BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 24 (C) of 2002-03

(Arising out of order of the learned ACST, Balasore Range, Balasore in Sales Tax Appeal No. AA- 31/BAC – 1995-96, disposed of on dated 26.11.2001)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Krishi Rasayan,
At/PO- Maitapur, Ranital,
Dist. Balasore ... Appellant

-Versus-

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

For the Appellant : Sri R.P. Kar, Advocate
Sri A. Kedia, Advocate &
Sri A.N. Roy, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 28.04.2022 *** Date of order: 17.05.2022

O R D E R

The dealer-assessee has preferred this second appeal assailing the order dated 26.11.2001 passed by the learned Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'first appellate authority') in Appeal No. AA- 31/BAC – 1995-96 thereby

allowing the appeal in part and reducing the tax demand to ₹5,82,814.00 from ₹18,79,206.00 raised by the Sales Tax Officer, Balasore Circle, Balasore (in short, 'assessing authority') for the year 1994-95 in the assessment framed u/r. 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

2. The relevant facts leading to the filing of the present second appeal are summarised hereunder –

The dealer-assessee is a partnership concern engaged in production and sale of pesticides. Pursuant to the notice u/r. 12(5) of the CST (O) Rules, the dealer produced books of account consisting of petty cash book, sale account of finished products, purchase account of raw materials, stock account of raw materials and finished products. The dealer effected sale in course of inter-State trade and transfer of goods to its branches outside the State, transfer of goods for sale on commission basis and sale of goods in course of export. The dealer returned its GTO at ₹1,83,71,964.32 and NTO at ₹1,30,258.05 for the year 1994-95. The assessing authority while finalizing the assessment took into consideration the Fraud Case Report (FCR) received from the Sales Tax Officer, Vigilance, Balasore

Division, Balasore and confronted the allegations made in the said report to it (the dealer-assessee). The dealer inspite of repeated opportunities, failed to explain the allegations confronted to it for which the assessing authority concluded that the dealer resorted to colourful device in claiming inter-State sales as branch transfer. The dealer disclosed to have transferred stock worth ₹1,64,10,445.75 to different branches outside the State, but it filed declaration in Form-F in support of stock worth ₹64,90,975.00 in respect of its Bombay Branch. So, on account of failure of the dealer to file declaration in Form-F, the assessing authority disallowed the branch transfer entirely to the tune of ₹1,64,10,445.75 and levied tax under the CST Act. The dealer also claimed to have despatched goods worth ₹10,13,550.00 for sale on commission to consignment agent at Delhi and Muzaffarpur, but could be able to file declaration in Form-F for total amount of ₹5,31,110.00 relating to consignment sale to New Delhi. The assessing authority on account of failure of the dealer to file relevant documents in support of consignment sales in respect of other places and to file sale patties, transfer documents relating to despatch details, disallowed the entire claim of

consignment sales to treat the same as sales u/s. 3(a) of the CST Act. The dealer also claimed deduction of ₹8,12,500.00 towards export sale, but failed to file supporting documents along with declaration in Form-H for which the assessing authority disallowed deduction on that count. The dealer also claimed inter-State sales to the tune of ₹1,30,258.05, but could be able to file declaration in Form-C for ₹37,620.00 only. Therefore, the assessing authority allowed concessional rate of tax on ₹37,620.00 only and rest amount was taxed @ 10%. The assessing authority also found that the dealer suppressed sale to the tune of ₹1,60,000.00 on account of which it enhanced the GTO and NTO by ₹5,00,000.00 for levy of tax. The assessing authority raised total tax demand of ₹18,79,206.00 for the assessment year 1994-95.

