

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

S.A. No.158(C) of 2007-08

(From the order of the Id. ACST, Sundargarh Range, Rourkela,
in First Appeal Case No. AA. 79 (RL-II-C) of 2005-06,
disposed of on 30.11.2007)

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 1st Judicial Member
&
Sri R.K. Rout, Accounts Member-II**

M/s. Shri Mahavir Ferro Alloys P. Ltd.,
Industrial Estate, Kalunga,
Dist.- Sundargarh, Orissa. ... Appellant

- V e r s u s -

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

For the Appellant : Mr. K. Kurmy, Advocate
For the Respondent : Mr. M.S. Raman, A.S.C. (C.T.)

Date of Hearing: 20.06.2019 **** Date of Order: 20.06.2019

ORDER

In an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) when the dealer's claim of commission sale of goods and exemption u/s.6A(1) of the Central Sales Tax Act, 1956 (hereinafter referred to as, the CST Act) relating to particular alleged commission agent M/s. Biharilal Steel Co. is rejected by the first appellate authority and thereby when the transaction between the dealer and said M/s. Biharilal Steel Co. is

treated as interstate sale taxable @ 8%. The dealer felt aggrieved, preferred this appeal.

2. The prayer of the dealer is, to set aside the impugned order by accepting the plea of the dealer like, M/s. Biharilal Steel Co. is a commission agent under dealer and transferred goods from the dealer-principal to M/s. Biharilal Steel Co. against form 'F' is covered under exemption u/s.6A(1) of the CST Act.

3. The assessee is a registered dealer both under CST as well as OST Act having its place of business inside the State. The assessee is engaged in manufacturing of sponge iron in its factory in the district of Sundargarh. It effects sale of finished goods in course of interstate trade and commerce. In the course, it makes stock transfer of the finished goods to duly appointed outstate consignment agents and accordingly, in the regular return, it claims exemption as per sec.6A(1) of the CST Act. For the assessment year 2003-04, the dealer disclosed GTO of Rs.3,45,40,608.00 and NTO at Rs.3,31,80,595.00. It has also disclosed stock transfer of sponge iron and sale thereof valued at Rs.3,97,31,360.00 through consignment agent situated outside the state. The chart as follows will reveal the details of the claim of the dealer sale through consignment agent.

Sl. No.	Name & address of the consignment agent	Quantity	Value (Rs.)
1.	M/s. P.M. Steel Traders, 85/50, Coopergang, Kanpur	614.050	44,00,095.00
2.	M/s. Diamond Trading Co., Meerut Road, Muzaffarnagar.	1332.510	1,00,88,169.00
3.	M/s. M.R. Juneja (I&S) Pvt. Ltd., Meerut Road, Muzaffarnagar.	396.700	36,35,368.00
4.	M/s. Beharilal Steel Company, Mandi	1037.155	1,10,95,515.00
5.	Bashno Trading Company, Uttaranchal.	206.165	20,93,773.00

The intelligence wing made a visit to the dealer's premises on 22.04.2004 and in presence of dealer's authorized agent, the books of account and connected documents were duly verified. Thereafter,

the intelligence wing suggested for assessment with the report that, the dealer's claim of sale through consignment agents are nothing but interstate sale of goods. The assessing authority in the assessment, confronted the report of the intelligence wing to the dealer and in ultimate analysis concluded that, the consignment sale of goods disclosed by the dealer valued at Rs.3,97,31,360.00 should be treated as interstate sale as per sec.3(a) of the CST Act. In the result, the assessing authority raised balance tax due from the dealer at Rs.31,81,787.00.

4. Felt aggrieved, the assessee carried the matter before first appellate authority who in turn vide impugned order held that, the claim of sale through commission agent relating to five nos. of commission agents are covered under sec.6A(1) of the CST Act. However, the said claim of consignment sale through M/s. Beharilal Steel Company is not established. As a result the first appellate authority treated the goods transacted between the assessee-dealer and M/s. Beharilal Steel Company exigible to tax, accordingly, the balance tax due payable by the dealer was recalculated and determined at Rs.8,90,267.00.

