

4. Special Commissioner & Commissioner Of Commercial Taxes, Tamil Nadu, "EZHILAGAON", Chennai, Tamil Nadu.
5. Principal Secretary, Finance Department, Govt. of Kerala, Trivandrum, Kerala.
6. Commissioner of Commercial Taxes, Govt. of Karnataka, Kalidas Road, Gandhi Nagar, Bangalore-560009.
7. Commissioner of Sales Taxes, Govt. of Maharashtra, Vikrikar Bhawan, Mazagaon, Mumbai-422010.
8. Commissioner of Sales Taxes, Govt. of Rajasthan, G.F. Kara Bhawan, Ambeddhar Circle, Bhawanisingh Road, Jaipur, Rajasthan.
9. Secretary, Finance Department, Govt. of Punjab, Chandigarh, Punjab.
10. Secretary, Finance Department, Govt. of Jammu & Kashmir, Srinagar, Jammu & Kashmir.
11. Commissioner of Commercial Taxes, Madhya Pradesh, Moti Bungalow Compound, M.G. Road, Indore, Madhya Pradesh.
12. Director of Commercial Taxes, West Bengal, 14, Belia Ghat, Main Road, Kolkata-700014, West Bengal.
13. Secretary, Finance Department, Govt. of Haryana, Chandigarh.
14. Commissioner of Sales Taxes, Govt. of Gujarat, Vechanvera Bhawan, Ashram Road, Ahmadabad-380009.
15. Secretary, Finance Department, Govt. of Bihar, Patna, Bihar.
16. Commissioner of Commercial Taxes-cum-Secretary, Commercial Taxes Department,

Jharkhand, Project Building HBC Dhurwa,
Jagannathpur, Ranchi-834004, Jharkhand.

17. Secretary, Finance Department,
Govt. of Arunachal Pradesh, Ittanagar,
Arunachal Pradesh.

. . . Respondents

S.A. No. 110(C) of 1997-98

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

. . . Appellant

- V e r s u s -

1. M/s. Steel Authority of India Ltd.,
Rourkela Steel Plant & Rourkela Fertilizer
Plant, Rourkela, Dist. Sundargarh.
2. Secretary, Finance Department,
Govt. of Chhattisgarh, Raipur,
Chhattisgarh.
3. Secretary, Finance Department,
Govt. of Andhra Pradesh, Hyderabad,
Andhra Pradesh.
4. Special Commissioner & Commissioner
Of Commercial Taxes, Tamil Nadu,
"EZHILAGAON", Chennai, Tamil Nadu.
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Govt. of Kerala, Trivandrum, Kerala.
6. Commissioner of Commercial Taxes,
Govt. of Karnataka, Kalidas Road,
Gandhi Nagar, Bangalore-560009.
7. Commissioner of Sales Taxes,
Govt. of Maharashtra, Vikrikar Bhawan,
Mazagaon, Mumbai-422010.
8. Commissioner of Sales Taxes,
Govt. of Rajasthan, G.F. Kara Bhawan,
Ambeddhar Circle, Bhawanisingh Road,
Jaipur, Rajasthan.

9. Secretary, Finance Department,
Govt. of Punjab, Chandigarh, Punjab.
10. Secretary, Finance Department,
Govt. of Jammu & Kashmir,
Srinagar, Jammu & Kashmir.
11. Commissioner of Commercial Taxes,
Madhya Pradesh, Moti Bungalow Compound,
M.G. Road, Indore, Madhya Pradesh.
12. Director of Commercial Taxes, West Bengal,
14, Belia Ghat, Main Road, Kolkata-700014,
West Bengal.
13. Secretary, Finance Department,
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14. Commissioner of Sales Taxes,
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Jagannathpur, Ranchi-834004, Jharkhand.
17. Secretary, Finance Department,
Govt. of Arunachal Pradesh, Ittanagar,
Arunachal Pradesh.

