,34,173.64 not supported with any declarations

in Form 'C' and thus, the same was liable to be taxed @ 8%. Out of ₹175,64,38,618.34 against which, 'C' Forms have been furnished, declarations covering for an amount of ₹1,12,98,721.58 and ₹17,40,780.67 were declared defective and invalid respectively in remand assessment. On the whole, the dealer-company is found to have furnished valid declarations in Forms 'C' and 'D' for an amount of ₹174,33,99,116.09. The dealer-company having furnished valid declaration in Form 'F' to the tune of ₹320,29,87,541.66 at remand assessment, the ld. Assessing Authority has allowed the said claim of branch transfer as envisaged under Section 6 A of the CST Act. However, on analyzing the facts as discussed above, the ld. Assessing Authority on levy of appropriate tax on the net taxable turnover determined the tax liability of the dealer-company at ₹7,94,39,651.52 against which, the dealer-company having paid ₹10,63,66,490.00 earlier, and amount of ₹2,69,26,938.00 was found refundable to the dealer-company in remand assessment. The first appeal preferred by the dealer-company resulted in remand of the case to the ld. Assessing Authority for fresh assessment on certain anomalies observed in the remand assessment.

5. The dealer-company being further aggrieved with the order of first appellate authority approached this forum for relief endorsing several grounds of appeal. From among the grounds taken in the second appeal for relief, Mr. K. Rath, learned Advocate appearing on behalf of the dealer-company confined to defend on disallowance branch transfer worth ₹2,78,73,380.00 claimed on account of diversion of goods to stock yard of the Branch Office despite submission of valid declarations in Form 'F' along with details of such diversion, original invoices and names of the parties who refused to accept the goods. Mr. Rath argues that disallowance of the branch transfer by the forums below staking on a vague plea that there was 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. But the goods were shifted to the stock yards of the nearest Branch Office as the purchasing dealers had refused to accept the goods. 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. Further, Mr. Rath vehemently protests 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 concludes soon after the goods dispatched from the principal office reaches the destination Branch Office irrespective of the fact that whether the alleged goods are 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.

6. The orders of the forums below, order of this Tribunal in S.A. No. 27(C) of 1987-88, 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. Amongst the grounds taken, Mr. Rath solely harped on disallowance of branch transfer claimed for ₹2,78,73,380.00 on account of diversion of goods to the stock yard consequent upon refusal of the indenting purchasing dealers to accept the goods who had placed purchase orders with SAIL. So other grounds agitated in the grounds of appeal are not pressed. In this connection, it is apt to say this forum in S.A. No.25(C) of 1987-88 have remitted the case back to the ld. Assessing Authority for re-exanimation of the credit notes worth ₹3,35,84,056.28. The dealer-company is learnt to have filed revised returns incorporating ₹3,49,70,000.00 towards credit notes for the year under appeal in remand assessment out of which, credit note covering for an amount of ₹2,78,73,380.34 is seen to have been claimed towards diversion of goods to stock yard of the Branch Office and to this effect, requisite declarations in Form 'F' have been furnished before the ld. Assessing Authority. It is imperative

to say that the both the ld. Assessing Authority and the ld.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' furnished along with the details of diversion of goods, original purchase invoices issued and the names of the purchasing dealers who refused to accept the consigned goods are found to have been looked into in remand assessment. The ld. Assessing Authority has disallowed the claim of branch transfer merely on the plea that there was no evidence adduced as to sale of the alleged diverted goods to any other purchasing dealers or to the former indenting dealers. 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."*

7. 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 dealers making payment thereof in cash or deferred payment or for any other valuable consideration. In the instant case, as purportedly admitted by the ld. 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 inter-state 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'. 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. Assessing Authority 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 to evade tax unlike other fraudulent dealers. Thus, disallowance of the claim of branch transfer by the forums below 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 ₹2,78,73,380.00 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. Hence, it is ordered as under:-

8. The appeal filed by the dealer-company is allowed. The order of the ld.FAA is set aside. The impugned case is remitted back to the ld. 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 evolvement 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

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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