BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri P.C. Pathy, Accounts Member-I

S.A. No. 123(C) of 2006-07
(From the order of the ld. ACST, Sundargarh Range, Rourkela, in First Appeal Case No. AA 73(RL II C) of 2005-2006, disposed of on 31.08.2006)

M/s. O.C.L. India Limited,
At/P.O.- Rajgangpur,
Dist.- Sundargarh (Odisha). ... Appellant

- V e r s u s -

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack. ... Respondent

For the assessment period: 2004-05

For the Appellant ... Mr. K. Kurmy, Advocate &
Mr. D.K. Singh, G.M. (F&A)
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 31.07.2019 ******** Date of order: 14.08.2019

O R D E R

The dealer as appellant has called the order of first appellate authority in question by way of this second appeal with a prayer to delete the additional amount of tax demanded.

2. The facts giving rise to the present appeal are, M/s. O.C.L. India Limited, Rajgangpur had declared his GTO and TTO under the Central Sales Tax net at Rs.1,92,42,91,048.88 and Rs.1,77,14,77,776.45 respectively. The dealer had also disclosed stock

transfer of Rs.80,66,31,877.74 and export sale of Rs.30,62,15,802.00 out of the total stock transfer above claimed u/s.6A(1) of the Act, goods worth of Rs.24,92,80,639.54 related to branch transfer to his own depot and goods worth of Rs.5,32,83,183.00 related to sale through consignment agent.

3. In the assessment u/s.12(5) of the CST(O) Rules, learned assessing authority vide assessment order dtd.27.01.2006 raised additional demand of Rs.3,52,87,074.00 i.e. on rejection of the claim of stock transfer of sponge iron of Rs.1,99,42,451.00 alleged to have dispatched to branch depot at Raipur and for Rs.42,62,655.00 to consignment agent and for Rs.1,10,81,975.00 without declaration form. Being aggrieved by such demand, the dealer carried the matter before the first appellate authority challenging the rejection of branch transfer, consignment sale and concession in case of wanting declaration form. The first appellate authority, however in the impugned order dtd.31.08.2006 allowed the appeal in part and as such, reduced the demand by Rs.99,57,934.00. Accordingly, the modified demand amount was raised at Rs.2,53,29,140.00. However, further aggrieved, the dealer moved this Tribunal challenging the sustainability of the order of the first appellate authority.

4. The case of the taxing authority is, as against sale through outstate consignment agent and branch transfer the case of the taxing authority is the goods like sponge iron claimed to have transported to branch depot at Raipur. Some vehicles were intercepted on the way and the transporters were questioned/interrogated. They categorically deposed before investigating officer that, the goods are seldom given delivery at the depot point of dealer, rather those were straightway given delivery to the different customer as per the instructions of the consignor-dealer. From this, the assessing authority hold that the documents/papers were manufactured and tailored so that these can be used as a ruse to give a semblance of stock transfer. But, in fact are

covered u/s. 3(a) of the CST Act since the transactions are pre-planned and pre-designed to evade tax by affecting a colourable exercise of transactions the claim of branch transfer. Similarly, the assessing authority also found that the particulars furnished in the declaration did not match with the facts collected in course of inquiry and therefore the existence of an implied contract between the parties concern is an irresistible conclusion. These findings of assessing authority are accepted by the first appellate authority and in the result first appellate authority also held that, on the garb of branch transfer or consignment sale the dealer is engaged in interstate sale i.e. covered u/s.3(a) of the CST Act.

5. The tax and penalty raised on three counts become the centre of disputes between the parties more fully stated as follows.

(i) Confirming order of tax demand of Rs.1,99,42,451.00 by rejecting claim of stock transfer of 24447.070 MT of sponge iron to the dealer's own depot at Raipur (Chhattisgarh).

(ii) Confirming order of tax demand of Rs.42,62,655.00 by rejecting claim of consignment sale of 5396.920 MT of sponge iron to duly appointed consignment agents.

(iii) Modified order of tax demand of Rs.11,29,034.00 for non-submission of form 'C', form E1 and C, form 'H' not being pressed by the dealer.

6. **Findings:-**

So far as the point No.(iii) above, the dispute has already been set at rest between the parties keeping view the well settled principle, hence need not be dealt with in this order as not pressed.