. . . Respondents

- | | |
|-----------------------|---|
| For SAIL | ... Mr. Jagannath Pattnaik, Sr. Advocate &
Mr. Basudev Panda, Sr. Advocate with
Mr. T.K. Pattnaik, Advocate |
| For State of Odisha | ... Mr. D. Behura, S.C.(CT),
Mr. M.L. Agrawal, S.C. (CT),
Mr. M.S. Raman, Addl. S.C. (CT) &
Mr. S. Mishra, Addl. S.C. (CT) |
| For other Respondents | ... N o n e. (Ex parte) |

Date of hearing: 19.06.2018 **** Date of order: 29.06.2018

ORDER

These appeals have been remanded to this Tribunal for fresh disposal by Hon'ble Central Sales Tax Appellate Authority, New Delhi (in short, 'CST Appellate Authority') vide its order dt. 15.03.2010. Since all the appeals relate to the same dealer and involve common questions of law and fact, for the sake of convenience they were heard together and are being disposed of by this common order.

2. It is to be noted at the outset that respondent Nos. 2 to 17 being the Commercial Tax/Finance Department of different States, did not appear despite due service of notice of hearing of these appeals. As such, they were set exparte and the matters were heard in presence of the dealer and State of Odisha only.

3. A brief reference to certain relevant background facts at the outset would be in order. All these appeals, barring the one filed by Revenue, are at the instance of the same dealer, i.e. M/s. Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela (in short, 'SAIL, RSP') challenging the orders of the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'first appellate authority') passed in respect of different assessment years, the details of which would be stated hereinafter. The appeals were originally disposed of by this Tribunal by separate orders passed on 12.03.2008 and 14.03.2008. Challenging the said orders, the dealer moved the Hon'ble CST

Appellate Authority u/s. 20 of the Central Sales Tax Act, 1956 (in short, 'CST Act') in Appeal Nos. 331-334/CST/2008, which came to be disposed by the aforementioned common order dt. 15.03.2010.

S.A. No. 171 (C) of 1994-95 -

4. This appeal relates to the assessment year 1989-90 and has been preferred by the dealer impugning order dt. 06.01.1995 of the first appellate authority in Sales Tax Appeal No. AA. 85 (RLIC)/1991-92 in confirming the order of assessment dt. 23.12.1991 passed by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing authority') u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') whereby a demand of ₹31,79,32,630.00 was raised. The second appeal was disposed of vide order dt. 14.03.2008 by this Tribunal by remanding the matter to the assessing authority for fresh assessment.

S.A. No. 63 (C) of 1996-97 -

5. This appeal relates to the assessment year 1991-92 and has been preferred by the dealer impugning order dt. 25.06.1996 of the first appellate authority in Sales Tax Appeal No. AA. 22 (RLIC)/1993-94 whereby the demand of Rs.52,70,92,433.00 raised by the assessing authority u/r. 12(5) of the CST (O) Rules was reduced to ₹20,89,92,986.00. The second appeal was disposed of vide order dt. 12.03.2008 by this Tribunal by remanding the matter to the assessing authority for fresh assessment.

S.A. No. 73 (C) of 1997-98 -

6. This appeal relates to the assessment year 1992-93 and has been preferred by the dealer impugning order dt. 29.09.1997 of the first appellate authority in Sales Tax Appeal No. AA. 28 (RLIC)/1994-95 in reducing the demand of Rs.88,93,73,716.00 raised by the assessing authority u/r. 12(5) of the CST (O) Rules to ₹63,82,33,964.00. The second appeal was disposed of vide order dt. 12.03.2008 by this Tribunal by remanding the matter to the assessing authority for fresh assessment.

S.A. No. 110 (C) of 1997-98 -

7. This appeal also relates to the assessment year 1992-93 and has been preferred by Revenue impugning the aforementioned order of first appellate authority.

