

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A.No.67(C)/2007-08

(Arising out of the order of the learned Assistant
Commissioner of Sales Tax, Balasore Range, Balasore,
in First Appeal Case No. AA-21/BAC-2006-2007,
disposed of on 16.03.2007)

Present: Smt. Suchismita Misra
Chairman,

Shri S. Mohanty &
Judicial Member-II

Shri P.C. Pathy
Accounts Member-I

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha, Cuttack.

... Appellant.

-Versus-

M/s. Jaiswal Plastic Tubes Ltd.,
Januganj, Balasore.

... Respondent.

For the Appellant: : Mr. M.L. Agarwal, Id. S.C. (C.T.)
For the Respondent: : Mr. P.K. Jena, Id. Advocate.

Date of Hearing: 12.03.2019

Date of Order: 13.03.2019

ORDER

The State challenges the order dtd.16.03.2007 passed by the learned Assistant Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'Id. ACST) in appeal Case No. AA-21/BAC-2006-2007 allowing the appeal in full reducing the demand of Rs.27,04,010.00 raised by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, 'Id. STO') in his order passed on 31.08.2006 Under Rule 12(5) of the Central Sales Tax Odisha Rules, 1957, (in short, 'the CST(O) Rules') for the assessment year 2003-04 and also allowed refund of Rs.1,00,000.00 claimed to have been paid against such extra demand subject to verification of payment by the concerned authority.

2. The brief facts of the case are that the dealer-respondent is a small scale industrial unit registered under the District Industries Centre, Balasore and engaged in manufacturing and trading of PVC pipes and fittings having its corporate office at Salkia, Howrah in West Bengal. During the year 2003-04 the petitioner has disclosed Gross Turnover and Net Taxable Turnover at Rs.2,91,258.75 and 2,88,375.00. The dealer-

assessee also declared to have effected branch transfer of goods worth Rs.2,70,40,067.09. The ld. STO rejected the entire claim of branch transfer and treated the transaction as interstate sales and levied tax @10% which resulted in extra demand of tax to the tune of Rs.27,04,010.00 on the ground that the 12 nos. of declaration in form-F covering the entire claimed branch transfer transactions are not defective being not filled up properly as well as non-amendment of registration certificate of the dealer incorporating J.D. Castings and Forging Pvt. Ltd. as place of the business of the dealer or godown of the dealer. The branch transfer transactions are disallowed by the ld. STO on account of production of incomplete form-F and non-production of conclusive evidence in support of branch transfer effected.

The ld. ACST on careful consideration of the grounds of appeal and the documentary evidences produced and photo copies of declaration form-F by filing of the vacant columns with information about facts and figures and the photo copies of other documentary evidences like Xerox copies of Govt. way-bills and acceptance letter of the goods received at Calcutta Branch and transportation and transaction details and non-consideration of application dtd.12.12.1984 received by the registering authority on the same day but not incorporated the additional place of business by way of amendment and which was neither granted nor rejected by the registering authority arrived at a conclusion that the branch transfer effected as genuine and the dealer-assessee is entitled to effect branch transfer of goods dealt by virtue of the amendment petition filed as back as 12.12.1984 but no action was stated to have been taken by the registering authority. Therefore, he waived out the extra demand treating the same as not based on any reasonable nexus.

3. Being aggrieved, the State has filed appeal before this Tribunal on the following grounds:-

- i. The order of the ld. ACST is not just and proper.
- ii. The appellant has shown branch transfer goods worth Rs.2,70,40,067.09 to its corporate office at Calcutta which was not accepted by ld. STO on the ground that the conditions of branch

transfer as laid down in Sec.6-A of CST Act like movement of goods from one State to another was not occasioned by reason of transfer of such goods by him, additional place of business was not declared in R.C. defective 'F' forms etc.

- iii. The Id. ACST states to have produced Xerox copies of way bills and delivery notes and kept in record and application for amendment but order of Id. STO is against it.
- iv. The Id. ACST has also stated the appellant applied for amendment of R.C. for inclusion of branch business places where now goods sent but Id. STO denied it.
- v. The order of Id. ACST stands contradictory to that of Id. STO for which unreliable to accept it.
- vi. Entire transaction leaving a little was transferred to so called branch is not reliable as per standing transaction of previous years.
- vii. The Id. STO held it as interstate sale which to stand and that of Id. ACST to be quashed.

4. The dealer-respondent has filed the following cross objections:-

The learned first appellate authority has rightly allowed the appeal in full by a reasoned and speaking order in accordance to law in favour of the respondent dealer. Hence, the submission made by the appellant State in the second appeal grounds of appeal that the order of the learned ACST is not just and proper and is untenable in law and accordingly the appeal filed by the appellant State is liable to be dismissed.

- a) The first appellate authority has rightly called for and perused the registration case record under the CST Act and had observed at page-7 of the first appellate order, which is quoted below:

“However, a pertinent question in this issue is that whether the appellant has got an additional place of business at J.D. casting & Forging Pvt. Ltd. Benaras Road, Kona, Howrah, W.B. where the goods have actually been delivered and accepted. The Id. Assessing Officer has observed that this additional place of business has not

been reflected in the registration certificate of the appellant under the CST Act. For this reason the Id. Assessing Officer could not accept the impugned transaction as branch transfer otherwise than by way of sale from its Balasore factory to Calcutta branch. In this connection the contention of the appellant is that he has applied to the Registering Authority for incorporation of M/s. J.D. Casting & Forging, Benaras Road, Kona, Howrah, W.B in his registration certificate vide his application dated 12.12.1984 which has been received by the registering authority on the same day. He has also submitted the house rent receipt of such additional place of business. Even he could produce the registration certificate under W.B.S.T. Act issued by the West Bengal Govt. exhibiting aforesaid additional place of business. Under such premises I have verified the registration record of the dealer under CST Act and seen the said application for amendment for incorporation of additional place of business as mentioned above (kept in page-11) When the dealer has applied for amendment of registration certificate it is the duty of Registering Authority either to grant him such amendment or to reject the same. As long as petition for amendment is not rejected the appellant is entitled to take the privilege of such amendment. Therefore I do not find any irregularities committed by the appellant in dispatching goods from Balasore to its branches located at Calcutta otherwise by way of sale as required in section 6-A (2) of the CST Act. Therefore, I allow such branch transfer of Rs.2,70,40,067.09 as genuine and therefore accepted. Therefore the extra demand raised by the Id. Assessing Officer is not based any reasonable nexus and therefore waived out.”

