

₹59,66,117.00 in assessment proceeding u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹37,18,880.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files no cross-objection in this case.

3. The learned Standing Counsel (CT) for the State submits that the finding of the First Appellate Authority is otherwise bad in law. He further submits that the First Appellate Authority extended the concessional benefit even in absence of the inter se agreement between the parties. He further submits that the First Appellate Authority ought to have enhanced the NTO determined by the Assessing Authority.

4. On the contrary, the learned Counsel for the Dealer submits that the finding of the First Appellate Authority is correct in its perspective and the same is a reasoned order, which calls for no interference in appeal. So, he submits that the appeal of the State merits no consideration.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the assessment order that the Dealer could not produce supporting documents for sales turnover of ₹13,14,900.00 of Nayapalli Branch and ₹8,00,231.55 of Lewis Road Branch. So, the Assessing Authority rejected claim of a total sum of ₹21,15,131.55. The Assessing Authority further found the Dealer failed to furnish valid declaration Form 'E-1' and 'C' and other relevant documents for an amount of ₹3,61,40,770.00 and ₹69,70,164.41 relating to Nayapalli and Lewis Road Branches respectively. So, the Assessing Authority rejected the claim of total sum of ₹4,31,10,934.41. Accordingly, the Assessing Authority determined the GTO at ₹14,42,98,041.34 and allowed ₹1,82,311.52 towards

collection of CST and ₹9,74,73,201.39 towards exemption u/s. 6(2) of the CST Act. He determined the TTO at ₹4,66,42,528.43. He computed the tax and surcharge at the appropriate rate and the same came to ₹61,52,152.00. The Dealer had paid tax of ₹1,86,035.00. So, the Assessing Authority raised tax demand of ₹59,66,117.00 in assessment.

The First Appellate Authority accepted the NTO determined by the Assessing Authority. It transpires from the impugned order that the Dealer filed 'C' form for ₹2,44,26,492.66 although corresponding 'E-1' form and transport document, purchase and sale order are not filed. The First Appellate Authority found that the Assessing Authority has not extended the concessional benefit on the turnover even if the turnover was supported with 'C' form. So, the First Appellate Authority accepted the 'C' form filed and modified to the extent that the turnover of ₹2,44,26,492.66 was withdrawn from 12% to 4% tax group. He further observed that the turnover which was not supported by 'C' form was to be taxed @ 12% as the goods involved were plant and machinery. Accordingly, the First Appellate Authority determined the tax and surcharge at ₹39,04,915.00 and after adjustment of the tax paid, the balance tax payable is computed at ₹37,18,880.00.

6. The State disputes the 6(2) sale on the ground that the sale was not supported by the vital document, i.e. inter se agreement. The State has further raised a ground that the First Appellate Authority ought to have enhanced the NTO, but accepted the NTO determined by the Assessing Authority.

Section 6(2) of the CST Act provides in-transit sale. Section 6(2) of the CST Act provides that the dealer effecting subsequent sale has to produce before the Assessing Authority form E-1 or E-II as the case may be, which was obtained from the dealer when he purchased the goods and also produce Form 'C' or 'D' as the case may be, which was obtained from the dealer to whom the subsequent sale is effected. Inter se agreement is not

required in in-transit sale, so the submission of the learned Standing Counsel (CT) for the State is not accepted. The learned Standing Counsel for the State could not justify the ground for enhancing the NTO, so the same merits no consideration.

In the instant case, the Dealer has already submitted required 'C' form and basing on which the First Appellate Authority has already modified the tax liability extending the concessional tax benefit to the Dealer.

7. So, for the foregoing discussions, we are of the considered view that the Dealer has already submitted 'C' form before the Assessing Authority, but inspite of that the Assessing Authority did not extend the concessional benefit to the Dealer. The First Appellate Authority found fault with the finding of the Assessing Authority and extended the concessional tax benefit to the Dealer. We do not find any infirmity or illegality in the said finding of the First Appellate Authority, which warrants no interference in appeal. Hence, it is ordered.

8. In the result, the appeal stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**