S.A. No. 47 (C) of 1996-97 -

8. This appeal relates to the assessment year 1993-94 and has been preferred by the dealer impugning order dt. 28.05.1996 of the first appellate authority in Sales Tax Appeal No. AA. 83 (RLIC)/1995-96 in reducing the demand of Rs.20,76,57,320.00 raised by the assessing authority u/r. 12(5) of the CST (O) Rules to ₹78,08,511.00. The second appeal was disposed of vide order dt. 14.03.2008 by this Tribunal by remanding the matter to the assessing authority for fresh assessment.

9. As already stated, the orders of this Tribunal passed in the aforementioned second appeals were challenged by the dealer

before the Hon'ble CST Appellate Authority and have been remanded to this Tribunal for fresh disposal in terms of the observations contained in the said order. The relevant extract of order dt. 15.03.2010 passed by the Hon'ble CST Appellate Authority is quoted herein below :-

"9. *In the circumstances, we have no option but to set-aside the impugned order of the Tribunal and remand the matter to the Orissa Sales Tax Tribunal for fresh disposal in the light of the observations made herein and after examining the relevant material in more detail. Unless this Authority has the benefit of findings by the Tribunal reached on a comprehensive consideration of the relevant material and issues, we are handicapped from deciding these appeals finally. The mere fact that there was certain amount of remissness of default on the part of the appellant to bring on record the relevant materials and to present an analysis of the transactions would not justify the rejection of appeals straightway. The fact remains that high stakes are involved and the appellant has paid tax on identical transaction in other States treating them as branch sales. It transpires that the analysis of single typical transaction relating to Mechanical Wire Industries referred to by the assessing authority and the Tribunal does not lead to the inference of inextricable link between the inter-State movement of goods and the contract of sale, as discussed earlier. It has come to the light in that case that the offer and sale had taken place only after the movement started and the goods reached the branch. But, a single transaction is not conclusive of the issue to be decided in the appeals. Some other typical transactions for each year should also be analyzed and appropriate findings have to be reached. The other details relating to despatches, sales and*

the pending allotments for a few months can also be looked into by the Tribunal to cross-check whether the movement of goods can be attributed to antecedent contracts of sale.”

10. Be it noted at the outset that though the assessments relate to determination of tax liability on different aspects, yet the dispute involved in the present appeals is limited to examining the correctness of the claim of branch transfer of goods raised by the dealer and disallowed by the authorities below.

FACTS :

11. M/s. SAIL is a Public Sector Undertaking established under the Companies Act, 1956 having set up 7 (seven) Steel Plants at different places of the country including Rourkela. The Plant at Rourkela (RSP) is engaged in manufacture and sale of iron and steel as well as fertilizer and its finished goods are despatched to the branches of SAIL numbering 39 and spread all over the country. Pursuant to certain guidelines issued by the Govt. of India under the provisions of Iron and Steel (Control) Order, 1956, a Time Bound Supply Scheme, 1989 (TBS Scheme) was framed “to establish a long term commercial relationship of confidence between SAIL and its customers with a commitment of supply of materials within a predetermined time schedule”. As provided in the Scheme, eligible customers are required to register their demands with the Branch Sales Office (BSO) for a particular period (quarter). Such demands are compiled and sent to Central Production Planning Department (CPPD) through the Regional Office. The CPPD and

Regional Office thereafter finalizes the branchwise despatch programmes and sends them to the Plants. The goods are thereafter manufactured by the Plants and despatched to different BSOs at the advice of CPPD, whereupon customers are intimated to take delivery of the goods after depositing the sale price. This, broadly speaking, is the methodology adopted by the SAIL for marketing of its finished goods produced by its different units including Rourkela Steel Plant.

12. According to the dealer, when the finished goods, manufactured as per production programme prepared by CPPD and Regional Offices, are despatched in normal course to the BSOs for onward sales to customers that may be arranged by the latter, such movement of goods is nothing; but a case of branch transfer and, therefore, is not exigible to tax.