7. The dispute relates to rejection of claim of stock transfer to outstate branch office and the sale through outstate consignment agent as per Point No.1&2 are:- When the dealer claims, mode of the transactions above falls within four corner of Sec.6A of the Central Sales Tax Act, 1956 (hereinafter referred to as, the CST Act), Revenue

on the other hand claims, the transaction attracted Sec.3 of the CST Act.

8. Before delving into the discussion into details of the facts of this case, for sake of brevity, the relevant provisions under law and mandate of the statute applicable to the case in hand may be appreciated as follows.

8.a Section 6A was introduced under the CST Act by CST Amending Act, 1972 w.e.f. 01.04.1973, the same is reproduced herein below for better reference :

> 6-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 despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have occasioned as a result of sale.
>
> (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, 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 be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

Explanation:– In this Section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

8.b The object and reasons of the above enactment as reported in (1973) 31 STC 47,48 (St.) stand as follows: -

> Central Sales Tax is not leviable in respect of transactions of transfer of goods from a head office or a principal to a branch or an agent or vice versa as these do not amount to sales. This aides evasion in that dealers prior to show even genuine sales to third parties as transactions of this types. Accordingly, it is proposed to provide **that the burden of proving** that the transfer of goods in such cases is otherwise than by way of sale **shall lie on the dealer who claims exemption** from tax on the ground **that there was in fact no sale**.

8.c Time and again it has been enunciated that the dealer has to prove and establish its claim to non-liability to tax and the inter-State movement of goods effected by him by way of transfer is not a sale. The provision above does not obligate the department to place the necessary facts to show that the transactions were not inter-State sales, rather, the burden lay squarely on the appellant to do so. [**Ref** : *CST v. Pravin Chemicals Industries (1987) 66 STC 138 (All) at P 140].*

8.d In the case of State of Orissa v. Orissa Small Industries Corp. (1987) 67 STC 262 (Ori.) it has been held :

> "3. ..Mere filing of F forms is not conclusive. It is open to the assessing authority to make an enquiry at that stage. The dealer has to satisfy him that the movement of goods from one State to another was occasioned otherwise than as a result of sale. Sub-section (1), therefore, categorically states that the dealer has to make an application in the prescribed form along with the evidence of despatch of such goods. The provision contained in Section 6-A is, therefore, an enabling provision...the dealer can discharge the burden which lies upon him under Sub-section (1) of Section 6-A by other modes as well, apart from submitting declaration in form F to the assessing authority.."

In *Ashok Leyland Ltd v. State of Tamil Nadu (2004) 134 STC 473 (SC)* it has been held :

> "37. By reason of Sub-Section (2) of Section 6A, a legal fiction has been created for the purpose of the said Act to the effect that transaction has occasioned otherwise than as a result of sale.

8.e On an analysis of the aforementioned provisions, therefore, the following propositions of law emerge:

> (i) The initial burden of proof is on the dealer to show that the movement has occasioned by reason of transfer of such goods which is otherwise than by reason of sale. The assessee may file a declaration. On a declaration so filed an inquiry is to be made by the assessing authority for the purpose of passing an order on arriving at a satisfaction that movement of goods has occasioned otherwise than as a result of sale.

8.f What constitute a sale and inter-State sale has been enunciated by the Hon'ble Courts from time to time may be stated have under-

Interpreting the term 'sale' the Hon'ble Apex Court in *State of Madras v. Gannon Dunkerley* (1958) 9 S.T.C. 353 (SC). The Hon'ble Court held that the expression 'sale of goods' was, at the time when the Government of India Act, 1935 was enacted, a term of well recognized legal import in the general law relating to sale of goods and in the legislative practice relating to that topic and must be interpreted as having the same meaning as in the sale of Goods Act 1930: The Court after examining the various decisions cited at the Bar, observed, as follows:

> "Thus, according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course pre-supposes capacity to contract, that it must be supported by money consideration and that as a result of the transaction property must actually pass in the goods.

> Unless all these elements are present, there can be no sale. Thus, if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer was not money but other valuable consideration, it may then be exchange or barter but not sale. And if under the contract of sale, title to the goods has not passed, **then there is an agreement to sell** and not a completed sale."

8.g Thus, as laid down by the above decision, to constitute a valid sale, there must be concurrence of the following elements viz. (1) parties competent to contract (2) mutual assent (3) a thing the absolute or general property in which is transferred from the seller to the buyer and (4) a price in money paid or promised. Therefore one has to see whether all these elements are found in the transactions. Before doing so it is necessary to refer to the 'order' and the manner in which those transactions were effected.

