

Officer, Bolangir-II Circle, Kantabanji (in short, LAO) in assessment order passed on 31.03.2003 framed U/r.12(4) of CST(O) Rules for the period 2001-02 to Rs.79,97,894.00. Further, vide corrigendum order dtd.01.01.2004 issued under rule 83 of OST Rules, he further reduced the demand to Rs.76,67,374.00.

S.A. No.38(C) of 2005-06:

3. Present appeal U/s.23(3) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') read with Rule 22 of the CST(O) Rules is at the behest of the dealer-assessee challenging the impugned order dated 31.01.2005 promulgated in Appeal Case No. AA -3(BPC II) of 2004-05 by the Assistant Commissioner of Sales Tax, Bolangir Range, Bolangir (in short, Id. FAA) who confirmed the tax demand of Rs.1,44,82,160.00 raised by the Id. Sales Tax Officer, Bolangir-II Circle, Kantabanji (in short, LAO) in assessment order passed on 29.03.2004 framed U/r.12(4) of CST(O) Rules for the period 2002-03.

S.A. No.42(C) of 2006-07:

4. Present appeal U/s.23(3) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') read with Rule 22 of the CST(O) Rules is at the behest of the dealer-assessee challenging the impugned order dated 23.03.2006 promulgated in Appeal Case No. AA-01(BPC II) of 2005-06 by the Assistant Commissioner of Sales Tax, Bolangir Range, Bolangir (in short, Id. FAA) who confirmed the tax demand of Rs.1,18,63,005.00 raised by the Id. Sales Tax Officer, Bolangir-II Circle, Kantabanji (in short, LAO) in assessment order passed on 10.06.2005 framed U/r.12(4) of CST(O) Rules for the period 2003-04.

5. Being aggrieved by the aforesaid orders of Id. FAA, the assessee has preferred second appeal before this Tribunal challenging the said orders as bereft of consideration of material fact with the provisions of law for which the said impugned orders are illegal and bad in law.

6. The brief fact of the case is that the instant company is established for the solitary purpose of manufacturing high Speed Steel and alloys by effecting purchase of raw-materials from outside State and also import from outside country. It is the only industry in the country to manufacture high speed steel and alloys in a sophisticated mechanism for specific purposes. This product is manufactured through a special and cumbersome process after combining the raw-materials like scraps, ferro alloys (ferro-tungstone), ferro-moly, cobalt, ferro-banadium etc and other 30 to 40 items and consumables. These raw-materials are melted at the degree of 1400 Celsius and the ingot finally comes to a finishing stage.

For the year 2001-02, on examination of books of account with relevant documents and different statutory forms filed, the LAO observed that the assessee has claimed inter-state sale of goods for Rs. 25,60,10,035.00 at concessional rate against C forms conditions, but failed to submit such form for Rs.2,80,32,662.00 which the STO taxed at state rate of 8%. However, he rejected claim of branch transfer of goods of Rs.9,19,27,321.00 on the ground that the claim falls under section 3(a) of CST Act against which the assessee could be able to submit necessary 'F' forms with detailed statement for Rs.9,01,91,321.00. He observed that the goods claimed u/s. 6 (A) of the CST Act was having privity of contract and the goods were dispatched to outside the State in pursuance of purchase order from the ultimate purchasers. This finding was supported by a fraud

case report bearing No.3 dtd.05.12.2002 relating to period 2001-02 and 2002-03 submitted by IST, Mobile Unit in which the GM (Finance) of the said assessee admitted that the goods were dispatched to their outside branches on receipt of requisition form from the branches in pursuance to the requisition and specification of the ultimate purchaser of the outside State. All these resulted in a tax demand of Rs.83,36,135.00 by the LAO in his assessment order for the year 2001-02 which was challenged by the assessee in first appeal before the Ld. FAA.

The ld. FAA, after due examination of the case, reduced the tax demand to Rs.79,97,894.00 by re-determining the GTO at Rs.44,74,55,541.00 as against Rs.45,62,10,447.00 determined by the LAO in his order and by accepting few 'C' forms produced by the assessee at first appeal stage. However, he further reduced the demand to Rs.76,67,374.00 by a corrigendum order dtd.01.01.2004 issued u/r. 83 of OST Rules.