Hence, no mistake has been committed by the first appellate authority in passing the first appeal order. It is well settled in law that for the inaction of the assessing authority/Registering authority, the assessee shall not be sufferer. Therefore, the appeal filed by the appellant State is liable to be dismissed.

5. Mr. M.L. Agarwal, Learned Standing Counsel (C.T.) appearing on behalf of the State reiterated the points raised in the grounds of appeal. He vehemently argued that it is the assessing authority who is the competent authority to verify the transactions claimed as stock transfer transactions. He took the contention that it is the bounded duty of the dealer-assessee as per the provision under the law to furnish declaration forms duly filled up with relevant information supported by relevant documentary evidences corroborating the books of accounts maintained in regular course of business. He took the stand that the dealer has not been granted additional place of business/branch to which place the dealer-respondent has claimed to have effected stock transfer of goods dealt in. The dealer-respondent ought to have got its registration certificate amended prior to effecting transfer of stock. Acceptance of photo copies of declaration forms and allowing the impugned transactions as genuine is not in accordance with the provisions under the law.

6. Mr. P.K. Jena, Learned Advocate appearing on behalf of the dealer-respondent reiterated the points raised in the cross objection filed and vehemently argued that the order of the ld. ACST is just and proper as he has verified each and every transaction with corresponding documentary evidences and finding no fault on the part of the dealer-respondent in registering authority's not amending the registration certificate of the dealer-assessee despite application filed long back i.e. on 12.12.1984.

7. Heard both the parities. Gone through the impugned orders of appeal and assessment, grounds of appeal filed by the appellant, cross objections filed by the respondent and relevant records of appeal and assessment. The dispute for adjudication in the case is whether the ld. ACST is justified in accepting the transactions on the strength photocopies of declaration in Form-F and accepting the branch at outside the State without amendment of registration certificate even though the dealer-respondent has applied for the same? On careful perusal of the impugned orders and relevant record it is observed that there is no gainsaying of the fact that the ld. ACST has examined the transactions

thoroughly and also verified the application filed by the dealer-respondent for amendment of its registration certificate prior to the period covered under this appeal. As the registering authority has not rejected the amendment petition in connection with incorporation of branch office of the dealer-respondent as applied for it cannot be said that the dealer has effected stock transfer of goods without informing the registering authority. The ld. ACST has also observed that the name of place of business which has not been amended by the registering authority of Balasore Circle, Balasore found place in the registration certificate granted in favour of the dealer-respondent by the West Bengal Govt. in the registration certificate issued under W.B.S.T. Act. But it is noticed that neither the ld. STO pointed out to the dealer-respondent that the declaration in form-F submitted by it are defective on the ground that those are sans relevant information required to be filled up by the transferee. As per the provision contained in u/s 6-A(1) of the CST Act, 1956, the dealer-assessee is required to furnish a declaration (Form-F), 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. In this case the dealer has submitted prescribed form obtained from prescribed authority before the ld. STO but without submission of relevant particulars and without filling of the vacant/empty spaces meant for indicating particulars in respect of the stock transfer of the goods effected. It is a matter of fact that the declaration form-F submitted by the dealer-assessee are not fake ones and the transactions are also not proved to be other than genuine. The ld. ACST has verified the transactions and accepted the transactions as stock transfer of goods by the instant dealer to its branch in West Bengal but has not insisted for incorporation of information in the appropriate original declaration in form-F which is the requirement as per the provisions contained under the law. Law is well settled that when the statute requires certain things to be done in certain way, the thing must be done in that way or not at all. Other methods or

mode of performance are impliedly and necessarily forbidden. The Ld. ACST is competent to verify and accept declaration forms submitted by the dealer-appellant in course of appeal hearing being an extend forum of assessment. Hence it is observed that the ld. ACST has verified the transactions thoroughly but has neither properly taken appropriate steps to remand the case to the ld. STO extending opportunity to the dealer-assessee to furnish relevant information in the declaration Form-F submitted before the ld. STO by taking back the same nor allowed the dealer-assessee to do the needful in course of appeal hearing. Acceptance of photo copies of duplicate copies of declaration Form-F with relevant information by the ld. ACST which information were not reflected in the original declaration Form-F submitted before the ld. STO is not proper and in accordance with the provision under the law. In view of the facts discussed above we are of the opinion that for the facts stated above the order of the Ld. ACST warrants interference.

8. In the result, the appeal is partly allowed. The order of the ld. ACST is set aside. The matter is remanded to the ld. STO with a direction to return the declaration in Form-F to the dealer-assessee on request for the same for the purpose of making necessary entries lying vacant in the declaration forms and resubmit the same after doing the needful. This exercise should be completed within a period of four months from the date of receipt of this order.

Dictated and corrected by me,

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

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

I agree,

Sd/-
(Suchismita Mishra)
Chairman

I agree,

Sd/-
(S. Mohanty)
Judicial Member-II