8.h It is pertinent to take note that the sales tax law of the State enacted under entry 54 of list II is subject to 92A of the List I of the Constitution. Therefore, the enactment of CST Act made by the Parliament has a pre-dominance over the law passed by the State legislature and the same is subject to CST Act. This aspect has been explained and highlighted in *Gannon Dunkery & Co. v. State of Rajasthan (1993) 88 S.T.C. 204 (SC) ; 20th Century Finance Corporation v. State of Maharashtra (2000) 119 STC 182 (SC).*

9. The scope and ambit of Section 3(a) was pithily expressed by Supreme Court in the well-known case of *Tata Iron & Steel Co. vs. S.R. Sarkar (1960) 11 STC 665* thus :

> "….clause (a) of Section 3 covers sales other than those included in clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale and properly in the goods passes in either State."

In *Commissioner of Sales Tax, v. Bakhtawar Lal Kailash Chand Arthi (1992) 87 STC 196*, at page 200 the Hon'ble Supreme Court explained the scope of Section 3(a) in the following words:

> "According to Clause (a) of Section 3, an inter-State sale or purchase is one which occasions the movement of goods from one State to another. In other words, the movement of goods from one State to another must be the necessary incident – the necessary consequence – of sale or purchase. A case of cause and effect – the cause being the sale/purchase and the effect being the movement of the goods to another State."

10. The limbs of valid contract are, invitation to offer (claim)/offer/counter offer (if any)/acceptance. Sec.4 of the Sales of Goods Act, 1930 says where under a contract of sale the property of goods is transferred from the seller to buyer, the contract is called a sale but where the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called as agreement to sale.

The agreement to sale becomes a sale when the time elapses or the conditions are fulfilled subject to which property in the goods is to be transferred.

11. Keeping in mind the settled principle discussed reproduced hereinabove, when we revert to the case in hand, it is found that, the dealer has claimed of interstate transaction otherwise then by way of sale not exigible to tax on furnishing the prescribed declaration form 'F' and argued that, once the declaration form 'F' is found to be genuine containing the correct entries, then there is no scope in the hands of the taxing authority to go on imposing tax. The jurisdiction of the taxing authority is limited only to the extent of verification of the genuineness of the declaration form 'F' and correctness of the entries therein. This argument of the learned Counsel for the dealer is successfully countered by the learned Standing Counsel with the argument that, acceptance of declaration

form is not mere a formality. The authority has no jurisdiction under the statute to scrutinize the claim of branch transfer or sale through consignment agent attracting provision u/s.6A(1) of the CST Act is a narro interpretation of Sec.6A(2) of the CST Act. Provision u/s.6A(2) of the CST Act as it was read by then, during the relevant period of assessment in question empowers the authority to make such enquiry, he may deem necessary that the particulars contained in the declaration form furnished by a dealer under sub-sec.(1) be deemed for the purpose of this Act to have been occasioned otherwise then as a result of sale. In the case in hand, the claim of Revenue is, there was pre-identified/existing buyer and in accordance to the order placed by those pre-identified/existing buyer the movement of goods started from the instant dealer's premises. Though the goods were intended to be sent to the interstate branch office or to the interstate consignment agent but in a camouflage manner, these intermediate arrangements were made by the dealer to evade the tax liability.

11.a Undisputedly, no written agreement or contract is forthcoming. Claim of the Revenue is, it should be treated as implied contract basing on the nature of transactions or should be treated as an oral contract. Per contra, claim of the dealer is, the goods were sent to branch office as evident from excise invoice, way bills, consignment notes, sale invoice, stock register or of the branch office of the consignment agent, return and payment of tax by the branch office and the consignment agent in their respective capacities, railway receipts with the endorsement of self against dispatch destination, payment of freight etc. All these documents are ample in support of the claim of the dealer that, the movement of goods were occasioned from the dealer's unit for the destination at branch office or transfer to the consignment agent which are nothing but transfer otherwise then sale.

12. Claim of the Revenue is, delivery of goods directly at the ultimate purchase point, the statement of the vehicle owner stating

that the fact of no knowledge regarding destination point and delivery made in accordance to the direction given by the branch office or consignment agent and further delivery of all consignments to a particular, same and one buyer in case of consignment sale, all these indicates, the instant dealer was knowing the purchasing dealer and only after knowing about the ultimate purchaser the goods were dispatched.