For the year 2002-03, the LAO observed that the assessee has claimed inter-state sale of goods of Rs.17,43,36,978.00 against 'C' form condition but failed to submit such forms for Rs.1,18,86,633.00 which he taxed at State rate of 8%. Moreover, he observed that out of 'C' forms submitted for Rs.16,24,50,345.00, one 'C' form bearing no.8025603 dtd.24.08.2003 relating to net value of Rs.88,69,941.00 was a xerox copy for which no original 'C' form could be produced. Hence, he rejected the aforesaid statutory form and taxed it at state rate. Further, he rejected the claim of exemption of tax on branch transfer of goods valued Rs.17,23,41,992.00 in spite of submission of statutory form 'F' with the same reason relating to the assessment year 2001-02. All these resulted in an extra demand of Rs.1,44,82,160.00 by the LAO in his assessment order

for the impugned year which was challenged by the assessee before the Id. FAA in first appeal who after thorough examination of the case, confirmed the assessment order with his reasoned order.

For the year 2003-04, the Id. LAO, after verification of books of account with relevant documents and different statutory forms filed, accepted all the 'C' forms filed and taxed the inter-State sale of goods at concessional rate of 4%. However, he rejected the 'F' forms filed for Rs.14,83,94,579.00 towards its claim of tax exemption for branch transfer of goods on the same ground as enumerated above resulting in an extra demand of Rs.1,18,63,005.00 which was challenged by the assessee in first appeal.

7. The Id. FAA, however, on examination of the case, confirmed the said assessment order relating to the impugned year.

Being further aggrieved by the aforesaid orders, the assessee preferred second appeal for the impugned periods separately before this Tribunal.

8. During the course of hearing, the Id. Counsel for the assessee strongly assailed the impugned orders passed by Id. FAA as unjust, illegal and contrary to the provisions of law and settled case laws.

9. Per contra, the Id. SC(C.T.) for the Revenue argued in favour of the orders of the Id. FAA being just and proper in the facts and circumstances of the case that don't warrant further interference by this Tribunal.

10 From the rival contentions of both the parties the moot question involved in the present appeals filed separately is whether, in the facts and circumstances of the case, both the forums below are justified in rejecting the claim of the appellant in respect of branch transfer of goods supported

by declaration form 'F' contending that the transactions being inter-state sale u/s.3(a) of CST Act and not covered u/s. 6-A of the said Act.

In order to properly address the query above, it is profitable to refer to the relevant provisions of CST Act.

Section-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.”

Section6-A

“Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.

- (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, 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 dispatch of such goods

- (2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) [are true, and that no inter-State sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3)], be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.”

The serious question that arises for consideration in this case is whether or not the term “sale of goods” as used in section-3 includes an agreement to sale. It is to point out here that an agreement to sale is undoubtedly an element of sale. In fact, a sale consists of three logical steps – (i) that there is an offer; (ii) that there is an agreement to sell when the offer is accepted; and (iii) that in pursuance of the said agreement a concluded sale takes place. When the statute uses the words “sale or purchase of goods”, it automatically attracts the definition of sale of goods as given in Section-4 of the Sales of Goods Act, 1930 which is a statute passed by the same Parliament and is to some extent *pari materia* to the Central Sales Tax Act so far as transaction of sale is concerned. In case of *Balabhagas Hulaschand Vrs. State of Orissa* reported in (1976) 37 STC 207 (SC) their Lordship has defined the conditions to treat a sale in course of inter-State trade or commerce. In Para 15 (2) of the said judgment, their Lordship have decided as under:-

“Para 15(2) That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce:

“(i) that 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) that in pursuance of the said contract, the goods in fact move from one state to another; and

(iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move.”

If these conditions are satisfied then by virtue of section 9 of the Central Sales Tax Act, it is the state from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act.”