13. The Revenue, on the other hand, contends that the movement of goods is in pursuance of a pre-existing contract with a pre-identified buyer by the BSO and that the said BSO is nothing but a conduit interposed between the actual seller and the buyer. Therefore, the movement of goods is as envisaged u/s. 3(a) of the CST Act and hence, the transaction is exigible to tax, though at a concessional rate upon furnishing of declaration in Form-C.

Broadly stated, the above is the sum and substance of the dispute involved in these appeals.

14. For better appreciation, a reference to the volume of claim of branch transfer raised by the dealer in each of the assessment

years under review would be proper, which is given below in a tabular form :-

Assessment Year	Claim of branch transfer raised and disallowed
1989-90	₹378,13,76,000.00
1991-92	₹693,94,58,065.25
1992-93	₹1116,81,65,300.00
1993-94	₹240,64,10,004.29

All these claims were raised on the ground that the goods in question had been despatched from the manufacturing Unit (RSP) to the BSO in normal course for onward sales by the said BSO to customer arranged by it. Such claims of branch transfer were rejected and the transactions were treated as inter-State sales u/s. 3(a) of the CST Act and hence, added to the NTO. Such findings were confirmed by the first appellate authority in the appeals filed by the dealer and remanded by this Tribunal in the second appeals, which orders were challenged before the Hon'ble CST Appellate Authority.

15. As already stated, the Hon'ble CST Appellate Authority has directed this Tribunal to analyze some typical transactions for each year including the details relating to despatches, sales and pending allotments for a few months to cross-check whether the movement of goods can be attributed to antecedent contracts of sale. Accordingly, by order dt. 05.06.2018 of this Tribunal, both parties were directed to furnish details of some typical transactions relating to each assessment

year pursuant to which, the dealer has furnished the same along with relevant documents of the following transactions :

Assessment Year	Transactions
1989-90	M/s. Gold Mohar Industries
1991-92	M/s Sarda & Sons M/s. Mechanical Wire Industries
1992-93	M/s. Mechanical Engineering Industries
1993-94	M/s. Durez Engineers (P) Ltd. M/s. Dekon India

In course of hearing, it is submitted by Sri J. Pattnaik, learned Sr. Counsel appearing for the dealer that the documents relating to other transactions could not be traced out but asserted that the ones furnished are typical transactions and hence, would serve the purpose of adjudication as directed by the CST Appellate Authority. The above assertion of learned Sr. Counsel is not disputed in any manner by learned Standing Counsel (CT) appearing for the Revenue. At the sametime, the Revenue also furnished the details and relevant documents relating to the following transactions :-

Assessment Year	Transactions
1989-90	-
1991-92	M/s. Mechanical Wire Industries
1992-93	-
1993-94	M/s. Durez Engineers (P) Ltd.

	M/s. Dekon India M/s. Flakt India Ltd. M/s. Citadel Engineers (P) Ltd.
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Sri D. Behura, learned Standing Counsel (CT) appearing for the Revenue submits that while the aforementioned transactions are relied upon by the Revenue, yet the relevant facts pertaining to the transactions relied upon by the dealer would also be referred to by the Revenue in order to prove its point.

It is, however, noted that despite not raising any objection at the time of hearing as regards the number of transactions relied upon by the dealer, the Revenue in its written submission filed after closure of hearing, i.e. 22.06.2018, has taken a contrary stand by objecting to the dealer's furnishing of only one transaction each for two assessment years, i.e. 1989-90 and 1992-93. The relevant submission made in the written note is extracted here under :-

"4. By providing just one transaction treating the same as a typical case to represent all the transactions taking place in one year, the appellant has consciously disobeyed the terms of remand by learned Apex Tribunal. The Apex Tribunal has disapproved the earlier order of this Tribunal since it was based on just one transaction relating to one party. The appellant is creating the same situation all over again by providing just one transaction for one year. **Any order of this learned Tribunal based on one transaction in one year is bound to be remanded by learned Apex Tribunal once again to this Tribunal.** As a result, the litigation will continue for years

together without any sign to abate. Thus, the action of the appellant will frustrate the process of law." (Emphasis supplied)