The assessing authority has held that, all the goods through all the consignment agents should be held as interstate sale, whereas the first appellate authority has held that, the sale claimed to have made through particular consignment agent M/s. Beharilal Steel Company only should be treated as interstate sale. The appeal in hand confined to the mode of transaction between assessee and M/s. Beharilal Steel Company. The reason given by the assessing authority against the transaction with M/s. Beharilal Steel Company in particular are, the goods were transported by railway rack (RR) on a even day and the entire quantity of alleged stock transfer was sold to single buyer namely M/s. Sponge Sales (India) Pvt. Ltd., G.T. Road, Sarhind side, Mandi Govindgarh. It indicates there was a privity of contract between the ultimate buyer and the alleged consignment

agent and in furtherance to that, pre-arrangement the goods were moved from the dealer's end. It is also held that, the balance of goods dispatched to so called consignment agent in the next part of the assessment period was disclosed as sold indicating thereby the pre-arrangement and sale of goods on the basis of that pre-existing contract. It is also held that, the assessee-dealer had taken advance in the garb of security deposit from the consignment agent which is not found in course of normal trade price rather, it indicates pre-arrangement between the consignment agent and the ultimate buyer. Ultimately, the assessing authority held the transaction with consignment agent M/s. Beharilal Steel Company as, nothing but a sale covered under sec.3(a) of the CST Act. The declaration form 'F' was furnished, was a colourable device to avoid payment of tax, accordingly he levied tax.

The first appellate authority has held that, the railway receipt against the aforesaid transaction reveals the senders name as M/s. Beharilal Steel Company at Rourkela and the receivers name as "self", it indicates the goods were delivered to the allotted consignment agent at Rourkela who booked that consignment in Railway dispatched from Rourkela to Mandi Govindgarh, the place of business of the consignment agent. So, from the railway receipt it is established that, M/s. Beharilal Steel Company is the owner-cum-sender at Kalunga, Rourkela. The ownership of the goods thereby passed to the consignment agent at Rourkela. Therefore, the claim of the dealer of sale through consignment agent is entitled to exemption u/s.6A is not tenable.

5. **Dealer's contention-**

It is contended by the dealer that, the fora below have gone wrong in holding that, because the Railway Receipt (RR) discloses consignment agent as sender and consignee as self, no inference should be drawn that, the sale took place at Rourkela in between the assessee-dealer and the consignment agent. The non-

acceptance of the claim of stock transfer as against the declaration form 'F' by the fora below is unlawful particularly when there is no clear finding regarding rejection of the form 'F'. The relationship between the assessee-dealer and the consignment agent is evident from the appointment letter of the consignment agent and the terms and conditions therein, dtd.01.02.2004. The first appellate authority has lost sight to the fact in the sale patty/debit notes furnished by the consignment agent, railway freight which was reimbursed from the assessee in a later period. This was clearly demonstration of the relationship between the consignment agent and the assessee-dealer as much as, M/s. Beharilal Steel Company has acted as a consignment agent. The consignment agent M/s. Beharilal Steel Company is a commission agent at Rs.100.00 per MT as it revealed from the agreement between the assessee and the consignment agent. So, the findings of both the fora below is perverse and not tenable.

6. In cross objection the Revenue has supported the findings of fora below as based on materials on record and tenable in law.

7. The questions struck for decision in this appeal are,

- (i) whether the first appellate authority is wrong in confirming the order of assessing authority by holding the transaction between the assessee-dealer and consignment agent M/s. Beharilal Steel Company as an interstate sale covered u/s.3(a) of the CST Act exigible to tax;
- (ii) whether the transaction between the assessee-dealer and consignment agent M/s. Beharilal Steel Company is nothing but covered u/s.6A of the CST Act and thereby the dealer is exempted from paying tax;
- (iii) what order?

