

together decided by this common order for sake of convenience and to avoid conflicting opinion, if any.

2. Confirming order of assessment under Section 12(3) of the OST Act raising demand of tax on the goods utilised in the execution of the works contract within the purview of OST Act is under challenge by the appellant with a prayer to treat the movement of goods in pursuance of works contract covered by Section 3-A of the CST Act.

Issue:-

(i) Whether, in the given circumstance of the case the movement of goods in pursuance of works contract constituted interstate trade covered under Section 3-A of the CST Act and thus exempted from liability under OST Act?

(ii) What order?

Above are the issues raised in this appeal for decision.

3. **Facts and Background:**

The appellant M/s.Vinar System Limited, a registered dealer under CST Act and West Bengal Sales Tax Act entered into a works contract with M/s.TRL, Belpahar, Orissa for execution of job work like erection, testing, designing and supply of mill house equipments with accessories in pursuance to three number of works contract mentioned in detail below:

Agreement No.

Name of the work.

PU/PJ-99/93/7355/5.4.1993	For erection, testing, commissioning and demonstration of performance guarantee of parameters or other related site work for mill house equipments for TRL Dolomite brick plant.
PU/PJ-99/93/7353/5.4.1993	Providing, designing and engineering services for mill house equipments for TRL Dolomite Brick Plant.
PU/PJ-99/93/7351/5.4.1993	For supply of mill house equipments and all accessories.

In pursuance to the contract, the dealer had supplied all materials from outside the State to the contractee M/s.TRL claiming the same to be interstate transactions covered under Section 3-a of the CST Act read with 6(2)(b) of the CST of the CST Act and in the assessment under Section 12(5) of the OST Act for the assessment period 12/93 to 3/94 and subsequent assessment year 1994-95. The assessing authority treated the appellant as a un-registered dealer under OST Act and fixed tax liability under the local and treating the nature of works contract as a composite one. The taxing authority has held that, since the goods are passed to the contractee only after successfully commissioning of work within the state of Orissa, the claim of like goods are supplied only through interstate trade and commerce having no liability under OST Act is wrong and accordingly, the taxable turnover was determined at Rs.1,81,00,000.00. Tax @4% on it was determined at Rs.7,24,000.00, surcharge at 10% tax amount was calculated to Rs.72,400.00. Besides, a penalty of Rs.4 lakhs was levied invoking provisions under Section 12(5) of the OST Act for quarter ending 3/94. Similarly, the TTO for the assessment period 1993-94 the GTO was determined at Rs.1,07,856.00 and after allowing deduction of Rs.53,928.00 towards labour and service charges, the taxable turnover arrived at Rs.53,928.00. Tax @4% on it was determined at Rs.2157.12, surcharge at 10% only on tax amount was calculated to Rs.215.71.00. Besides, a penalty of Rs.2372.00 was also levied invoking provisions under Section 12(5) of the OST Act.

4. Being dis-satisfied, the dealer knocked the door of the First Appellate Authority, learned ACST, Sambalpur Range as First Appellate Authority vide impugned order (common for both periods) remanded the matter back to the assessing authority with a direction to fix further liability under Section 4(2) and 4(7) of the OST Act.

5. When the matter stood thus, the dealer being further aggrieved preferred this appeal with the sole contention that the dealer is not liable to pay tax under OST Act in respect of interstate sale of goods affected under the contract on account of provisions of Section 3(a) read with Section 6(2)(b) of the CST Act.

6. Both the appeals are heard without cross objection from the revenue, however, in the hearing the revenue took a specific plea that since the goods were first brought into local area inside the state and there, the dealer commissioned the job work under works contract for delivery to the contractee M/s.TRL, so the movement of goods being intercepted by the dealer inside the State before its delivery for the purpose of commissioning of work the goods are liable for tax under OST Act.

Findings:

In the case in hand, the claim of the dealer is, the movement of the goods started in pursuance to a contract entered between the dealer/contractor and M/s.TRL Limited, the contractee. The goods are transported to be utilised for particular purpose under the works contract and the goods are of specific design for the purpose of particular job work. The nature of the work under three nos. of contract mentioned above indicate, the goods of specific character, size and specification were to be supplied/ sold for which there was a pre-arrangement vide a contract for sale executed between the parties. It is when the goods are found to the required satisfaction then, the buyer/ contractee on acceptance can treat the contract a concluded one.

Law is well settled that, the intention of the parties about the agreement is to be gathered from the terms of the agreement itself /Section-19, the sales of goods Act, 1930 reads as follows:

Property passes when intended to pass:-

- I. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to be buyer at such time as the parties to the contract intend it to be transferred.
- II. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
- III. Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Section-3 of the CST Act reads as follows:

“When is a sale or purchase of good said to take place in the course of inter-State trade or commerce.-

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

“3(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.”

Section 6(2)(b) further reads as follows:

- (b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section.”