We are surprised at the above stand inasmuch as it contradicts the stand taken by the Revenue earlier. Having accepted the assertion of learned Senior Counsel appearing for the dealer that these are all typical transactions, it is not open to the Revenue to take a contrary view at this belated stage. That apart, both parties having been directed by this Tribunal to furnish typical transactions for each year, it was also open to the Revenue to furnish more than one such transaction for each assessment year, but it did not do so. Rather, only one transaction was referred to for the year 1991-92 and four transactions were referred to for the year 1993-94, which include two transactions relied upon by the dealer. Therefore, both parties having agreed to the position that the transactions furnished by them for examination by this Tribunal are typical transactions, it is improper for the Revenue to turn around and take an absolutely contrary stand in their written note of submission filed after conclusion of hearing and by attempting to pre-judge the order to be passed by this Tribunal on such basis. Therefore, the contention that "any order of this learned Tribunal based on one transaction in one year is bound to be remanded by learned Apex Tribunal once again to this Tribunal" amounts to not only pre-judging the outcome of the appeals, but also amounts to casting aspersions against the Tribunal, albeit in a subtle manner. It also amounts to foretelling the order to be passed by this Tribunal as well as

the Apex Tribunal. Having noted as above, we refrain from saying anything further in this regard.

16. Before proceeding to examine and analyze each of the transactions relied upon by the parties, it would be proper to refer to the law governing the field.

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

the assessing authority is required to make an inquiry as regards correctness of the declaration so furnished and accordingly, arrive at his finding. Thus, merely because the declaration (Form-F) is furnished by the dealer, the claim of branch transfer, cannot automatically be allowed. 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 a colourable device 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. In this regard, there are a plethora of decisions by the Hon'ble Supreme Court of India and different High Courts of the country, but the fundamental proposition of law as noted above being undisputed by the parties, it would not be necessary to refer to the same at this stage, but we shall do so at appropriate places subsequently in this order.

18. We shall now examine the rival contentions raised by the parties vis-à-vis the transactions relied upon by them in the backdrop of the relevant statutory provisions and the settled position of law.

19. Sri J. Pattnaik, learned Sr. Counsel basically submits that the goods produced by the dealer are standard goods manufactured in a continuous process as per production programme drawn up by the CPPD and Regional Office and not as per any customers' specification. The goods are despatched in bulk to the branches of the Steel Plant in different States as per branch-wise

despatch programmes drawn by the CPPD and are not relatable to any specific order of a customer. Sri Pattnaik further argues that the despatches are freight paid and the dealer's title over the goods remains intact during such transit and passes to the buyer only at the time of delivery of material. The BSO has the discretion to give a particular quantity of goods to a customer from the bulk despatches made by the manufacturing unit (dealer) without referring to it (dealer) in any manner. The BSO pays entry tax/octroi and local sales tax in the State where the branch locates, since the goods in question are declared goods u/s. 14 of the CST Act. The sale price of goods is determined by the branch. The above arrangement, according to Sri Pattnaik, clearly shows that there is no nexus between any contract of sale entered into by the BSO and movement of goods by the dealer.

Per contra, Sri Behura, learned Standing Counsel (CT) has argued that the TBS Scheme signifies that the contract to be made between the parties being bound by time will be a contract relating to goods and that the provisions of the said scheme would clearly go to show that there is an offer by BSO followed by acceptance by registered customer and, therefore, an agreement enforceable by law, i.e. a contract within the meaning of Sec. 2(h) of the Indian Contract Act comes into existence pursuant to which movement of goods occurs from the dealer's Unit in Rourkela (Odisha) to the BSO in Howrah (West Bengal). Therefore, according to Sri Behura, mere interposition of the

branch at Howrah is immaterial because the goods move only as an incident of and pursuant to a contract of sale already in existence.

20. The typical transactions relied upon by the parties now need to be examined in detail in light of the rival contentions noted above.

