

towards claim of concessional sales and also failed to submit declaration in Form "H" to substantiate the claim of exempted sale in course of export U/s.5(3) of the CST Act amounting to Rs.2,85,085.98, the net taxable turnover was arrived at Rs.68,09,225.45 which was made exigible to tax @16% after allowing deduction of Central Sales Tax collected to the tune of Rs.2,60,965.24. Besides, the dealer was levied surcharge of Rs.1,08,947.60 and interest of Rs.57,857.80 charged u/s.12(4-a) of the Odisha Sales Tax Act (in short, OST Act) read with Rule-22 of the CST(O) Rules. Against the total tax, surcharge and interest aggregating to Rs.12,56,281.47, the assessment was resulted in demand of Rs.10,35,547.00 after allowing deduction of Rs.2,20,734.00 paid by the dealer-appellant before passing of the assessment order. This led the dealer-assessee to file appeal before the Id. ACST.

The Id. ACST after careful consideration of the grounds of appeal, submission of one declaration in form "C" obtained from M/s. Usha Martin Industries, Jharkhand for Rs.7,28,582.40 and another declaration in Form "C" obtained from M/s. Nova Iron & Steel Ltd., Chhatisgarh for Rs.18,23,076.00 and one declaration in Form "H" obtained from M/s. MMTC Ltd., Barbil for Rs.2,46,104.98 allowed the concessional rate @ 4% on inter-state transactions and claim of exemption from tax in respect of sales in course of export. However, as the Id. Advocate of behalf of the dealer-appellant claimed to have disclosed gross turnover of sales, net turnover of sales, CST payable and CST paid as per revised returns filed at a belated stage on 31.03.2003 at Rs.27,97,763.38, Rs.24,59,185.14, Rs.98,367.00 and Rs.1,02,507.00 respectively for the impugned period, at the time of appeal hearing submitted in writing that the Id.STO has determined GTO at Rs.70,70,190.69 including Rs.28,07,049.00 against from-IV sale (M/s. Prakash Industries

Ltd.). So actual GTO (CST) is (Rs.70,70,190.69-Rs.28,07,049.00) Rs.42,63,141.69.

In view of the conflicting and contradicting figures furnished by the ld. Advocate at the time of appeal hearing and as the supporting documentary evidences were not furnished, the ld. ACST accepted the gross turnover determined by the ld. STO but allowed exempted sales and concessional sales for the transactions for which declaration in forms "H" and "C" were submitted respectively. This resulted in reduction of demand to Rs.6,58,555.00.

3. Being further aggrieved, the dealer-assessee filed second appeal before this Forum on the following grounds:-

- (a) The ld. ACST is not legally justified in raising extra demand which is high and excessive for the dealer has no intention to suppress the transaction.
- (b) The petitioner has maintained correct books of accounts and after verification of the same he has filed revised return both before the ld. STO and ld. ACST at the time of assessment and appeal by the forum below.
- (c) The ld. ACST should have allowed the deductions covered under the declaration form 'C' for an amount of Rs.25,52,658.00 instead of Rs.7,28,582.00 although relevant declarations forms have been submitted before him at the time of disposal of first appeal.

4. The State has filed cross objections as follows:-

- (i) The ld. AO has verified the accounts of dealer appellant produced before him and found that the dealer has inter-state transaction worth Rs.70,70,190.69 inclusive of STC which has been accepted as gross turnover of the dealer for the assessment period.
- (ii) The dealer appellant though claimed before ld. ACST as to less turnover of sale to outside State but submitted a statement of

sale with different figures on the whole. The dealer's claim is contradicting with the annual returns submitted & sale statement submitted.

- (iii) The dealer appellant was allowed reasonable opportunities to submit wanting "C" declaration form but the dealer failed to submit the same. Besides concessional rate benefit has been allowed for an amount of Rs.24,53,518.00 supported by "C" declaration.
- (iv) The State has also filed second appeal seeking recompilation tax on the turnover not supported by "C" & "D" forms.

5. Mr. P.K. Mishra, Id. Advocate appearing on behalf of the dealer-appellant reiterated the points raised in the grounds of appeal and vehemently opposed that the Id. ACST has passed order without taking into consideration the photo copies of the revised returns filed and the declaration Form-'C' produced for Rs.18,23,076.00 issued by M/s. Nova iron & steel ltd., Chhatisgarh. He further argued that the dealer-appellant has not effected any other inter-state sales or export sales other than the transactions for which declaration forms "C" and "H" were submitted for verification and acceptance at the time of appeal hearing before the Id. ACST. However, he failed to produce any documentary evidences or books of accounts substantiating the points raised in the grounds of appeal filed and reasons for which revised returns under the CST Act were filed that too at a belated stage i.e. on 31.03.2003 on which date the assessment order for the period was passed by the Id. STO under the CST Act.

