

taxable turnover at Rs.39,42,55,57,481.00 and Rs.38,56,59,07,226.00 respectively. As the dealer-appellant failed to file 'C' form against transactions to the tune of Rs.806,26,87,285.00 (for net turnover of Rs.790,45,95,397.00) the net taxable turnover was made exigible to CST @4% and the claim of concessional sale was not allowed. This resulted in extra demand of tax to the tune of Rs.14,39,57,176.00. This made the dealer-assessee to prefer first appeal against the order of the ld. assessing authority.

The ld. first appellate authority on careful consideration of the grounds of appeal and the 56 nos. of 'C' form submitted in piece-meal manner covering a period of nearly one year for net taxable turnover of Rs.723,36,51,654.95 allowed concessional claim of transactions to the tune of Rs.718,44,72,545.03 but rejected the claim made on the strength of counterfoils of three declaration in Form-C covering an amount of Rs.4,91,79,109.66 on the grounds that the originals were lost for which the purchasing dealer's sales tax authorities declined to issue declaration in Form-C as the manual forms are not in vogue due to introduction of electronic forms.

3. Being aggrieved, the instant dealer approached this Tribunal on the following grounds of appeal:-

- a) Reasonable opportunity was not allowed to the appellant to furnish the balance declaration form 'C' covering an NTO of Rs.67,09,43,723.00 before the first appellate authority.
- b) The rejection of declaration forms 'C' covering an NTO of Rs.4,91,79,109.66 furnished by NTPC, Bihar without appreciating the grounds reality is against the principles of law.

4. The State has filed following cross objections in response to the grounds of appeal filed by the dealer-appellant:-

- I. There is no reasonable merit in the 2nd appeal filed by the dealer, which is not sustainable in the eyes of law.

- II. The ld. Assessing officer & first appellate authority have rightly completed assessment/appeal basing on the statutory provisions under the Acts & Rules with regards to the point raised by the dealer.
- III. The dealer had failed to provide statutory forms within the stipulated period as envisaged in the Rule 12(7) of the CST (R & T) Rules, 1957 so no further extension of time should be allowed to him.
- IV. The order of the first appellate authority is clear and he has dealt each and every aspect raised by the dealer which requires no further interference.

5. Mr. D.K. Dash, learned Advocate appearing on behalf of the dealer-appellant reiterated the grounds raised earlier and vehemently contended that the ld. first appellate authority has not allowed reasonable opportunity to furnish balance declaration forms and has rejected the counterfoils of declaration forms-C furnished by NTPC in support of transactions amounting to Rs.4,91,79,109.66 without appreciating the grounds reality which is against the principles of law. In course of hearing before the Bench, the ld. Advocate furnished photo copies of six nos. of original declaration in form-C along with written submission in support of the grounds already advocated praying for allowing credit of the transactions covered in the declaration forms the photo copies of which were produced before the Bench and for acceptance of counterfoils of declaration form 'C' submitted by NTPC without inferring any adverse view. The ld. Advocate filed written submission stating the following points:-

- A. As per rule 12(7) of CST (R & T) rules it is the duty of the purchasing dealer to furnish the declaration form 'C' to the selling dealer so as to enable him to furnish the same before the authorities within three months after the end of the period to which the declaration or the certificate relates. And Rule 7A(1) of

CST (O) Rules cast an obligation on the selling dealer to deposit the said declaration forms along with the return within the due date of filing of the return for the next quarter before the appropriate authorities.

However the rule 12(7) of the CST (R & T) has a proviso which reads as 'Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit'.

However at no stage the purchasing dealer can issue Declaration Form before the completion of transaction of sale. Thus the selling dealers cannot insist for blank declaration forms before the completion of transaction.

Both Section 8(4) of the CST Act read with Rule 12(7) of the CST (R & T) Rules 7A(1) of the CST(O) Rules nowhere prescribe for submission of declaration form 'C' written as Original. Both the rules are simply speaks about submission of 'declaration form 'C'.

- B. Both during the stage of provisional assessment under the CST (O) Rules for the tax period from 01.04.2009 to 30.03.2011 as well as at the stage of First appeal it has been repeatedly pointed out that some of the State run Power houses such as Maharashtra Power Corporation who is the major defaulter failed to furnish the declaration forms 'C' to the selling dealer i.e. MCL in spite of repeated correspondences and personal visit by the officials of MCL. And MCL also cannot stop the supply of coal for non-submission of declaration forms 'C' as it will create a national havoc and furore. Therefore the selling dealer is at the mercy of the purchasing dealer so far as the furnishings of declaration forms are concerned.

