



(Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the tax period 01.04.2015 to 31.03.2016 raising demand of ₹10,999.00.

2. The brief fact of the case is that, the dealer-appellant in the instant case M/s. Graffitic having TIN-21442801456 being a proprietorship concern is engaged in trading of readymade garments. On scrutiny of the periodic returns, learned assessing authority observed that the dealer-appellant had dispatched goods to outside the state otherwise than by way of sale on branch transfer at ₹1,48,106.00 during the period under challenge, but could not be able to produce the declaration in form 'F' in support of his claim. So, the dealer was called upon to produce the requisite 'F' declaration forms, but the dealer did not respond to that. So, the learned assessing authority treated such transactions as sale in course of interstate trade and commerce and initiated assessment proceeding u/r.12(1) of the CST(O) Rules and raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who confirmed the demand.

4. Further, 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.

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

6. During the course of argument, the proprietor himself contended stating that the order of the assessing

authority is erroneous and opportunity has not been afforded to file 'C' form.

Per contra, learned Addl. Standing Counsel for the Revenue stated that the learned first appellate authority has rightly confirmed the order of assessment as the dealer failed to produce the required declaration form.

7. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record including orders of the fora below. On perusal of the order of the learned first appellate authority it becomes apparent that the dealer-appellant had shown dispatch of stock to outside the State otherwise than by way of sale to the tune of ₹1,48,106.00 during the period under challenge, but failed to file the way bills utilized for such dispatch of goods to outside the state otherwise than by way of sale to the company at Mumbai. This apart, the dealer has also failed to file the credit notes issued to that effect by the company. The dealer-appellant filed delivery challan vide packing No.GR0005 dtd.09.07.2015, net amount of ₹1,48,106.00. Apart from this, the dealer had also filed 'F' form bearing Sl. No.27061740173239 (Maharashtra) to the tune of ₹1,58,543.00 towards such dispatch of goods. Furthermore, it also reveals from the order of the learned first appellate authority that on scrutiny of the said 'f' which revealed that the said form had been issued for the period 1<sup>st</sup> August, 2015 to 31<sup>st</sup> August, 2015 against invoice No.217 dtd.28.08.2015 for an amount of ₹1,58,543.00. But the said amount and date of dispatch as mentioned in form 'F' was not tallied with that delivery challan. This apart, also the dealer failed to file any

other corroborative evidence in its favour to prove that goods returned and dispatched are otherwise than by way of sale. So, the learned first appellate authority rightly held the dispatch of goods to the tune of ₹1,48,106.00 to outside the State of Odisha was deemed to be sales in course of interstate trade as provided u/s.6A of the CST Act r/w. sec.3(a) of the CST Act. So, in view of such analysis, learned first appellate authority has rightly adjudicated upon the matter which needs no interference. But fact remains right now during course of hearing of this second appeal the dealer has filed 2 nos. of 'F' forms. If that is so, due consideration should be given to those forms otherwise there will be a violation of principle of natural justice.

8. In the result, the appeal preferred by the dealer is partly allowed and the orders of the fora below are hereby set aside. The case is remitted back to the learned assessing authority for reassessment giving due consideration to the 'F' forms filed by the dealer before this forum within a period of three months of receipt of this order. The dealer is also instructed to produce the original 'F' forms before the learned assessing authority during the time of reassessment. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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