2(a). The dealer-assessee challenging the aforesaid demand raised by the assessing authority disallowing its various claims, preferred appeal before the first appellate authority on the ground that the assessing authority did not allow sufficient opportunity to produce the relevant documents and statutory forms; that the declaration in Form-F in respect of Bombay Branch was

rejected erroneously; that the claim of exemption in respect of sale on commission basis was also illegally disallowed and that the assessment was completed illegally. Learned first appellate authority on going through the relevant documents and hearing the dealer-assesee reduced the tax demand to ₹5,82,814.00 challenging which the dealer-assessee filed the present second appeal.

3. It was vehemently urged by the learned Counsel for the dealer-assessee that both the forums below committed serious illegality in discarding the statutory forms whimsically and arbitrarily and assessed the dealer-assessee on surmises, conjectures and on suspicion. Learned Counsel for the dealer-assessee drawing our attention to the tax invoices and other documents filed before this Tribunal in course of hearing of the second appeal on 15.03.2022, submitted that there was ample evidence on record to show that the transfer of goods made by the dealer-assessee entered into octroi area of Bombay and consignment had been sent directly to Bombay Branch on stock transfer basis against Form-F. The assessing authority as well as first appellate authority taking into consideration extraneous material rejected the claim of

branch transfer and illegally levied tax on it. The Vigilance Wing of the Balasore Division did not find any contract between the dealer-assessee and the purchaser. In the absence of any contract, the claim of branch transfer could not have been disallowed on the ground that transfer of goods was made to pre-identified customer. He vehemently urged relying on the decisions of this Tribunal (Full Bench) in case of State of Odisha Vs. M/s. Ballarpur Industries Ltd. (S.A. No. 183 (C) of 2001-02 decided on 29.01.2018) and in case of M/s. Emami Paper Mills Ltd. Vs. State of Odisha (S.A. No. 76 (C) of 2001-02 decided on 01.12.2020) that considering the demands in the market requests are being received by the dealers from its branches and consignment agent well in advance and such being the business practice, transfer of goods made to the branches outside the State cannot be considered as inter-State sale on the ground that the transfer was made to pre-identified customers. The dealer-assessee manufactures pesticides according to the demands in the market and such demands are estimated according to the requirement of the prospective buyers. Therefore, the branch transfer made by the dealer-assessee should not have been disallowed by the forums below on

that ground. He submitted to set aside the impugned orders of the forums below and allow the claim of branch transfer.

4. Per contra, learned Standing Counsel (CT) for the revenue supporting the impugned order of the first appellate authority in terms of cross-objection filed by it, vehemently urged that the dealer-assessee effected inter-State sales resorting to colourful device of branch transfer, but as a matter of fact, the goods were directly transferred to the concerned buyers without entering into the octroi area of the said branch. The dealer did not produce the books of account of the concerned branch to which the goods were transferred to show that actually such goods were received and reflected in the books of account of the branch. So the forums below were correct in their approach in disallowing the claim of branch transfer in the absence of relevant documents. He relying on the materials available on record further argued that the transfers were made in pursuance of the pre-existing contract between the parties. Therefore, the same will not be covered under Section 6A of the CST Act rather it will come under u/s. 3(a) of the CST Act for the purpose of taxation. The forums below did not commit any illegality in treating the transfer of goods to the pre-identified

buyers as inter-State sale and levying tax on it. He submitted to dismiss the appeal and confirm the orders of the forums below.

5. We have heard the rival submissions of the parties, carefully gone through the grounds of appeal raised by the dealer-appellant vis-a-vis the impugned orders of the forums below and the materials on record. The whole dispute in the present second appeal centres round the question whether transfer of stock worth ₹1,72,75,745/- to different branches outside the state by the dealer-assessee would fall within the ambit of section 6A of CST Act being branch transfer or it would fall within the ambit of Section 3(a) of CST Act being inter-State sales? Before addressing on this issue, we feel it expedient to quote relevant provisions of the CST Act governing the field.

5(a). Sec. 6 of the CST Act is the charging section, which provides for levy of tax on sale of goods effected by a dealer in course of inter-State trade or commerce.

Sec. 6 of the CST Act reads as under :

> "6. Liability to tax on inter-State sales –
>
> (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in

the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified :

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of Section 5, is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State."