8. Mr. K. Kurmy, the learned Counsel for the assessee-dealer points out that, the idea and understanding of both the fora below is per se wrong and unsustainable in all respect. It is submitted that, submission of declaration form 'F' was more than sufficient to

prove the interstate stock transfer in the instant case and no other material was necessary particularly when the authority has not rejected the declaration form 'F'. It is submitted further that, in addition to form 'F' the dealer had submitted agency agreement, railway receipt, sale patties, evidencing payment of commission and reimbursement of railway freight to the consignment agent, challans issued by the assessee for stock transfer to the commission agent and all these documents are ample to evident, the nature of transaction which was nothing a stock transfer. So, the impugned order is wrong and illegal in all respect and is liable to be intercepted by this Tribunal. In support of his claim, he placed reliance in the case of **State of Tamil Nadu v. Shree Murugan flour Mills (P) Ltd. (Mad.) (2005) 142 STC 399** and argued that, the authority has settled that once declaration form 'F' was accepted, there was no reason for denial of the claim of 6A(1) sale.

9. The findings and the reasonings by the fora below are good to be justifiable as argued by Sri M.S. Raman, learned Addl. Standing Counsel who pointed out that, the RR itself indicates M/s. Beharilal Steel Company had received the goods inside the state and transported the same to its own godown outside the state wherefrom he sold the same to ultimate buyer. The goods were purchased from assessee-dealer in furtherance to a pre-arrangement or pre-existing contract between M/s. Beharilal Steel Company and ultimate buyer M/s. Sponge Sales (India) Pvt. Ltd. So, once there was a pre-existing buyer then, the transaction between the consignment agent M/s. Beharilal Steel Company and assessee-dealer should be treated as interstate sale. The dealer has failed to discharge the burden of proof required under law that, the transfer of goods in question was otherwise than by way of sale. Notwithstanding the fact that, form 'F' furnished by the dealer but the forum below has rejected the plea of stock transfer. It is argued that, the impugned order was passed

perfectly within the four walls of the law and in conformity with the mandate of sec.6A of the CST Act and sec.3(a) of the CST Act.

It is settled that, there cannot be any liability, if the movement of goods from one state to another state or within state is otherwise than by way of sale. Stock transfer is one such incident and on such an event, it is open for the assessee to claim exemption from meeting the tax liability to the appropriate extent covered by stock transfer. By virtue of the mandate of the statute, the burden is heavily cast upon the assessee, to prove the transaction that, it was otherwise than by way of sale. To appreciate the fact of the case in hand, the provision u/s.6A as enacted under the statute book reads as follows:-

Section 6(A) brought into the statute with effect from 1.4.1973 reads as follows:

"6A. 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 been 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 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 purpose 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.

(3).Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State."

10. It is very evident from the above provision that the declaration in the prescribed form has to be submitted "along with the evidence of despatch of such goods". The words "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 been occasioned as a result of sale" were originally not there and it was inserted only by the relevant Finance Act (Act 20 of 2002 (Central Act)) with effect from 11.5.2002. It was obligatory for the assessee to have submitted the declaration in the prescribed form along with evidence of dispatch of such goods. Sub-section (2) of Section 6 (A) refers to the enquiry, as the assessing authority may deem necessary, to get satisfied as to the correctness of the transaction and if he gets satisfied, an order was to be passed to the effect that, the movement of goods to which the declaration relates, shall, subject to the provisions of sub section (3) (on discovery of new facts or revision by higher authority to have re-assessment) be deemed for the purpose of the Act to have occasioned otherwise than as a result of sale.

11. Consequence of the amendment to sec.6A after the Act 20, 2002 w.e.f. 11.05.2002 if considered, it can safely be said that, mere production of form 'F' is not sufficient to prove exemption of stock transfer. For claiming exemption under 6A it is for the dealer to

prove with cogent evidence that, the goods have moved from one state to another and it is only along with such evidence, the dealer has to produce form 'F' and other details regarding consignment agency or branch to which transfer is made.

