

2. The dealer M/s. S.K. Enterprises engaged in business of seasonal goods and rice was self-assessed u/r.12(1) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules), but at a latter period, when it is found that, the dealer has availed concession in rate of tax and also availed tax exemption of sale of goods, without furnishing required declaration form, the assessment was re-opened u/r.12(4) of the CST(O) Rules.

3. The Assessing Authority/Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, AA/JCST) found the dealer failed to furnish declaration Form 'H' against the claim of export sale of Rs.2,72,000/-, whereas on acceptance of the declaration Form 'C' produced, he allowed concession in rate of tax as per Sec.3 of the CST Act for sale of Rs.25,04,499/-. In ultimate calculation, the dealer was asked to pay balance tax due of Rs.10,880/- by the AA.

4. Being aggrieved, the dealer knocked the door of the FAA. It was an ex-parte order by which the FAA confirmed the order of assessment with the reasoning that, the dealer has failed to furnish declaration Form 'H'.

5. On the above backdrop, being unsuccessful to get the claim of exemption from the appellate forum, the dealer preferred this second appeal. It is contended by the dealer that, it has effected sale in course of export coming u/s.5(3) of the CST Act and as such is, entitled to exemption, but the

authority below has ignored to take note of the declaration Form 'H' produced and disallowed the claim of exemption.

6. Appeal is heard with cross objection. In the cross objection, the plea of the State is, the export sale must be preceded by an agreement in between the exporter and the foreign buyer. The dealer has failed to produce the evidence, to fulfill the conditions to treat a sale transaction covered u/s.5(3) of the CST Act. In spite of opportunity, the dealer could not produce the documents like declaration Form 'H, purchase order of the merchant exporter, copy of the agreement between the exporter and foreign buyer, bill of lading and the sale between penultimate seller like dealer and the exporter took place on the basis of the agreement between exporter and foreign buyer.

The appeal is admitted on the question of fact and law i.e. (i) Whether the FAA has committed wrong in confirming the order of AA disallowing the claim of exemption against export sale in spite of the supporting documents produced before him?

7. At the outset, it is pertinent to mention here that, the order of the FAA, which is under challenge in this appeal, was an ex-parte order. Further, though the dealer has taken a plea that, it has furnished declaration Form 'H' before the authorities below and the authorities have ignored to accept the declaration Form 'H' and asked for other documents, but

in fact, the orders of both the fora below as it revealed, no declaration form was furnished before the authorities below. The dealer has furnished declaration Form 'H' and bill of lading in Xerox before this forum. The genuineness of the documents are needs to be scrutinised. However, the principle to decide the case of exemption against export sale can be stated as follows :

If the dealer has furnished declaration Form 'H', the presumption is definite in favour of the dealer's claim of export sale. The dealer cannot be forced to produce the agreement in between the exporter and foreign buyer. If the authorities want to verify the same, it can scrutinise or verify the same by summoning the exporter to cause production of the document like agreement. It can examine the returns of the exporter and to ascertain whether the claim of the present dealer is genuine or not. Because of the fact that, the dealer could not produce the agreement, but produced the declaration Form 'H', in that event, the dealer's claim of exemption cannot be denied.

With the observation above, it is held that, this is a fit case where the matter should be remitted back to the AA with a direction to verify the genuineness of the declaration form and in the event it is found to be correct, the dealer should be given the exemption in sale as per provision u/s.5(3) of the CST Act.

In the result, the appeal is allowed on contest. The impugned order is set-aside. The matter is remitted back to the AA for assessment afresh on verification of the declaration Form 'H' as observed above.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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