

(Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the tax period 01.04.2016 to 31.03.2017 raising demand of ₹57,814.00 including interest.

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 found that the dealer-appellant had dispatched goods to outside the state otherwise than by way of sale on branch transfer at ₹8,45,420.00 during the period under challenge, but did not produce the declaration in form 'F' in support of his claim. So, the learned assessing authority issued notice in form IIB to the dealer to produce the requisite 'F' declaration forms, but the dealer did not respond to that notice. So, the learned assessing authority treated such transactions as sale in course of interstate trade and commerce by way of assessment 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 vis-à-vis the grounds of appeal, cross objection and the orders of the fora below. After have a glance to 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 ₹8,45,420.00 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. Apart from this, the dealer also failed to file the credit notes issued to that effect by the company. The dealer-appellant had filed delivery challans amounting to ₹8,45,420.00 vide challan/packing No.GR0002, GR006 and GR0011 dtd.04.06.2016, 29.09.2016 and 24.12.2016 respectively. Apart from this, the dealer had also filed 2 nos. of 'F' forms bearing Sl. No.27021F0565681 (Maharashtra) and No.270119F0544962 (Maharashtra) to the tune of

₹4,50,361.00 and ₹3,34,517.00 respectively towards such deposit of goods. On scrutiny of the said 'F' forms revealed that the said forms had been issued for the period 01.08.2016 to 31.08.2016 against invoice No.101 & 107 dtd.15.08.2016 and 20.08.2016 for an amount of ₹4,49,777.00 and 584.00 and for the period 01.03.2017 to 31.03.2017 against invoice No.288M & 302M dtd.03.03.2017 and 22.03.2017 for an amount of ₹1,494.00 and ₹3,33,023.00. But the amount and date of dispatch as mentioned in form 'F' did not match with that of the delivery challan. Bereft of such, the dealer also failed to file any other corroborative evidence in its favour to prove that the goods returned and dispatched were otherwise than by way of sale. So, the learned first appellate authority rightly held that the dispatch of goods to the tune of ₹8,45,420.00 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, when the matter has already been rightly adjudicated upon by the learned first appellate authority inconsonance with the provisions of law, the same needs no interference. But fact remains that during the time of hearing of this second appeal the dealer has produced 2 nos. of 'F' forms which should be given due consideration otherwise there will be 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)
2nd Judicial Member

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