

declaration in Form 'C' and Form 'H' the Id. ACST completed the provisional assessment under section 12(1)(b) of the CST(O) Rules 1957, raising demand of tax to the tune of Rs.1,48,88,548.00. Being aggrieved with the assessment order the dealer-appellant preferred first appeal before the Id. Addl.CST on grounds of denial of natural justice in submission of declaration forms in Form 'C', Form E-I and Form 'H'. The Id. Addl.CST on careful consideration passed the appeal order reducing the demand of tax from Rs.1,48,88,548.00 to Rs.5,96,461.00 on production of declaration forms.

3. Being further aggrieved the instant dealer preferred second appeal before this Tribunal on the following grounds:-

a. The first appeal order passed by the Id. Additional Commissioner of Sales Tax (appeal), Northern Zone, Sambalpur is infirm, erroneous, illegal and therefore bad in law.

b. The Id. Addl.CST has failed to appreciate the law in proper context leading to extra demand on the appellant amounting to Rs.5,96,461.00 which is liable to be quashed.

c. The appellant had effected exempted sales to SEZ for an amount of Rs.65,48,811.00 including the cost of freight of Rs.44,646.00. Law stipulates that the sale to SEZ is conditionally exempted, the condition being furnishing of declaration in Form-I from the inter-state purchaser. Once the dealer-appellant submitted the Certificate in Form-I, there was no scope on the part of the Id. Addl. CCT Appeal N.Z. Sambalpur. The declaration form clearly displayed the freight charges on the body of the form. Therefore there is no reason as to why the Id. Addl. CCT NZ Appeal should have disallowed the turnover of Rs.44,646.00.

d. The Id. Addl.CST has committed error while disallowing appellant's claim of deduction to the tune of Rs.76,15,827.00. The appellant has effected a total sale of goods in course of inter-state trade and commerce to the tune of Rs.317,72,11,047.00 which has been accepted by the Assessing authority in the order of assessment . The amount of Rs.317,72,11,047.00 is the Net Taxable Turnover relating to Inter-state sales u/s.3(a) of the CST Act. That is, the basic sale price plus Tax. For the purpose of computation of tax liability under the CST Act, it is the Net Turnover that matters, not the Gross Turnover. The appellant had earlier furnished before the Assessing Authority- at the time of

assessment- declaration form in Form C covering an amount of Rs.274,23,51,124.00 being the NTO w.r.t inter-state sales and declaration Form covering an amount of Rs.43,48,59,923.00 [being the NTO] was wanting for which the LAO has imposed additional tax on the appellant.

e. During the hearing of first appeal, the appellant further submitted 53 nos. declaration in Form 'C' in original covering an amount Rs.43,48,32,631.00 which is the Net Taxable Turnover, gross turnover being Rs.44,35,29,284.00. Thus there remained a balance wanting C-forms of Rs.27,292.00.

f. The appellant submitted the statement of 'C' forms by filling up the particulars of 'C' form in Annexure-F as prescribed under the CST (O) Rules, as a requirement the appellant has to fill up the gross value i.e. the value of basic sale price Plus tax. However, for the purpose of determination of tax, as per the law, it is the basic sale Price, i.e. the net sale price should have been taken into consideration for determination of tax liability of the dealer. The ld. Addl.CST however erred in law by levying tax on the gross turnover of CST sale and thereby levying tax once again on tax component involved in Rs.43,48,32,631.00.

g. The ld. Addl.CST while disallowing an amount of Rs. 42,68,752.00 pertaining to less submission of F-Form has committed illegality by not allowing the appellant to cure the alleged defect.

4. The respondent-State has filed the following memo of cross objection:-

i) There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law.

ii) The ld. Assessing Authority & ld. First Appellate Authority have rightly completed assessment/appeal basing on the statutory provision under the Act and Rules with regard 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 (7) of CST (R&T) Rules 1957. So no further extension of time should be allowed.

5. At the time of hearing before the Bench Shri U. Behera, the ld. Advocate on behalf of the dealer-appellant reiterated the grounds already filed and permitted to furnish written submission as sought for with the following contentions:-

The dispute in the present case is that the Id. First Appellate Authority has levied tax on the Gross Turnover which is inclusive tax component and advance freight as explained under:

On C-Forms: Concessional CST sale falling u/s.3-a: Rs.317,72,11,047/- [NTO]

(i) Out of above, C form of Rs.274,23,51,124/- [NTO] was submitted at the time of assessment leaving balance wanting forms to be submitted by the appellant at Rs.43,48,59,923.00 [NTO].