M/s. Gold Mohar Industries (Assessment Year 1989-90) (GP Sheet) –

Sl.No.	Date	Transaction
1	13.07.1989	M/s. Gold Mohar Industries submits application for registration of demand under TBS Scheme for the quarter October'89 – December'89 to BSO, Howrah.
2	26.09.1989	BSO, Howrah intimates the party about booking of demand and requiring them to submit Earnest Money Deposit (EMD) of ₹29,450.00 either through Bank Guarantee/ Letter of Credit valid up to 31.01.90. In the Offer of BSO, Howrah, GP Sheets was offered to the tune of 38 MT for October-December'89.
3		The party in response to such Offer of BSO, Howrah booked and submitted EMD. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)
4		The demand from various customers collected by Howrah Branch and forwarded to the Regional Office of Kolkata. Similarly, other branches under Eastern Region also forwarded their requirement in respect of their Branch. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)
5		Regional Office of Eastern Region as well as other Regions forwarded their demands to CPPD, Kolkata. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)

6		CPPD, Kolkata consolidates the demand from different regions and apportions them to different Plants. The apportioned demand is forwarded by CPPD to SRM situated at different Plant Sites. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)
7		SRM, Rourkela which is part of CMO forwarded demand in respect of different Regions to RSP which inter-alia includes the demand of different Branches of Eastern Region as well as other Regions. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)
8	08.11.1989	The material is loaded into Wagon No. SE-54353 which is shown in Delivery Chalan-cum-Invoice. The material is loaded into Wagon No. SE-55480 which is shown in Delivery Chalan-cum-Invoice.
9	18.11.1989	Offer No. 5893 issued by BSO, Howrah after the receipt of the dispatches of the material in favour of the party as follows : <ol style="list-style-type: none"> 1. GP Sheet .63 mm thickness of 6.7 MT offered against the booking made for quarter June'89 to September'89 (Wagon No. SE-54353) 2. GP Sheet 1.6 mm thickness of 4.74 MT offered against the booking made for quarter October'89 to December'89 (Wagon No.55480)
10	21.11.1989	The party makes payment of ₹1,83,110.00 and Money Receipt No. 23782 is issued against the same.
11	21.11.1989	Delivery Order No. 4297 issued in respect of GP Sheets of .63 mm of 6.7 MT and 1.6 mm – 4.734 MT total quantity of 11.44 MT in favour of the party.
12	23.11.1989	Delivery Chalan-cum-Invoice No. 4326 dt. 23.11.89 is issued in favour of the party by BSO, Howrah for 4.72 MT of 1.6 mm GP Sheet.
13	25.11.1989	Delivery Chalan-cum-Invoice No. 3385 dt. 25.11.89 is issued in favour of the party by BSO, Howrah for 6.62 MT of 0.63 mm GP Sheet (Wagon No. SE54353).

Sri Pattnaik submits that the offer given by the BSO, Howrah on 26.09.1989 is not really an offer but a preliminary offer whereby the party, having registered its annual demand was asked to book the goods to the extent they were available with the BSO. But a firm offer was given by the BSO only on 18.11.1989 and, therefore, the same only is relevant. The goods in question had moved on 08.11.1989, i.e. prior to the giving of the firm offer by the dealer and hence, cannot be treated as 'sale' u/s. 3(a).

Sri Behura, on the other hand, submits that the preliminary offer given on 26.09.1989 is material inasmuch as it required the customer to accept such offer by making an EMD of ₹29,450.00. The party also made the EMD which implies acceptance of the offer and, therefore, it signified a concluded contract. The goods moved only after acceptance of the offer by the customer by making EMD and hence, is nothing but an inter-State sale. The subsequent offer given on 18.11.1989 is clearly relatable to the original offer dt. 26.09.1989 and hence, is of no consequence in so far as Sec. 3(a) is concerned.