5(b). Sec. 3(a) of the said Act which deals with the principles for determining inter-state trade and commerce reads as under :-

"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce –

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase –

(a) occasions the movement of goods from one State to another; or

(b) xx xx xx"

The aforesaid provision makes it clear that movement of goods from one State to another cannot be subject to levy of tax if it is occasioned otherwise than by way of sale as in the case of transfer of stock from one Unit of a dealer to its branch situated in another State. Implicit in the provision u/s. 3(a), a transaction to be treated as inter-State sale, the movement of goods must be preceded by a sale or at least a contract of sale. In other words, the goods must have moved pursuant to a sale or a contract of sale or as an incident of the said contract of sale.

5(c). When a dealer claims that the movement of goods is otherwise than by way of sale, the initial burden is on him to prove the same as contemplated u/s. 6A, which is quoted hereunder :-

"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.

(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.

(3) xx xx xx"

5(d). A cursory look at the above provision makes it clear that in case the dealer furnishes necessary declaration (Form-F), then the assessing authority is required to make an inquiry as regards correctness of the declaration so furnished and accordingly, arrive at his

finding. Mere submission of the declaration (Form-F) is not sufficient to allow the claim of branch transfer. In the inquiry envisaged under sub-section (2) of Sec. 6A, the assessing authority is basically required to ascertain whether the claim of the dealer is genuine and not or a colourable device has been resorted to avoid tax liability on inter-State sale of goods by introducing an agent or branch in the other State just to show an absence of link between it and the ultimate buyer

5(e). The Hon'ble court in case of Balabhagas Hulaschand and another Vs. State of Orissa reported in [1976] 37 STC p-207 interpreting Sec.3 of the CST Act held that three conditions are to be satisfied before a sale can be said to take place in course of inter-State trade or commerce:-

(i) There is an agreement to sell, which contains a stipulation express or implied regarding movement of goods from one State to another;
(ii) That in pursuance of the said contract, the goods, in fact, moved 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 moved.

6. The issue involved in the present appeal is to be answered keeping in mind the statutory provisions and law discussed herein above. In the instant case, the dealer-assessee claimed before the assessing authority stock transfer worth ₹1,64,10,445.75 to different branches outside the State as branch transfer u/s. 6A of the CST Act and it in order to justify the claim of branch transfer furnished declarations in Form-F for ₹64,90,975.00 in respect of its Bombay branch. The assessing authority rejected the entire claim of branch transfer holding that the dealer diverted the goods to Nasik, which were destined for Bombay branch before it reached at Bombay physically; that the dealer could not produce the quantity of stock diverted to Nasik in course of movement of goods from Orissa to Bombay; that the dealer could not also produce the books of account of Bombay branch for verification and that the dealer also could not produce documents/declaration in support of branch transfer to other branches. The dealer being aggrieved with such finding of the assessing authority preferred appeal before the first appellate authority where it revised its claim of branch transfer to the tune of ₹1,72,75,945.75. The dealer claimed transfer of goods to

Delhi branch for ₹97,59,270.75; to Calcutta branch for ₹8,90,300.00; to Daman branch for ₹1,35,000.00 and to Bombay branch for ₹64,90,975.00. The dealer-assessee in order to substantiate its claim of branch transfer to the tune of ₹1,72,75,745.75 to different branches outside the State as discussed above filed declarations in Form-F. The first appellate authority disagreeing with findings of the assessing authority that the entire claim of branch transfer to the tune of ₹1,72,75,745.75 was inter-State sale, allowed the claim of branch transfer for ₹1,20,24,070.75 and disallowed the claim of branch transfer in respect of rest amount of ₹52,51,675.00 on the ground that the materials on record indicated the transfer to the branches had been occasioned as a result of specific letters, inter office memos or slips indicating the names of the purchasers, quality, quantity of goods and place of despatch to pre-identified purchasers. Learned first appellate authority has taken into consideration 11 numbers of transaction, which on calculation comes to ₹50,23,680.00 not ₹52,51,675.00 as disallowed by the said authority. Learned Counsel for the dealer-assessee challenging that part of the order of the first appellate authority disallowing the claim of branch transfer

to the tune of ₹52,51,675.00, which according to him is ₹50,23,680.00, argued that the finding of the first appellate authority is based on surmises, conjectures and on suspicion. Therefore, such finding is unsustainable in the eye of law.