To eliminate the argument advanced by the Revenue, learned Counsel for the dealer vehemently argued that, the fraud case report was submitted prior to the furnishing of declaration form indicating thereby prejudged mind of the taxing authority. As the initiation of action was premature, then the scrutiny of the correctness of the declaration form became a mere eye wash by the department or that too, the department has not rejected the declaration forms. The declaration form is one of the vital documents to be scrutinized in support of the claim of 6A sale. Documents are filed in time, whereas the fraud case report and the assessments proceeding was initiated prior to furnish of declaration form 'F'. So, the assessment basing upon fraud case report covering transaction for which declaration form were to be filed in a future date is a premature.

13. The next plank of argument of the learned Counsel for the dealer is, the goods sent are not tailor made goods or the goods of any particular specification meant for particular use so as to indicate that, specific buyer was there for the specific type of goods. The goods sent are sponge iron which is a standard goods manufactured by the dealer in its ordinary course of manufacturing process. In that case, it is unsafe to hold that, there were pre-determined of pre-existing buyer. This argument independent of other argument is not conceivable. Because of the fact that general goods were dispatched, there may not be any pre-identified buyer invariably in all cases, is a weak piece of counter argument.

14. It is also argued by the learned Counsel for the dealer relying on the ratio laid down by the Associate Cement Co. (supra) that in such type of cases each and every transaction must be verified on its own merit unless the taxing authority cannot treat all transactions covering entire assessment to be interstate sale.

14.a The Hon'ble Supreme Court dealing with the similar aspect *prior to insertion* of Section 6A of the CST Act in the case of *Tata Engineering and Locomotive v. Asst. Commissioner of Commercial Taxes (1970) 26 STC 354 (SC)(CB) at 381* has held :

> "Another serious infirmity in the order of the Assistant Com- missioner was (a matter which even the Advocate General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a convenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an inter- State sale exigible to tax under the provisions of the Act."

15. Learned Counsel for the dealer strongly placed reliance on a decision of this Full Bench of this Tribunal in S.A. No.6(C) of 2011-12 deal with identical issues decided in favour of the dealer. The view of this Tribunal in identical matter cannot be a precedent in case of other dealer involving different set of facts.

16. Rebutting to the presumption of interstate sale as gathered from the evidence that, the goods are not sent through the depot of consignment agent or branch office depot but delivered to the

purchaser directly and the purchaser is the same and one in case of consignment sale, learned Counsel advanced the authority the matter of State **of State of Karnataka v. Jindal Aluminium Ltd. (2002) 126 STC 458 (Kar.) (Para 10)**, wherein the Hon'ble Court has held that, "By mere presumption, it cannot be considered that in all cases, where the sale is effected on the same day by the branch, on which, they have received the goods from head office, it will be presumed that it is an inter-State sale, is not in accordance with the provision of Section 3 of the Central Sales Tax Act, 1956. The provision of section 3 contemplated the movement of goods in pursuance of the contract of sale. If the movement is independent of the contract, even on the expectation of a particular buyer purchasing the goods, it will not considered to be an inter-State sale. There may be instances where the goods are sold only to one buyer by the branch, but so long as the movement is not linked with the contract, it could not be considered to be an inter-State transaction."

17. On a conspectus of the nature and mode of transactions undertaken by the instant dealer as discussed above, the provisions of law and the authoritative pronouncements mentioned above, here it can be concluded that, the dealer has fully discharged the burden raised on him as per Sec.6A of the CST Act more fully by furnishing declaration form 'F' and connected documents nowhere indicating the dispatch of goods to ultimate buyer. On the other hand finding of the fora below is found to be conjectural and presumptuous. The evidence discussed above does not unerringly point to a definite conclusion that, there is an inextricable link between the ultimate buyer and the present dealer. It is pertinent to mention here that, the Revenue should have investigated into the disputed questions from the books of account and connected documents of branch office and as consignment agent and that of ultimate buyers. Without verifying all these documents, without proof of contract express or implied on

agreement to sale evidencing existence of pre-existing buyer, particularly when huge volume of goods under business transaction involved over the period in a regular manner, a definite presumption cannot be drawn that, the transactions are nothing but interstate sale.

Accordingly, it is ordered.

The appeal is allowed in part on contest. The impugned order is modified to the extent of rejection of the claim of branch transfer and sale through consignment agent discussed above, as the claim of the dealer is allowed. The demand be raised accordingly.

Dictated & corrected by me,

Sd/-
(Subrata Mohanty)
1st Judicial Member

Sd/-
(Subrata Mohanty)
1st Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

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