With the settled principle above, when we delve into the case in hand, it is found that, the fora below have placed much reliance on the RR. As per the RR, the sender of the goods within the state was M/s. Beharilal Steel Company and receiver of the goods at Mandi Govindgarh was also the same M/s. Beharilal Steel Company. The goods were sent in one lot and the entire goods were sold to a particular buyer called M/s. Sponge Sales (India) Pvt. Ltd., G.T. Road, Sarhind side. It is held that, in a later period further quantity of goods sold to ultimate buyer and in the connected documents it was disclosed as sold by the assessee. All these facts indicate the ultimate buyer M/s. Sponge Sales (India) Pvt. Ltd.

12. All it is to be seen here is, whether there was any kind of pre-existing contract between M/s. Beharilal Steel Company and M/s. Sponge Sales (India) Pvt. Ltd. and in furtherance to that, pre-existing contract or arrangement, M/s. Beharilal Steel Company placed order or took delivery of goods from assessee-dealer. If the goods were moved on the basis of a pre-existing contract then, as because buyer is identified prior to the movement of goods, in that case there can be no escape from the conclusion that, the transaction is an inextricable link between the assessee-dealer and movement of goods from assessee-dealer's till delivery to ultimate buyer. In the case in hand, it is pertinent to take note of the fact that, the assessing authority has not furthered his investigation to establish the link between the assessee-dealer and ultimate buyer. The assessing authority or the first appellate authority could have easily ascertained the same but they have gone by slipshod manner by relying upon the railway receipt and the mode of payment. There is no restriction under law that, an outstate consignment agent cannot take delivery of goods

coming here to the assessee-dealer's unit. Even the railway receipt where the sender is consignment agent and the receiver is consignment agent, that does not itself indicate conclusively that the transaction is an interstate sale. Similarly, because the entire consignment was sold to a particular buyer, in that case also, it is unsafe to arrive at a definite conclusion that, there was a pre-existing contract between the ultimate buyer and the consignment agent.

All these are based on surmises. On the other hand, the dealer has advanced documents like, form 'F' which is the vital documents in support of the claim of exemption u/s.6A followed by movement of goods which is the requirement under law particularly in view of the amendment of the provision in the year 2002. Besides, the dealer has submitted the agreement with consignment agent contending the terms and conditions of the agency-ship, sale patties, evidencing payment of commission and reimbursement of the freight to the consignment agent which is cross verified and on tallying found to be matching. All the documents above if considered, it is believed that, the dealer has duly discharged the liability u/s.6A(2) of the CST Act which qualified the dealer to get the exemption as claimed.

The provision under law discussed above and the facts and circumstances of the transactions involved in the case mentioned above does not indicate any kind of sale by the dealer to M/s. Beharilal Steel Company, rather M/s. Beharilal Steel Company is proved to have acted as commission agent of the principal, the assessee.

13. One more thing need to be discussed here in this appeal is, if a sale is covered under CST sale and tax is levied under CST Act then, necessarily it is to be decided in assessment under CST Act which is not done in this case. Conversely, if the sale point is within the state and the purchaser has facilitated the transportation by himself to out of state then liability under OST may be attracted. The

authority has proceeded in neither way. To sum up, it is held as follows:-

The dealer has successfully established the fact of stock transfer otherwise than by way of sale against declaration form 'F' to its consignment agent M/s. Beharilal Steel Company. Hence, the dealer is entitled to exemption u/s.6A(1) of the CST Act.

Be that as it may, it is held that, the impugned order is interceptable both in law and fact. Accordingly, it is ordered.

The appeal is allowed on contest. The impugned order is set aside.

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/-
(R.K. Rout)
Accounts Member-II