- C. Further declaration forms 'C' covering an NTO of about Rs.100/- Crores have been misplaced while in transit and as such necessary steps have been initiated by appellant to obtain the duplicate of the said missing forms but due to implementation of electronic system i.e. e-way bill, e-'C' forms the appellant facing difficulties in obtaining the same from many purchasing dealers.
- D. In spite of above facts both Id. AO as well as Id. First appellate authority decided not to allow any further time and passed their respective order.
- E. After lot of persuasion and personal visit the appellant could able to collect only six number of declaration forms 'C' covering an NTO of Rs.37,29,32,368.00 from different purchasers which the appellant is now furnishing before this august forum with a prayer to consider the same while disposing the appeal.
- F. With regard to disallowance of three number of declaration forms 'C' furnished by NTPC Ltd. Kahalgaon, Bihar covering an NTO of Rs. 4,91,79,109.66 on the ground that "mere submission of counterfoil of C-forms and written communication of the assessing officer of the issuing State that manual forms cannot be issued due to introduction of electronic forms will not serve any purpose and accordingly the counterfoils as submitted are hereby rejected".
- G. It will not be out of place to mention here that NTPC Ltd. Kahalgaon, Bihar has earlier furnished the original declaration forms 'C' but unfortunately same have been missing while on transit beyond any trace. That on the detection of the same necessary steps have been initiated by the present appellant as per Rule 12(3) of the CST (R &T) Rules for issue of duplicate of such forms. But unfortunately the Id. Jurisdictional sales Tax Officer of NTPC, Kahalgaon, Bihar had showed his inability to issue a proper duplicate declaration form 'C' of such forms issued earlier against those missing forms citing the reason in writing

that “on introduction of electronic forms, manual forms are not in vogue and cannot be issued”. The copy of the said letter in original has already submitted before the Id. First appellate authority during the course of hearing.

It is a fact that MCL (a PSU) has sold coal to NTPC Ltd. Kahalgaon (a PSU) at concessional rate of tax against furnishing of declaration form ‘C’. There is no dispute on the above point. It is also a fact from the letter of the Id. Jurisdictional Sales Tax Officer that against the said transactions declaration forms ‘C’ have already been issued to NTPC but unfortunately while on transit same have gone missing beyond any trace. And it is also a fact that due to change of law and procedure duplicate form cannot be issued reducing the provisions to non workable. Therefore under the circumstances issue of counter foils by the purchasing dealer is the only alternative remains and as such same may kindly be accepted allowing the credit of the same to the appellant.

Under similar circumstances Hon’ble M.P. High Court and Hon’ble Madras High Court have allowed dealer appeals holding that “*there was nothing wrong in filing the duplicate C forms for availing of the concessional rate*”. *State of Tamil Nadu V. India Rosin Industries (2018) 51 GSTR 319 (Mad)* In response to Sr. 3 the Addl. Grounds of Cross Objection filed by the State, the appellant herewith enclosing evidences in support of payment of Tax for Rs. 87,37,85,011/- which are as under-

2009-10 -----	Rs. 37,9709.305.00
<u>2010-11-----</u>	<u>Rs. 49,40,75,706.00</u>
Total	Rs. 87,37,85,011.00

6. Per contra, Mr. M.L. Agarwal, learned Standing Counsel (C.T.) appearing on behalf of the Revenue reiterated the points raised in cross objections already filed. He stated that the Id. first appellate authority has already allowed adequate/reasonable

opportunity for submission of declaration in Form-C in support of concessional sales effected in course of inter-state trade and commerce. The ld. assessing authority also allowed opportunity for the same. He vehemently argued that in view of the mandatory provisions of law and the judicial pronouncements the photo copies of declaration forms cannot be accepted for grant of concession. The ld. S.C. (C.T.) on behalf of the Revenue on dtd.05.07.2018 has filed the following additional grounds of cross objection:-

- a. The filing of the original 'C' declaration form is mandatory and indispensable to claim concessional rate of tax under the CST Act.
- b. For non-submission of declaration form, the appellant is liable to levy of interest from the date of filing of returns till the date of payment as per the provisions of law.
- c. The LAO has credited a sum of Rs.87,37,84,981.00 as tax paid by the appellant during the period, but, whereas, it is found from the VATIS that the appellant has paid a sum of Rs.87,35,53,553.00, resulting in extra tax credit of Rs.2,31,436.00. The appellant be directed to prove the payment of deposits made, and the correct tax payment may be directed to be credited.