21. The date on which the EMD was made is not forthcoming but in its "List of Dates and Analysis of Sample Transaction for the Assessment Year 1989-90 on behalf of Appellant" filed on 13.06.2018, the dealer states that the EMD was submitted pursuant to the offer letter. The goods are said to have moved from Rourkela to BSO Stockyard at Kolkata on 08.11.1989. While the matter stood thus,

BSO, Howrah again made an offer on 18.11.1989 offering the following items:-

Product Category	Thickness, Width, Length etc.	Quantity
<u>July-Sept., 1989</u> G.P. Sheet	0.63 X 910 X 2500	6.700 MT
<u>Oct.-Dec., 1989</u> G.P. Sheet	1.6 X 910 X 2500	<u>4.740 MT</u> 11.440 MT

22. Thus, it is clear that what was finally offered to the customer was GP Sheet measuring 0.63 mm and 1.6 mm. The initial offer relating to 0.5 mm, 1.00 mm and 1.25 mm were not included in the offer dt. 18.11.1989 and the quantity offered in respect of 1.6 mm, i.e. 10.00 MT was also reduced to 4.740 MT. Now in such fact situation, the transaction particulars are to be analyzed in light of the rival contentions.

Sri Behura contends that since the dealer has not furnished information regarding issue of work order/compilation of branch-wise work order/despatch programme/movement plan/wagon card/despatch advice/consignment advice/TBSS register, appropriate adverse inference should be drawn against it by holding that it has deliberately suppressed such documents as the same go against its case. It is further contended that supply of less quantity than the quantity booked or initially offered is immaterial because it does not preclude SAIL from supplying the remaining quantity in future.

Referring to the pre-offer letter dt. 26.09.1989, learned Standing Counsel (CT) contends that the offer of 38 MT of GP Sheets includes the backlog of the previous quarter, which would be apparent from perusal of the second offer letter dt. 18.11.1989 wherein the offer of 6.7 MT is clearly shown as pertaining to quarter July-September'89 and 4.740 MT, to the quarter October-December'89. However, the pre-offer letter dt. 26.09.1989 relates only to October-December'89 which implies that the mention of July-September'89 in the second offer letter dt. 18.11.1989 is relatable to the previous quarter and for which, the pre-offer letter has not been filed. Furthermore, the quantity offered for the previous quarter is shown against a specific wagon bearing No. SE 54353 while that of October-December'89 refers to another wagon bearing No. SE 55480. The above clearly shows a continuous process of supply of goods against registration of demand spread over different quarters.

From the above analysis, the following inferences can thus, be clearly drawn :-

- (i) There was an offer by BSO, Howrah to the party for supply of GP Sheets for October-December'89 against demand registered by party. There was also an offer for supply of GP Sheets for July-September'89.
- (ii) The party accepted the offer by making EMD.
- (iii) Material was produced by RSP and dispatched to BSO, Howrah Stockyard by rail.

(iv) Offer was made to party regarding supply of material for October-December'89 as also for previous quarter (July-September'89) on payment of 100% advance as already stipulated in the initial offer.

(v) Party makes the payment and lifts the materials.

So, the sequence of events is as under :

Offer → Acceptance → Movement of goods → Sale.

23. M/s. Sarda & Sons (Assessment Year 1990-91) (GP Sheet/GC Sheet) –

Sl.No.	Date	Transaction
1	28.10.1991	M/s. Sarda & Sons submitted its application for registration of demand under the Scheme for the period of January-March, 1992 to BSO, Howrah. The demand is for different types of steel materials, i.e. GP Sheets, GC Sheets, MS Rounds, CR Coils etc. in various sizes/dimension and different quantity itemwise.
2	28.11.1991	Stock Yard Advice No. Y15497 dt. 28.11.91 (2 sheets) raised by RSL for despatch of 58.040 MTs of GC Sheets in .63 mm size through Wagon No. SE 94491. This Stock Yard Advice is in favour of BSO, Howrah/SAIL.
3	28.11.1991	RR No. 264780 dt. 28.11.91 issued by Railway for booking said goods.
4	07.01.1992	BSO, Howrah intimates the party about booking Offer 140 MTs quantity of GP Sheets and GC Sheets of .4 mm/.5 mm/.63 mm (20+20+50+50 MTs) in sizes/dimension and requiring them to submit EMD either through Bank Guarantee or through Demand Draft by 14.1.92.
5	02.03.1992	Offer letter No. 6514 dt. 02.03.92 issued by BSO Howrah in favour of the party for sale of following items :