7. Having heard the learned Counsel for the parties and on going through the impugned orders of the forums below and materials on record, we find that both the forums below disallowed the claim of branch transfer basing on the findings recorded by the STO (Vigilance) in its report. Neither the assessing authority nor the first appellate authority have given any finding with regard to existence of any contract which occasioned the movement of goods from Orissa to branches outsides the State. The letters, slips and office memos referred to in the report of the STO (Vigilance) cannot be the basis to form an opinion that there was a pre-existing contract between the parties which occasioned the movement of goods from Orissa to outside the State. The materials on which the forums below placed reliance did not satisfy three ingredients i.e (i) there is an agreement to sell, which contains a stipulation express or implied regarding movement of goods from one State to another; (ii) that in

pursuance of the said contract, the goods, in fact, moved 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 moved, to establish that transfer of goods to different branches was not actually branch transfer as envisaged u/s. 6A of the CST Act, but was falling within the ambit of Section 3(a) of the said Act. In the absence of pre-existing contract, the transfer of goods from State of Orissa to different branches of the dealer-assessee outside the State for the purpose of sale to pre-identified customers as alleged by the STO (Vigilance) cannot be treated as inter-State sale. This forum in case of M/s. Emami Paper Mills Ltd. Vs. State of Odisha in S.A. No. 76 (C) of 2001-02, while dealing with similar issue observed that it is an ordinary business practice very often experienced that considering the demands in the market requests are being received by the dealers from its branches and consignment agents well in advance. At times, it is also experienced that certain demands directly were being forwarded to the dealer-assessee by stating requirements by the buyers which were ultimately honoured through its branches or consignment

agents. There is no denial to the practice that even branches receive orders and dispose of goods over which the dealer-assessee having had no role to play. It may quite often be possible that the buyers could avoid paying higher taxes through inter-State sales and may opt for purchases made through the branches situated in their own State. In the considered view of the Tribunal, only when direct contract is received by the dealer-assessee with clear specification either in respect of standard of goods or goods which were specifically made and manufactured and then sold to the buyers can only be treated as inter-State sales. If standard goods are regularly being delivered and in that regard direct correspondences if made, but all the despatches are to the branches where from the goods are sold on receipt of purchase orders even in such cases, it may be considered as stock transfer and not inter-State sales.

7(a). In the present case, the main reason for disallowing the claim of branch transfer was that goods were transferred to pre-identified customers/buyers. The reason on which the claim has been disallowed, in our humble view, is not legally sustainable. Unless it is established that there was a pre-existing contract between the buyer and the

dealer-assessee and in order to honour that contract, transfer was made through branches, such transfer cannot be treated as inter-State sale. The documents filed by the dealer-assessee before this Tribunal show that that the stock transferred to some of the branches entered into octroi area of that branch, which fact has not been taken into consideration by both the forums below. If, in fact, the goods which are transferred to different branches have been accounted for in their books of account and local tax has been paid, the same cannot be taxed again as inter-State sale in the absence of material to establish that the movement of goods from Orissa occasioned in pursuance of pre-existing contract between the ultimate buyer and the dealer-assessee. The findings recorded by both the forums below not being based on materials on record, but being based on surmises, conjectures and suspicion, the said findings cannot be sustained in the eye of law.

