

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX  
TRIBUNAL, CUTTACK.  
S.A.No. 76(C)/2016-17**

(Arising out of order of the Id. Addl. CST (Appeal), South Zone,  
Berhampur, in First Appeal Case No. AA(CST) 51/2015-16,  
disposed of on dtd.28.10.2016)

**Present: Smt. Sweta Mishra  
2<sup>nd</sup> Judicial Member**

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

**-Versus-**

M/s. Samsung India Electronics Pvt. Ltd.,  
Bhubaneswar. .... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)  
For the Respondent : Mr. A.K. Roy &  
Mr. A.K. Mohanty, Advocates

(Assessment Period : 01.04.2012 to 31.03.2014)

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Date of Hearing: 08.03.2021 \*\*\* Date of Order: 12.03.2021

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**ORDER**

This appeal is directed against the order of the learned First Appellate Authority/ Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur in First Appeal Case No. AA(CST) 51/2015-16 dtd.28.10.2016 in modifying the assessment order passed by the learned Sales Tax Officer/ Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (in short, STO/DCST) for the assessment period from 01.04.2012 to 31.03.2014 u/r.12(3)(f) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The brief facts of the case is that :

The dealer-appellant, in the instant case, M/s. Samsung India Electronics Pvt. Ltd., Bhubaneswar deals in Samsung Brand Products like A.C., Colour TV, Digital Still and Video Camera, Micro Oven, Refrigerator, Mobile Phone, Printer, Monitor etc. on wholesale basis. On receipt of tax audit report from the DCST, Bhubaneswar-I Circle, Bhubaneswar, the learned Assessing Officer initiated proceedings u/r.12(3)(f) of CST(O) Rules. In response to the notice, the dealer-company appeared and produced the books of accounts and relevant documents along with written submission which were examined by the learned AO in the light of observations made in the AVR.

The dealer has despatched goods to outside the State on branch transfer worth Rs.37,65,34,485/- and Rs.56,42,49,135/- during the period 2012-13 and 2013-14 respectively against which the dealer has received original 'F' form valued Rs.37,63,33,558/- and Rs.56,41,15,101/- for the period 2012-13 and 2013-14 respectively. As such a discrepancy of Rs.2,00,927/- and Rs.1,34,034/- for the period 2012-13 and 2013-14 respectively was detected.

On confrontation about the discrepancy, the dealer stated that, this amount is related to other goods against which no 'F' form is claimed from the receipt end. Further, the dealer stated that, this sum is not related to branch transfer. These other goods have been despatched to outside the State branches not against 'F' form. However, from the balance sheet the learned Assessing Officer found that the dealer has

despatched the above goods against branch transfer and for want of requisite declaration in Form 'F' to the effect the same is treated as deemed inter-state sale and taxed at the appropriate rate.

On verification of branch transfer of goods to outside the State during the period June, 2013, it is found that, the dealer has despatched goods valued Rs.8,00,22,059/- against which received 'F' form worth Rs.8,00,61,641/-. An amount of Rs.39582/- in excess has been furnished by the receiving branch Maharashtra. Taking in to account the 'F' form value furnished by the receiving dealer in excess of Rs.39,582/-, it is assumed that, the dealer has not disclosed this amount in his return during June, 2013 against branch transfer. Hence, the audit has suggested to treat the said amount as sale suppression and taxed at the appropriate rate.

On scrutiny of 'C' form it is found that, the purchasing dealer furnished 'C' form with excess amount of Rs.1,176/-. The dealer has not accounted for in his sale register. On confrontation, the dealer furnished cancelled invoice which indicates that goods have been sold against 'C' form and the dealer has not disclosed it in his return or books of account. This is sale suppression by the dealer. Accordingly, the learned Assessing Officer completed the assessment which resulted in demand of Rs.1,36,137/- including penalty of Rs.90,758/- imposed u/r.12(3)(g) of the CST(O) Rules.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South

Zone, Berhampur, who in turn, allowed the appeal in part and the assessment was reduced to Rs.22,570/-.

4. Being aggrieved with the order of the learned FAA/Addl.CST, the State has knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the Id.FAA/Addl.CST is unjust, improper and not based on facts and law.

