

A.T.F. on wholesale basis. The dealer appellant has disclosed his GTO and NTO at Rs.520,08,588.39 and Rs.408,89,810.30 for the year 1999-2000. During the course of examination of books of accounts, the learned STO noticed that the appellant's company by utilising way bill NoYZ 025367 and YZ 025368 has transferred the stock of furnace oil from Balasore deport to Haladia deport amounting to Rs.16,32,657.00. But it (dealer company) could not produce any documentary evidence in support of such stock transfer. So the learned STO taxed the same amount at the rate of 12% by adding to the NTO. Likewise, the learned STO noticed that the dealer appellant has claimed sale of LPG and HSD in course of interstate trade as per Section 3(a) of the CST Act against Form 'C' amounting to Rs.4,83,47,905.05 and Rs.6,14,13,246,48 respectively. The appellant furnished declaration in form 'C' in respect of sale of LPG to the extent of Rs.3,09,19,835.80. But he could not furnish the wanting list nor wanting 'C' form relating to the balance transaction of LPG and the entire transaction of H.S.D. Further, the learned STO noticed that the dealer appellant has shown to have transported LPG to outside the State but on verification of the way bills received from the checkgate for the month of Jan,2000 it was detected that the appellant has sold HSD through various way bills to the outside parties amounting to Rs.4,69,188.00. But the said amount of Rs.4,69,188.00 has not accounted for in the statement of sales submitted at the time of assessment. So the learned STO added the said amount in the NTO to be taxed. Similarly, the appellant has transferred the goods to outside the State through various way bills but could not furnish any declaration against the said transactions. So the said amount of Rs.11,28,128.00 was added to the NTO. In view of such, the learned STO rejected the books of accounts of the appellant and completed the assessment by adding Rs.32,29,973.00 to the NTO.

3. Being aggrieved with such assessment, the dealer assessee preferred the first appeal before the learned ACST, Cuttack I

Range, Cuttack, who allowed the appeal in part by reducing the demand to Rs.80,17,561,00.

4. Being dis-satisfied with the order of learned First Appellate Authority the dealer assessee preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. No cross objection is filed by the state respondent.

6. Heard the contentions and submissions of both parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal. Learned Counsel for the dealer appellant vehemently contended that learned ACST committed gross error of law by accepting the rejection of books of account and enhancing the turnover by Rs.32,29,973.00 by the assessing officer even if the appellant had maintained proper books of account. Learned ACST was not legally justified to disallow the claim of sales of LPG and HSD against declaration in Form-C amounting to Rs.3,80,29,269.07 as opportunity was not given to furnish the statutory declarations in Form-C as prescribed under CST (R & T) Rules, 1957 which could not be received due to postal delay and dispute etc. Levy of tax on Rs.27,60,785.00 by both the fora below representing transfer of stock to the own branches of the appellant company for non-submission of declaration in Form 'F' is not justified as the same could not be received due to non-issuance by the sales tax authorities and postal delay etc. That the movement of goods from Odisha to other State to own branch took place not as a result of 'Sale' but 'For sales' and even if evidence like transport L.R., transport invoices and supporting declaration way bills in form XXXII utilized for transfers were adduced but the same were not considered.

7. Per contra, learned Standing Counsel for the revenue refuted all such claims put forth on behalf of the dealer appellant stating that the orders of fora below are quite justified due to non-submission of declarations form 'C' and 'F'.

8. After thorough scrutiny of the order of the learned first appellate authority, it becomes evident that during hearing of the first appeal, certain numbers of 'C' forms amounting to Rs.4,08,12,046.56 were submitted on behalf of the appellant dealer with a request to accept the same. On examination of those 'C' forms by the learned first appellate authority, 8 numbers of 'C' forms were found to be defective. Such fact was intimated to the appellant vide its (office of ACST) letter no.7732 dated 18.11.2003 to rectify the mistakes. After rectification of defects in 'C' forms, 7 nos. of 'C' forms were resubmitted amounting to Rs.2,44,95,143.66 on dated 28.02.2004. After careful scrutiny, learned first appellate authority accepted 'C' forms amounting to Rs.4,08,12,046.56. But no form 'F' was submitted by the appellant against the claim of branch transfer. So after acceptance of 'C' forms, learned first appellate authority calculated the GTO and NTO as reflected at page 7 of first appeal order which is genuine and in consonance with the provisions of law. Due to such calculation, the demand was reduced to Rs.80,17,561.00. In view of such, to our considered view, the order of the learned first appellate authority needs no interference.

9. In the result, we are not hesitant to dismiss the appeal. Accordingly, the appeal preferred by the dealer appellant is dismissed and the order of the learned first appellate authority is hereby confirmed.

Dictated and Corrected by me,

(Shri S.K.Rout)
Judicial Member-II

I agree,

(Shri S.K.Rout)
Judicial Member-II

(Shri A.K.Das)
Chairman

I agree,

(Shri M.Harichandan)
Accounts Member-I