7(b). It is pertinent to mention here that both the forums below have not found any defect in the declaration in Form-F submitted by the dealer-assessee and have not rejected such form. 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 mentioned 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 assessing authority without fail. In the present case, since, the assessee has submitted the declarations in Form-F in respect of its branch transfer, the assessing authority is obliged under the law to peruse the said forms and make such inquiry as he deems necessary to find out whether the particulars mentioned in the declaration are true or not. 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 Kerala High Court in case of **C.P.K. Trading Company Vs. Additional Sales Tax Officer, III Circle, Mattancherry, [1990] 76 STC 211**, which has been

referred by the Hon'ble Apex Court in **Ashok Leyland Ltd. Vrs. State of Tamil Nadu reported in (2004) 134 STC 473 (SC).** In the aforesaid case, the Hon'ble Kerala High Court observed as under:-

> "... A plain reading of section 6A(2) of the Central Sales Tax Act points out that in cases where the dealer exercises the option of furnishing the declaration (F forms), the only further requirement is that the assessing authority should be satisfied, after making such enquiry, as he may deem necessary, that the particulars contained in the declaration furnished by the dealer are 'true'. The scope or frontiers of enquiry, by the assessing authority under section 6A(2) of the Central Sales Tax Act is limited to this extent, namely, to verify whether the particulars contained in the declaration (F forms) furnished by the dealer are 'true'. It means, the assessing authority can conduct an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord with facts or accurate or genuine. That alone is the scope of enquiry contemplated by section 6A(2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other. As to what should be the nature of the enquiry, that can be conducted by the assessing authority under section 6A(2) of the Act, is certainly for him to decide. It is his duty to verify and satisfy himself that the

particulars contained in the declaration furnished by the dealer are 'true'. As a quasi-judicial authority, the assessing authority should act fairly, and reasonably in the matter. During the course of the enquiry, under section 6A(2) of the Act, it is open to him to require the dealer to produce relevant docucments or other papers or materials which are germane or relevant, to find whether the particulars contained in the declaration (F forms) are 'true'. It is not possible to specify the documents or other materials or papers that may be required, to be furnished in all situations and in all cases. It depends upon the facts and circumstances of each case. The power vested in the officer is a wide discretionary power, to find, whether the particulars contained in the declaration (F forms) are 'true'. It is not possible or practicable to lay down the exact documents or materials that may be required in all the cases, by the assessing authority, to come to a proper and just finding as required by section 6A(2) of the Act."

Further, in case of **M/s. Hindustan Petroleum Corporation Ltd. Vrs. The Deputy Commissioner (CT)-II (FAC), Chennai, their Lordships of Hon'ble Madras High Court** vide order dtd. 07.11.2016 held as under :-

"8. Admittedly, in the instant case, the respondent did not conduct any enquiry, 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 to the statement recorded by the Enforcement Wing Officer from the Senior Operation Officer of the petitioner-Corporation. Thus, in the absence of any enquiry, the conclusion arrived at by the respondent that it was a case of inter-state sale, deserves to be rejected."

7(c). It is observed that in the present case, the assessing authority has not whispered any contrary view in respect of the declaration in Form-F submitted by the assessee upon such enquiry. Therefore, we are inclined to interfere with the impugned orders of the forums below. We think it just and proper to remand the matter to the assessing authority before whom the dealer-assessee shall produce all relevant documents including books of account of the relevant branches to show, in fact, the transfer of goods made to such branches were accounted for and local taxes paid. Thereafter, the assessing authority will make an enquiry with regard to the declarations submitted by the dealer-assessee in Form-F and pass necessary orders according to law.

8. In view of the discussion made above, the impugned order of the forum below is set aside to the extent only the first appellate authority disallowed the claim of

branch transfer made by the dealer-assessee and the matter is remitted back to the assessing authority with a direction to give reasonable opportunity to the dealer-assessee to produce the relevant documents to substantiate its claim of branch transfer in respect of 11 numbers of transaction which was disallowed by the first appellate authority and recompute the tax liability afresh within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I