

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

**S.A. No. 150(C)/06-07**

(Arising out of the order of the learned ACST, Cuttack-II Range, Cuttack in first appeal Case No. AA/42/CU-C-II-J/2005-06 disposed of on 19.08.2006.)

**Present :- Shri A.K. Das,                      Shri S.K. Rout,      &                      Shri S. Mishra,**  
**Chairman                                      2<sup>nd</sup> Judicial Member                                      Accounts Member-II.**

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

..... Appellant.

-Vrs.-

M/s. Oswal Chemicals & Fertilisers Ltd.,  
Musadiha, Paradeep.

..... Respondent.

For the Appellant:

:Mr. D. Behura, Standing Counsel(C.T.)

:Mr. S.K. Pradhan, Addl. S.C.(C.T.)

For the Respondent:

:Mr. R.K. Dhal, Advocate.

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**Date of Hearing : 12.07.2022**

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**Date of Order :29.07.2022**  
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**ORDER**

This present appeal has been filed by the State against the impugned order of learned Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack (in short, ld. FAA) passed on 19.08.2006 in Appeal Case No. AA/42/CU-C-II-J/2005-06 allowing the appeal in part thereby reducing the demand to Rs.25,164.00 from Rs.38,05,58,968.00 made in the assessment order of learned Sales Tax Officer, Jagatsinghpur Circle, Paradeep (in short, LAO) and passed U/s.12(8) of Odisha Sales Tax Act (in short, OST Act) relating to the assessment year 2003-04.

2. Being aggrieved by the impugned order of the Id. FAA, the State has preferred second appeal before this Tribunal assailing the order of the forum below as erroneous, unjustified, improper and prejudicial to the interest of revenue. The main contentions in the grounds appended to the memorandum of appeal are as follows:-

“i. That the Id. ACST has calculated the GTO for the year 2003-04 at Rs.3,47,84,15,061.00 which includes interstate sale against Form-C for Rs.8,13,000.00 and without form “C” for Rs.3,59,481.00. But on calculation of value of opening stock, quantity of stock received and closing stock (value) during the year, the total stock value sold/dispatched in course of interstate trade comes to Rs.3,18,11,41,648.54. Thus, a huge difference of Rs.29,72,73,412.46 as found in between the GTO recalculated by the Id. ACST at page-7 of the appeal order and the stock value found to have sold taking on the findings accounted at age 52 appeal order against closing stock, accounts received and closing stock value and no plausible reason has been assigned regarding the difference in sale value, which is transpired from 1<sup>st</sup> appeal order.

ii. That submission of declaration Form “F” for claiming exemption of tax U/s.6-A of the CST Act has become compulsory w.e.f. 2002. On a bare reading of declaration Form “F” furnished by the appellant the following defects are noticed.

- (a) The date on which delivery was taken by the transferee is not mentioned on the body form "F" bearing No.H-753733 to 753735 and "H" 807988 H807989 issued by the branch office at Karnataka and form "F" submitted by the Rajasthan, Uttarpradesh, Haryana, Andhra Pradesh, Chatishgarh and Jharkhand branch office.
- (b) Status of the person signing the declaration in relation to the transferee as provided in form "F" is also not found mentioned by the issuing branch of the outside state in case of Karnataka, Uttarpradesh, Haryana, Punjab, Rajasthan and Jharkhand.
- (c) Name of the persons signing the declaration Form "F" is also not mentioned in some of the Form "F" furnished by the appellant.
- (d) Date of R.R. is also not found mentioned in form "F" No.0119612 issued by the branch office at Haryana.
- (e) Name and seal of office issuing form "F" is not found in form "F" bearing No.K6J-4429 by branch office at Tamil Nadu.
- (f) Name of railway station from where goods were dispatched to the branch is not found mentioned in form "F" No.136045 to 136048 issued by Andhra Pradesh branch and R.R. No. with date is also not there.
- iii. That the ld. ACST is found silent in his order regarding the mode of transportation of goods(fertilizer) from factory side from Paradeep to Railway head at Dhanmandal.

iv. That it is clearly evident from the photocopy of declaration in form "F" bearing No.454734 placed in record that the same is not exact photocopy of the original as the amount stands different. So basing on this allowance of sale U/s.6 (A) is not appropriate.

v. That the appellant has violated the provisions envisaged in section 6(A) of the CST Act in so far as goods have been directly delivered to the party outside the state from Railway rack point as found in the appeal record at page-398 and 402. The modus operandi, the appellant has undergone amply conveys pre existing contract between the appellant and the parties taken delivery, which defeats the very purpose of provisions of section-6(A) of the CST Act."

3. The brief fact of the case is that the dealer-respondent is engaged in manufacturing and sale of chemical fertilizers. For the purpose of manufacturing, it uses the principal raw-materials like rock-phospet, sulphuric acid, ammonia, carbon black powder(CBP) and by utilizing the above raw-materials, it produces fertilizer like DAP and NP and effects sale of the same both inside and outside the State including branch transfer to outside the State. It is seen that this unit is eligible for sales tax concession on raw-material, machinery, spare parts, packing materials and finished products for a period of five years, five months and fifteen days from the date of commercial production and its eligibility certificate is valid from 16.04.2000 to 30.09.2005 as the said unit is sold to IFFCO on

01.10.2005 as per letter No.6770/Ind dtd.14.06.2007 issued by the Director of Industries, Odisha, Cuttack. In spite of statutory notice and subsequent intimations duly served on the dealer for assessment U/r. 12(5) of CST (O) Rules, none appeared on behalf of the assessee, as a result, the LAO completed assessment on ex-parte basing on the materials available in the record. From the record, the LAO found that the assessee has effected total dispatch of goods worth of Rs.346,01,00,240.00 which includes branch transfer of goods worth Rs.345,88,80,860.00 and sale against form "C" in course of interstate trade for Rs.11,72,481.00. From the turnover, the assessee has claimed deduction of Rs.46,899.00 as sales tax collected. The LAO found that the assessee has filed 34 numbers of "F" Form amounting to Rs.251,03,22,340.00 of the different branches and one "C" declaration form amounting to Rs.8,13,000.00. However, the claim of branch transfer against form "F" and interstate sale against form "C" could not be verified by the LAO due to want of books of accounts and other relevant documents. Accordingly, the LAO disallowed all the claims of deductions made by the assessee and raised a demand of Rs.38,05,58,968.00 in his assessment order for the impugned year which was challenged by the assessee before the ld. FAA in shape of first appeal.