In the present cases, the fact remains that the assessee has dispatched the goods to its four number of branches namely Chennai, Mumbai, Delhi and Jalandhar situated outside the State and has claimed these as branch transfer by producing valid declaration form ‘F’ in original with detail statement of dispatch of goods disclosing the Sl. No., name of the transporter, invoice number, date of dispatch, lorry no. along with quantity of goods in KGs and its value. However, the LAO, relying totally on the aforesaid fraud report discarded such claim made u/s.6-A of CST Act. He believed that the goods were moved from Orissa to outside identify customer in pursuance to pre-existing contract and thus the transaction relating to claim of branch transfer by the assessee are coming under the purview of inter-state sale in terms of section -3 (a) of the CST Act in the guise of branch transfer. Here, it is to reiterate that the IST (Mobile), during visit to the factory premises of the assessee on 27.11.2002 recorded a statement

from one Shri M.K. Mallik, GM (Finance) of the assessee in which he has stated that their marketing office collects orders from customers as per their specifications which are placed before the assessee for manufacture. However, such statement was turned down during assessment on 25.01.2003 on the ground that he, being newly joined, was not fully aware of the practice followed with regard to the branch transfer and his statement claimed to have given off-hand without verification of the records. He further stated that the goods were dispatched to their branches situated outside the state based on the feed back of the goods by the branch or depots and the collection of feed back of the goods by the branch as per their requirement and demand of the products in the market outside the state. It was felt necessary because of the fact that financial projection is essential for procurement of raw-materials, consumable, manpower and other costs to make continuity in production flow and for maintaining quality products at the manufacturing units.

11. The Id. Counsel for the assessee vehemently argued that without rejecting the submitted 'F' forms and without making an enquiry as required U/s. 6A(2) of the CST Act, both the forums below has grossly erred in assessing his client to tax on branch transfer. In this connection, the Id. Counsel filed few case laws along with decisions of this Tribunal to fortify its claim of exemption of tax U/s. 6A of the CST Act. Section 6A has been inserted for the purpose of establishing the burden of proof on the dealer that any movement of goods from one state to another was occasioned otherwise than by way of sale. But, once the dealer files a declaration in form 'F', the burden would be upon him to show that the particulars mention in form 'F' are true. If he fails to establish that the particulars

mentioned in form 'F' are true, it would be open to the assessing authority to record a finding that there is no material to show that the transfer of goods is otherwise than by way of sale. This is a statutory requirement u/s. 6A (2) of the CST Act which is to be scrupulously followed by the LAO without fail. In the present case, since, the assessee has submitted the declaration forms 'F' in respect of its branch transfer, the LAO is obliged under the law to peruse the said forms and make such inquiry as he deems necessary to find out whether the particulars found in the declaration are true. The type of enquiry to be conducted when declaration in form F is filed by the dealer has been vividly explained by the Hon'ble Supreme Court in case of Ashok Leyland Ltd. Vrs. State of Tamil Nadu reported in (2004) 134 STC 473 (SC). In the aforesaid case, the Hon'ble Apex Court held as under:-

“The scope or frontiers of enquiry, by the assessing authority under Section 6A(2) of the CST Act is limited to this extent, namely, to verify whether the particulars contained in the declaration “F” forms furnished by the dealer is “true”. It means, the assessing authority can conduct an enquiry independently to find out whether the particulars of the declaration furnished are correct, or dependable, or in accord with facts or accurate or genuine. That along is the scope of enquiry contemplated by section 6A(2) of the Act”.

In case of M/s. Hindustan Petroleum Ltd. Vrs. The Deputy Commissioner (C.T.), Chennai, their Lordship of Hon'ble Madras High Court vide order dtd.07.11.2006 held as under:

“Admittedly, in this case, the respondent didn't conduct any enquiry on the form 'F' declaration filed by the petitioner, nor there is any observation made in the impugned orders rejecting the form 'F' declarations. As pointed

out earlier, the sole reason for passing impugned orders was by referring the statement recorded by the Enforcement Wing given by the Senior Officer of the petitioner-Corporation. Thus, in absence of any enquiry, the conclusion arrived at by the respondent that it was a case of inter-state sale, deserves to be rejected.”

It is observed that in the present case, the LAO has never whispered any contrary view in respect of the declaration form ‘F’ submitted by the assessee upon such enquiry which is an admitted fact on record.