(ii) Against the wanting C-forms of Rs.43,48,59,923/-, the appellant submitted C-Form covering an amount of Rs.43,48,32,631.00 [NTO] at the time of hearing of first appeal. Gross amount being Rs.44,35,29,284.00 which is inclusive of CST Rs.86,96,653.00 i.e. @2% on Rs.43,48,32,631.00.

(iii) The tax component of Rs.86,96,653/- has been taxed by the first appellate authority erroneously in the first instance. Secondly, while doing so, the first appellate authority further wrongly deducted an amount of Rs.3,56,564/-, Rs.6,96,960/- and Rs.27,292/- towards sales return, credit note and wanting C forms respectively from Rs.86,96,653/- which is the differential CST Amount instead of levying tax only on Rs.27,292/- @3% being the amount of wanting C forms.

(iv) Due to the above erroneous calculation, a tax of Rs.3,80,791.00 was levied in excess on the appellant instead of Rs.819/- being the tax on wanting C form.

2. It is clearly mentioned in the assessment order that all F-Forms and Form I are submitted by the appellant. therefore the LAO rightly granted deduction to the appellant u/s. 6-A and u/s. 8(6) of the CST Act read with Rule 12(11) of the CST (R&T) Rules towards turnover relating to branch transfer and sales made to SEZ.

However, the Id. First Appellate Authority erroneously taxed Rs.42,68,752.00 being advanced freight paid to transporter against goods sent to branches outside the State and freight charges of Rs.44,646.00 relating to sales made to SEZ.

The Id. First appellate authority levied 5% tax on Rs.42,68,752.00 calculated to be Rs.2,13,438.00 and @ 5% on Rs.44,646.00 calculated to Rs.2,232.00.

Accordingly total tax demanded was calculated to Rs.5,96,461.00 instead of Rs.819.00 [being 3% of Rs.27,292.00] being balance wanting C Form.

Demand calculated by the Id. Addl. CST:

On C-Forms as per 1 above:	Rs.3,80,791.00
As per para 2 above: Rs.213438.00+Rs.2232.00=	<u>Rs.2,15,670.00</u>
	Rs.5,96,461.00

6. Shri S.K. Pradhan, the Id. Addl. Standing Counsel (C.T.) appearing on behalf of the Revenue argued that the Id. First Appellate Authority should not have accepted the declaration forms not submitted before the Id. Assessing Authority and the dealer-appellant should have been charged interest for non-payment of tax in time for which the Id. Addl.CST has levied tax.

7. Heard the rival contentions, the impugned orders of the Id. Assessing Authority as well as the Id. First Appellate Authority, grounds of appeal filed, the written submissions furnished at the time of hearing by the Id. Advocate on behalf of the dealer-appellant and the cross objection filed by the Revenue. On perusal of the appeal order passed by the Id. Addl.CST it is observed that the Id. Addl.CST has not indicated the net taxable turnover and CST collected by the dealer-appellant separately so far as 53 nos. of declaration forms produced before him for which the first appeal order is not a speaking order. There is no justification in the finding of excess sale of Rs.44,646.00 in respect of SEZ sale and no enquiry was made to ascertain the reason of the excess sale as found by the Id. Addl.CST. It is also not indicated in clear terms in respect of difference mentioned to the extent of Rs.42,68,752.00 so far as stock transfer is concerned with reference to reflection of the amount Rs.120,16,54,248.00 shown in the annual return against total branch transfer as mentioned in the appeal order. The Id. Standing Counsel (C.T) failed to produce LCR on account of which the contentions taken by the dealer-appellant could not be verified at this end but as the appeal order is not a speaking order and there is non-production of LCR, it is not possible to come to a definite conclusion regarding the fact. As per the appeal order the dealer could not furnish 'C' Form in respect of two transactions effected in course of interstate trade and commerce. The Id. Advocate on behalf of the dealer-appellant has also indicated in the written submission filed that the dealer could not furnish declaration

form for transactions to the tune of Rs.27,292.00 only for which the dealer is liable to pay the differential tax. There is no incongruity or irregularity on the part of first appellate authority accepting declaration forms at the appellate stage on proper verification as the appellate forum is also an extended forum of assessment so far the contention of acceptance of declaration forms taken by the Id. Addl. Standing Counsel (C.T.) on behalf of the Revenue.

8. In the result, the appeal is allowed in part and the order of the Id. Addl.CST is set aside. The matter is remanded to the Id. Assessing Authority to verify the transactions with reference to the books of accounts, returns filed and the contentions taken by the Id. Advocate on behalf of the dealer-appellant as discussed above and pass order afresh with reference to the provisions under the law within a period of four months from the date of receipt of this order. The cross objection filed by the Revenue is dismissed.

Dictated and corrected by me,

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

I agree,

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

Sd/-
(Subrat Mohanty)
Judicial Member-II