7. Keeping in mind the provisions above when we peruse the letter of intent/ contracts entered into between the contractor and contractee, it is found that the appellant had supplied machines and spare part as per terms of the contract.

Perused one such agreement (letter of interest).

As per the column No.(3) of the contract dated 5th April, 1993 it reveals the delivery of all items shall be completed in all aspect within a stipulated period, the delivery shall mean the delivery of all the items in good condition upto store at Belpahar. The contention of the dealer-appellant is, the goods are directly despatched from outside state depot of the dealer to the place of

execution at Belpahar, the premises of the contractee, the movement of goods were initiated in terms of the contract, therefore, there is no scope to hold that the movement of goods were not covered under interstate trade and commerce falling within the scope of CST Act.

8. In the case in hand the view of the assessing authority is that the dealer has provided labour and equipments here at inside the premises of contractee within the state of Odisha to commission the work, the goods were taken delivery by the personal appointed by the dealer company, the risk were on the dealer company, delivery of the goods were finally accepted by the contractee, the components moved from outside are not the goods in complete form as required by the contractee. It was assembled here within the State by the dealer in utilisation of labour and skill so it never can be said that the contract is purely a supply contract and as it included with job work it should be treated as a composite contract and the goods after receipt here within the State utilised is liable to be levied with tax under OST Act. The first appellate authority has confirmed the finding without any independent opinion which is implied from the impugned order.

In a matter of M/s. **Balabhadras Hulaschand and another Vrs. State of Orissa reported in 37 STC at page 207** their Lordships of the Apex Court have observed that:-

“ Before a sale can be said to take place in course of inter-state trade or commerce the following conditions must be satisfied : (1) There is an agreement to sell which contains a stipulation, express or implied, regarding the movement of the goods from one State to another ; (ii) In pursuance of that agreement the goods in fact moved from one State to another; (iii) Ultimately a concluded sale took in the state where the goods

were sent and that state is different from the State from which the goods moved. If these conditions are satisfied then by virtue of Section 9 of the Central Act, it is the State from which the goods moved which will be competent to levy the tax under the provisions of the Central Act.”

Further, in the matter of **Commissioner of Delhi Value Added Tax Vrs. ABB Limited (2016)**⁴ **TRL 534** the Hon'ble Supreme Court has held as follows:

The law on this issue was also considered by the High Court in correct perspective after noticing the case of *Tata Iron and Steel Co. Ltd. v. S.R. Sarkar*^[3] that where the goods moved from one state to another as a result of a covenant in the contract of sale it would be clearly a sale in the course of inter- state trade. The conclusion of the High Court on this issue also finds ample support from the following case laws which were noticed by the High Court (1) *Oil India Ltd. v. The Superintendent of Taxes*^[4] (2) *English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer*^[5] (3) *South India Viscose Ltd. v. State of Tamil Nadu*^[6].

In *Oil India Ltd.* this Court held that the inter-state movement must be the result of a covenant, express or implied in the contract of sale or an incident of the contract. In other words, the covenant regarding inter-state movement need not be specified in the contract, It would be enough if the movement was in pursuance of or incidental to the contract of sale. In *English Electric Co. of India Ltd.* the law was clarified thus: "if there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State

movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific/ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce.....".

In South India Viscose Ltd. it was held that if there is a "conceivable link" between contract of sale and the movement of goods from one state to another to meet the obligation under a contract of sale it would amount to an inter-state sale and such character will not be changed on account of interposition of an agent of the seller who may temporarily intercept the movement. On the issue of sale in the course of import it is relevant to extract Section 3 and 5 of the CST Act, 1956 enacted by the Parliament in exercise of powers under Article 286(2) of the Constitution of India: "3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase -

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

9. On a conspectus of liability under the disputed issues and the ratio laid down by the authorities it can safely be said that the movement of goods with case by way of interstate trade were in pursuance to the terms and conditions of

the contract between the appellant and M/s. TRL Limited. The goods are specific description more to say the goods are trailer made goods for the purpose of execution of job under specific work contract awarded on turnkey basis to the appellant and there was no possibility of such goods being diverted by the appellant for any purpose . Hence, the goods are not exigible to local tax since covered under Section 3-a of the CST Act.

Once it is held that the movement of goods occasioned on the strength of a contract being covered under the CST Act more particularly when not covered under OST Act, the direction of the first appellate authority in the impugned order has no legs to stand.

Consequentially, when the dealer's liability under OST Act is not established the impugned order is found not sustainable.

Accordingly, it is ordered.

10. Both the appeals are allowed on contest. The impugned orders is set aside. The dealer has not liable under OST Act.

Dictated and Corrected by me,

(Sri Subrat Mohanty)
Judicial Member.

(Sri Subrat Mohanty)
Judicial Member.

I agree,

(Suchismita Mishra)
Chairman.

I agree,

(Sri R.K.Pattnaik)
Accounts Member-III.