5. No cross objection has been filed by the dealer-respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has supported the order passed by the learned First Appellate Authority. He has vehemently argued that, the order of the learned FAA is just and proper. The State-appellant has challenged the order of the learned FAA dtd.28.11.2015 in so far as the deletion of penalty of Rs.90,758/- in this appeal. But in the course of hearing, the State-appellant has not contested the deletion of penalty by learned FAA as the demand is confined to non-submission of 'F' form. The learned Addl. Standing Counsel raised a ground for levy of interest u/r.8(a)(2) of the CST(O) Rules, which is not applicable to the instant case. The dealer-respondent has effected stock transfer from Bhubaneswar branch to outside branches in respect of goods other than trading activities which is covered u/s.6A of the CST Act. The dealer could not be able to furnish 'F' forms in respect of stock transfer of Rs.3,34,961.89 and by virtue of deeming provisions, the learned FAA has determined tax of Rs.22,570/- and deleted the penalty. Since the imposition of penalty has not been challenged by the State, the only issue remains for

adjudication is levy of interest. In this regard, the learned Advocate for the respondent-dealer submits that the decision relied upon by the State in the case of **Mannal Khetan Vrs. Kedarnath Khetan (1977) Tax LR 1638 (SC)** at Para-5 of written submission is not applicable to the instant case and the decision of Hon'ble Apex Court in **J.K. Synthetics Ltd. (1994) 94 STC 422 (SC)**, the case is squarely applicable to the instant case. Only 'F' forms against stock transfer from the respondent office to other places of the respondent-company could not be furnished by the dealer and no tax was payable in the return. The respondent-dealer had not defaulted in payment of admitted tax as per Rule-7 of the CST(O) Rules and therefore, no interest is payable by the dealer-respondent. The decision cited by the State-appellant in the case of **Royal Boot House – Vrs. State of Jammu & Kashmir (1984) 56 STC 212 (SC)** is not applicable to the present case in view of the fact that, the dealer in that case had not deposited tax payable as per the return till the last date of filing of the return. Also the learned FAA at Page-4 of his order has observed as follows :

“Regarding imposition of penalty u/r.12(3)(g) of the CST(O) Rules, the ld.AO has not mentioned the reasons in the assessment order. In the instant case due to non-furnishing of declaration form against branch transfer of goods the impugned demand has arisen. Further, no suppression of turnover has been detected by the ld.AO at the assessment stage. Hence, the opinion of the forum is that imposition of penalty u/r.12(3)(g) of the CST(O) Rules is not justified and liable for deletion”.

So, the learned Advocate for the dealer has prayed before this Tribunal to dismiss the appeal filed by the State and to confirm the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the order of the first appellate authority appears to be unjust and improper. The deletion of penalty u/r.12(3)(g) of CST(O) Rules by First Appellate Authority is not correct. The mandatory penalty is to be imposed without any discretion as observed by the Hon'ble Apex Court in the case of **Dharmendra Textiles** reported in **18 VST 180 (SC)** as well as in **54 VST 1** in case of Jindal Steels. Considering the circular of CCT(O) if at all, the penalty is not leviable, but imposition of interest is mandatory in nature as per Rule 8(a)(2) of the CST(O) Rules, 1957. The learned FAA has failed to impose the same while deleting the penalty without citing any reason thereof. The order of the learned FAA may be modified accordingly. The learned Addl. Standing Counsel cited many decisions in support of his contention and he has prayed to allow the appeal filed by the State and to set-aside the order of the learned FAA.

8. Heard the learned Advocate, Mr. A.K. Roy appearing on behalf of the dealer and learned Addl. Standing Counsel Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, the impugned orders of appeal and assessment, arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite satisfactory and the order of

the learned FAA is just and proper and it needs no interference by this Tribunal. Accordingly, it is ordered.

9. The appeal filed by the State is dismissed on contest. The order of the learned FAA is hereby confirmed.

Dictated and Corrected by me,

Sd/-  
(S. Mishra)  
2<sup>nd</sup> Judicial Member

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