6. Per contra, Mr. M.S. Raman, the Id. Additional Standing Counsel (C.T.) appearing on behalf of the State brought to the notice of this Bench that it is not a fact that the Id. ACST has not considered one of the two declaration forms submitted during the course of appeal hearing. He further indicated that even though the Id. ACST has not categorically mentioned the amount involved in

respect of the purchasing dealer M/s. Nova Iron & Steel Ltd., Chhatisgarh, has omitted to indicate the amount which is Rs.18,23,076.00. Rs.7,28,542.40 actually relates to the transactions of sales effected in favour of M/s. Usha Martin Industries, Jharkhand, but the ld. ACST even though failed to omit the amount involved in case of one transaction and name of the purchasing dealer involved in another transaction has taken into consideration the net sales turnover allowing concessional sales by subjecting the transactions to tax @4% as applicable under the CST Act. The ld. Addl. S.C. (C.T.) has also brought to the notice of the Bench the details account statement for the year 1999-2000 filed by the ld. Advocate in writing before the ld. ACST in course of appeal hearing, which forms part of the appeal record produced before this Bench. As per the detail account statement furnished by the ld. Advocate before the ld. ACST at the time of the appeal hearing reflects for the period 1999-2000 following break up of net taxable turnover for which declaration forms were submitted and not submitted hence due for submission:-

Break up

1- MMTC is -	2,46,104.98	“Form ‘H’ submitted”
2- Usha Martin Industries-	7,28,582.40	“Form ‘C’ submitted”
3- Nova Iron & Steel Ltd.-	<u>18,23,076.00</u>	“Form ‘C’ submitted”
	27,97,763.38	
	<u>14,65,378.31</u>	Form due
	<u>42,63,141.69</u>	
1- V.K. Ojha –	3,40,349.88	
2- Prakash Ind Ltd.-	10,86,047.44	
3- Nova Iron & Steel -	<u>38,980.99</u>	
Total -	14,65,378.31	

7. Heard both the parties. Gone through the grounds of appeal filed, the cross objection filed, the impugned orders of assessment and appeal and relevant appeal record. The dispute

before this Bench to be decided is whether the ld. ACST is justified in passing order accepting the gross turnover determined by the ld. STO but ignoring the claim of reduction of gross turnover, net taxable turnover and CST collected as per the revised returns filed by the dealer-appellant in respect of the transactions effected under the CST Act? From the records made available it is not possible to arrive at a conclusive decision regarding transactions made by dealer during the period owing to disclosure of confusing breakup of net taxable turnover in the shape of statement at the time of appeal hearing and the transactions of sale to the tune of Rs.28,07,049.00 effected against declaration in form-IV to M/s. Pakash Industries Ltd. Obviously it is a transaction covered under the OST Act being intra-state transaction for which the purchasing registered manufacturer is entitled to effect purchase of raw-materials at a concessional rate of 4%. The circumstances leading to incorporation of this transaction in the original returns filed under the CST Act and subsequent deduction of the same made through revised return ought to be considered after ascertaining how the transaction was reflected in the returns filed under the OST Act for it involves Revenue of the State. The ld. Advocate appearing on behalf of the dealer-appellant failed to explain with documentary evidences/books of accounts the transactions stated to have been wrongly incorporated in the original returns filed under the CST Act and the statement submitted by the ld. Advocate on behalf of the dealer-appellant before the ld. ACST at the time of appeal hearing. It is not ascertainable as to whether the dealer-assessee has reflected this transaction in the returns filed under the OST Act or not and has paid due tax on producing requisite declaration Form-IV. The transaction involving Rs.14,65,378.31 for which the ld. Advocate has admitted that the declaration forms are wanting necessitates thorough and proper verification of transactions with reference to the books of accounts and returns filed for the impugned period. In

view of the above, it is not possible to come to a conclusion without detailed verification of transactions and ascertaining the reasons of filing revised returns that too at a belated stage without proper explanation before the ld. STO or before the ld. ACST. Hence the order of the ld. ACST warrants interference for the order is not a speaking one covering details examination of the inter-state transactions effected and wrongly incorporated intra-state transactions. Hence, the ld. STO is directed to verify the books of accounts in details with reference to the returns both original and revised filed by the dealer-appellant, the declaration form submitted in connection with the transactions claimed to have been effected against Form-IV and the transactions with three dealers amounting to Rs.14,65,378.31 for which the ld. Advocate admitted that the declarations forms are due.

8. In the result, the appeal is partly allowed. The order passed by the ld. ACST is set-a-side. The ld.STO is directed to pass order afresh in the light of aforesaid observations in accordance with the provisions under law within a period of three months from the date of receipt of this order and the dealer-assessee is directed to extend necessary co-operation in producing books of accounts and other related documentary evidences in this connection before the ld. STO. The cross objection is 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/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
Judicial Member-II