12. It is argued by the ld. Counsel for the assessee that the goods were dispatched to their respective branches situated outside the State based on the feed back of the branch and depots so as to make financial projection for procurement of raw-materials, consumable, manpower and other cost to make continuity in production flow and for maintaining quality products at the manufacturing unit. It cannot be said that the assessee has dispatched goods in terms with pre-existing contract with identified customers. In this connection, he referred to a Full Bench decision of this Tribunal in S.A. No.76(C) of 2001-02. In case of M/s. Emami Paper Mills Ltd. Vrs. State of Odisha, in aforesaid case, this Tribunal, vide order dt. 01.12.2020 held as under: “It was constantly claimed as a report of the concerned branch at Calcutta which is more or less, a post facto review. In absence of any clear evidence regarding independent contracts between the dealer-assessee and its buyers, merely by referring to the performance Statement, which may normally be subject of a regular review would not be sufficient enough to hold that one or more or all of the transactions thereof on account of inter-state sale in the guise of stock transfer and consignment sales. A Performance Statement may be

the part of the process to elicit and address the shortfalls, cause and effect of the transactions already had and at the same time, to formulate future policies on planning and operation of the dealer assessee. According to the humble opinion of the Tribunal, such a piece of document cannot safely be relied upon to establish inter-state sale between the parties. Rather, it could quite not be irrational to accept the fact of statistical assessment being made by the dealer-assessee which is being reflected in the Performance Statement, as has been claimed all along”.

In view of the above analogy, the feed back as synonym to Performance Statement even collected by the Branch as necessarily felt by the present assessee as stated by its employee doesn't lead to any such presumption that the ultimate purchasers are pre-identified and the goods moved as such in pursuance of pre-existing contract. In case of state of Odisha Vrs. Jaiswal Plastic Tubes Ltd., this Tribunal in S.A. No.82(C)/2005-06 vide order dt. 07.10.2020 held that “a dealer can straight away receive an order from a buyer or it can be received through its branches for standard goods which needs no special manufacture but only to be promptly delivered and in case, delivery is effectuated through its branches, no inter-state sale can be attributed as the transactions would be within the realm of branch transfers specified in Section 6-A of the CST Act.” In the present case, it is an admitted fact on record that the goods dealt in by the assessee are all specific standard goods. Moreover, he has submitted copies of assessment orders of its different branches located outside the State from which it is revealed that the goods dispatched by the assessee have been taxed at state rate by the respective Taxing Authorities of those states.

In view of the above discussion, it is observed that the assessee has unerringly discharged the burden of proof as contemplated U/s.6-A of CST Act by furnishing form 'F' and as such the rejection of the declaration by the forums below basing upon presumption drawn is illegal as orders passed by them without bringing into record any contrary evidence i.e. any contract either express or implied to establish that the transactions of the assessee are inter-state sale and not branch transfer is illegal and liable to be rejected.

However, on examination of records of lower forums relating to the year 2001-02, it is observed that both the forums have wrongly determined the gross turnover which should have been as below:

a. Inter-state sale....	Rs.25,60,10,035.00
b. 5(3) sale against 'H' form	Rs.1,44,45,545.00
c. 5(1) sale i.e. direct export	Rs.9,88,93,309.00
d. Branch transfer	Rs.9,19,27,321.00
e. Misc. sale of goods	Rs.5,67,633.00
f. Inter-division supply of goods	Rs.33,902.00
g. Sales tax collected	Rs.95,95,698.70
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GTO	Rs.47,14,73,443.70

Moreover, the Learned Counsel for the assessee did not press on submission of balance required 'C' forms relating to the year 2001-02 & 2002-03 and as such, not taken into consideration.

13. Accordingly, it is ordered.

The orders passed by the Id. FAA for the impugned periods are set-aside. The assessee is allowed for tax-exemption U/s.6-A of CST Act towards transfer of goods to its different branches located outside the State

on production of valid original 'F' forms for the impugned periods and all the cases are, thus, remanded to the LAO for re-computation of tax in the light of our above observations preferably within three months from the date of receipt of this common order after giving a reasonable opportunity of being heard to the assessee.

The present cases are disposed of accordingly.

Dictated & corrected by me.

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member