He has further submitted that the dealer-appellant is liable to pay interest on differential tax amount arising out of non-submission of declaration form from the date of filing of returns till the date of payment as per the provisions of law. He further brought to the notice of this Bench that the dealer has been allowed extra tax credit of Rs.2,31,436.00 for the dealer appellant is ascertained to have paid a sum of Rs.87,35,53,553.00 as per the information found from the VATIS but the Forums below have credited a sum of Rs.87,37,84,981.00 as tax paid by the appellant during the period which requires to be made good by the dealer-appellant. In a written submission the following points were raised by the ld. S.C. (C.T.):-

- (i) The genuineness of the six declaration form submitted in course of hearing has to be cross-verified along with the selling bills. Further, declaration forms submitted are also defective and are not in accordance with the provision of law as per Rule 12 of the CST (R & T) Rules. The same has to be verified by the LAO and the defect in the forms has to be removed by the appellant before acceptance and claiming deduction.
- (ii) The averment made in the petition filed by the appellant that the wanting declaration form of net value stands at Rs.67,09,43,723.00 is wrong and incorrect, whereas, the wanting declaration form stands at Rs.5,13,67,28,143.00.
- (iii) The plea to accept the photo copies of the Counterfoil of C declaration form advanced by the appellant is misconceived in view of the provision of Section 8 of the CST Act read with Rule 12 of the CST (R & T) Rules & Rule 6 of the CST (O) Rules, 1957 which prescribes filing of Original declaration form to claim deduction. The modus operandi in case of loss of 'C' form and furnishing of the same has been prescribed u/r. 12(3) of CST (R & T) Rules.
- (iv) The submission of original declaration form is mandatory for grant of concession. The same has been settled by the Hon'ble Courts in case of **Delhi Automobiles (P) Ltd. V. CST (1997) 104 STC 75 (SC); India Agencies V. Addl. CCT (2005) 139 STC 349 (SC); Phool Chand Gupta v. State of A.P. (1997) 104 STC 601 (SC); Dy. Commissioner (law) v. Malabar Cashew (2007) 10 VST 479 (Ker.); Singal Trading Co. V. State of Orissa (1988) 69 STC 329 (Ori); Sri Krishna Rice Mills V. State of A.P. (1997) 104 STC 475 (AP); Kamal Kumar Sharma v. State of H.P. (1999) 112 STC 442 (HP)**. In view of the mandatory provisions of law and the judicial pronouncements the photo copies of the declaration form cannot be accepted for grant of deduction.

(v) The appellant has already availed itself of sufficient opportunities but could not furnish declaration form. Thus, no further opportunities to file declaration form be allowed to the appellant. Further, for non-submission of declaration form, the appellant is liable to levy interest from the date of filing of returns till the date of payment as per the provisions of law.

(vi) It is pertinent to mention that, the issue of levy of interest is no more in res-integra as the issue has been settled by this Hon'ble Tribunal in **Gupta Power Infrastructure Ltd., V. State of Odisha, S.A. No. 71 & 51 (C) of 2014-15 vide order dtd.10.01.2018 (FB); M/s. Ambica Iron Steel Pvt. Ltd. v. State of Odisha in S.A. No. 43(C) of 2016-17 vide order dated 05.02.2018 (DB);** Further, the levy of interest has been settled by the Hon'ble Courts in **Indodan Industries v. State of U.P. (2009) 27 VST 1 (SC); State of Karnataka v. Maintec Technologies Pvt., (2015) 78 VST 429 (Karn.) ; Fosrac Chemicals (India) Pvt. Ltd. v. State of Karnataka (2015) 79 VST 25 (Karn.)**

(vii) The forums below have credited a sum of Rs.87,37,84,981.00 as tax paid by the appellant during the period, but, whereas, it is found from the VATIS that the appellant has paid a sum of Rs.87,35,53,553.00, resulting in extra tax credit of Rs.2,31,436.00. The direction be given to the LAO to verify the details of tax payment and the correct tax payment may be directed to be credited.