4. At first appellate stage, the assessee produced further seven numbers of "F" forms in original amounting to Rs.94,97,35,240.00.

As such, he submitted total 41 numbers of "F" forms amounting to Rs.347,72,42,580.00 including forms submitted at assessment stage. The Id. FAA, after due examination, observed that the assessee has produced not only the forms but also the copies of RR in support of proof of dispatch : copies of branch transfer advise-cum Challan showing details of RR, quantity of the goods dispatch, the state to which dispatched and the value (approximate) of the goods dispatched. The assessee also submitted the ledger account depicting the payment made to East Coast Railway for transportation of DAP along with State-wise and month-wise dispatch of DAP and the annual report reflecting the details of branch transfer of each state. Accordingly, the Id. FAA accepted the "F" form submitted by the assessee and allowed deductions of Rs.347,72,42,580.00 towards branch transfer claimed U/s.6-A of the CST Act. However, out of claim of interstate sale of goods of Rs.11,72,481.00 against "C" form condition, the assessee could be able to submit such form for Rs.8,13,000.00 which he taxed at concessional rate and the balance of Rs.3,59,481.00 at state rate of 10%, resulting in a reduction of demand to Rs.25,164.00 in his appeal order which is now challenged by the State before this forum in shape of second appeal.

5. During the course of hearing, Mr. D. Behura, Id. Standing Counsel (C.T.) appearing on behalf of the Revenue vehemently argued against the appeal order passed by the Id. FAA being erroneous,

unjustified, improper and prejudicial to the interest of Revenue. Further, he argued that the ld. FAA without proper scrutiny of “F” forms, has allowed few defective forms as stated in the grounds of appeal noted supra which is not appropriate and proper. Moreover, he argued that the assessee has violated the provisions envisaged in Section 6-A of the CST Act in so far as goods have been directly delivered to the parties of outside the state from Railway rack point. The modus operandi taken by the assessee amply conveys pre-existing contract between the assessee and the parties taken delivery which defeats the very purpose of provision of Section 6-A of the CST Act.

6. Per contra, Mr. R.K. Dhal, ld. Counsel for the dealer-respondent argued that the objections raised about few defective declaration forms “F” are silly mistakes and his client has submitted all relevant documents in connection with branch transfer transactions before the ld. FAA which were duly been examined as per their record. The ld. FAA has not committed any error in his order and accordingly he prayed to sustain the order of ld. FAA.

7. From the rival contentions of both the parties, the moot questions involved in the present appeal are as follows:-

- i. Whether, in the facts and circumstances of the case, the ld. FAA is justified in allowing branch transfer to the tune of Rs.347,72,42,580.00 U/s.6-A of the CST Act?

- ii. Whether the ld. FAA is justified in accepting the alleged defective “F” forms as stated in the grounds of appeal of the appeal memorandum filed before the Tribunal by the State?
- iii. Whether, the ld. FAA is justified to accept revised returns for the month of February, 2004 and annual return of 2003-04 filed by the assessee before him?

In order to properly address the above queries, it is profitable to refer to the relevant provisions of the CST Act and Rules made there-under:

**“Section 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 been occasioned as a result of sale.”

**Rule- 7(1)**

“Within one calendar month of the expiry of each quarter of a year, every registered dealer shall furnish to the Assistant Sales Tax Officer of Sales Tax Officer a return in Form I showing particulars in respect of the sales tax payable by him for that quarter on the sales effected by him in the course of inter-State trade or commerce.”

Now, 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 different branches 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, in his ex-parte order discarded such claim made u/s.6-A of CST Act. The Ld.S.C.(C.T.) believed that the goods were moved from Orissa to outside identified customers 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.

Per contra, the ld. 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, the LAO has grossly erred in assessing his client to tax on branch transfer. 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.

It is argued by the ld. Counsel for the assessee that the goods were dispatched to their respective branches situated outside the State and he has submitted necessary ‘F’ forms with connected documents which were accepted by the Ld.FAA. But, we simultaneously observe that some of the ‘F’ forms as narrated in the grounds filed by the state are defective that require rectification by the assessee at assessment forum. We further observe that as per provision of the statute noted supra, revised returns relating to Month ending February,2004 & annual return 2003-04 is to be filed

before the LAO of concerned circle & not before the Ld.FAA. The Ld. FAA, instead of remanding the case to LAO,

has grossly erred in accepting revised returns and accepting the claim of 6-A sale without enquiry by the LAO as envisaged in section 6-A(2) of the CST Act.

8. Accordingly, it is ordered.

The appeal filed by the Stated is allowed in part and the order of the ld. FAA is set-aside. Consequently, the case is remanded to the LAO to re-examine the case in the light of our above observation and complete the assessment afresh preferably within three months from the date of receipt of this order, giving the assessee a reasonable opportunity of being heard. The cross objection filed by the dealer-respondent is disposed of accordingly.

Dictated and 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)**  
2<sup>nd</sup> Judicial Member