7. Considered the rival contentions, gone through the impugned orders of assessment and appeal, grounds of appeal filed by the dealer, cross objection, additional grounds of cross objection, written submission filed by the State as well as the dealer-appellant, the case laws cited by both the parties and the relevant records of assessment and appeal. Now, the dispute before this Bench to be addressed is whether in the facts and circumstances of the case and

in law the ld. first appellate authority committed an error of law in disallowing the counterfoil of declaration in form-C in lieu of original one's submitted by the dealer-appellant and violated the principle of natural justice in not allowing adequate opportunity of time to the dealer-appellant in submitting declaration forms-C? Regarding the question of rejection of counterfoils of three nos. of declaration form-C covering transactions to the tune of Rs.4,91,79,109.66 it is pertinent to make a mention here the following categorical observation/discussion made by the ld. first appellate authority in the appeal order:-

“On perusal of Rule 12(3) of CST (R & T) Rules, 1957 which governs the procedure in case of loss of declaration forms. According to the sub-rule (3) of the said Rules, when a declaration form furnished by the purchasing dealer are lost, the selling dealer may demand from the purchasing dealer, a duplicate form which shall be furnished with a declaration in red ink in all three portions of the form (counter foil, duplicate and original). In otherwords, when a form is lost, another duplicate form has to be obtained wherein, a certificate to that effect (prescribed in the Rule) is to be appended by the purchasing dealer. It may be carefully noted that the purpose of submitting a duplicate form in its three portions (counter foil, duplicate and original) by the selling dealer after obtaining the same from purchasing dealer would guard against misuse or fictitious claims. Therefore, mere submission of counterfoil of C-forms and written communication of the assessing officer of the issuing State that manual forms cannot be issued due to introduction of electronic forms will not serve any purpose and according the counterfoils as submitted are hereby rejected.” It is a well settled principle that when statute requires to do certain things in certain way, the thing must be done in that way or not at all. Other modes of performance are forbidden. In view of the provisions contained under the Law the grounds taken by the ld. Advocate on behalf of

the dealer-appellant on this point is rejected. From the orders of the ld. First appellate authority it is crystally clear that the dealer-appellant was allowed reasonable opportunity for submission of declaration in Forms-C. The dealer-appellant is found to have submitted 56 nos. of declaration forms in piecemeal manner before the first appellate authority covering the date of submission from 29.06.2015 to 18.06.2016 hence it cannot be said that for the periods of assessment from 01.04.2009 to 31.03.2011, the dealer appellant was not allowed reasonable opportunity of time for the purpose of filing declaration form 'C'. The ld. Advocate on behalf of the dealer-appellant could produce six nos. of original declaration in form-C before the Bench without any supporting documentary evidences/books of accounts hence he was allowed to take back the original forms and furnish the photo copies of the same. This Tribunal being an extended forum of assessment is competent to entertain such form in course of appeal hearing. The transactions relating to these six declaration forms have not been examined by the fora below. So in our considered opinion this is a fit case for remand to ld. assessing authority to verify the genuineness of the forms and examine it with reference to the books of accounts for the relevant period. If, found correct the claim of concessional sales may be allowed by accepting the forms in accordance with the provisions under the law. The dealer-appellant is required to produce six nos. of original declaration form-C along with requisite books of accounts/documentary evidences for necessary verification for consideration. Further the ld. assessing authority may take steps for levy of interest which is mandatory and compensative in nature, for the delayed payment of differential tax on account of non-submission of declaration form-C in support of the transactions. This apart, the actual/correct payment of tax under the Act may be credited in favour of the dealer-appellant.

8. In the result, the appeal is allowed in part and the impugned order of the ld. first appellate authority is set aside and the matter is remanded to the ld. assessing authority for disposal in accordance with law, keeping in view our observations made above, within a period of three months from the date of receipt of this order. The cross objection has been disposed of accordingly.

Dictated and corrected by me,

Sd/-
(P. C. Pathy)
Accounts Member-I

I agree,

Sd/-
(P. C. Pathy)
Accounts Member-I

Sd/-
(Subrat Mohanty)
2nd Judicial Member