		<p style="text-align: center;"><u>Item</u> <u>Quality/Size</u> <u>Quantity</u></p> <p>GC Sheets .63 mm 7.430 MT</p> <p>GC Sheets .63 mm 6.900 MT</p> <p>GC Sheets .63 mm 6.510 MT</p> <p>Out of the material which had arrived through Wagon No. SE 94491 covered by RR No. 264780 dt. 28.11.91.</p>
6	06.03.1992	The party makes payment of ₹3,86,700.00 and Money Receipt No. 7407 dt. 06.03.92 was issued against the same.
7	07.03.1992	<p>Delivery Order No. 6014 dt. 07.03.92 was issued in respect of Offer dt. 02.03.92 in favour of the party for sale of :</p> <p style="text-align: center;"><u>Item</u> <u>Quality/Size</u> <u>Quantity</u></p> <p>GC Sheets .63 mm 7.430 MT</p> <p>GC Sheets .63 mm 6.900 MT</p> <p>GC Sheets .63 mm <u>6.510 MT</u></p> <p style="text-align: right;">20.840 MT</p> <p>This delivery Order was valid upto 13.03.92 and this DO was issued only after receiving full money as mentioned in DO Money Receipt No. 7407 dt. 06.03.92.</p>
8	09.03.1992	<p>Three Chalan-cum-Invoice Nos. 14130, 14142 & 14144 dt. 09.03.92 are issued in favour of the party by BSO, Howrah. In this sale proceeds actual sale is only for following quantity/items :</p> <p style="text-align: center;"><u>Item</u> <u>Quality/Size</u> <u>Quantity</u></p> <p>GC Sheets .63 mm 6.710 MT</p> <p>GC Sheets .63 mm 6.490 MT</p> <p>GC Sheets .63 mm <u>6.110 MT</u></p> <p style="text-align: right;">19.310 MT</p>

In this case, the dealer registered itself under the TBS Scheme on 28.10.1991 for January to March, 1992 and offer was given by BSO, Howrah on 07.01.1992 for 140 MT of different registered items

for the same period as evident from the reference to such period in the body of the letter.

Subsequently, the second offer was given on 02.03.1992 for the following items :-

<u>Item</u>	<u>Quality/Size</u>	<u>Quantity</u>
GC Sheets	.63 mm	7.430 MT
GC Sheets	.63 mm	6.900 MT
GC Sheets	.63 mm	<u>6.510 MT</u>
		20.840 MT

But it is seen that the offer letter dt. 02.03.1992 relates to October-December'91 as evident from the endorsement "TBS/Oct-Dec, 1991" on the body of the said letter. Therefore, it is evident that offer letter dt. 02.03.1992 does not correspond to the offer letter dt. 07.01.1992 and hence, the contentions advanced in such respect cannot be accepted. The goods were delivered on 09.03.1992. Therefore, the movement of goods on 28.11.1991, was in relation to a previous quarter, i.e. October-December'91.

It is highly pertinent to mention that the registration was for the period January-March'92 and the initial offer given on 07.01.1992 was also for that period. Subsequently, on 02.03.1992 another offer letter was issued but it was for October-December'91, i.e. prior to the period under review. That apart, the goods having been moved on 28.11.1991, i.e. prior to issuance of the offer dt. 07.01.1992 implies that the same was for the previous quarter, i.e. prior to January'91. A comparison of the offer letter dt. 02.03.1992 and the

stockyard advice showing movement of goods from Rourkela Steel Plant to BSO, Howrah shows that there is reference to the Wagon No. SE 94491 in both the documents. The offer letter dt. 02.03.1992 also contains reference to Wagon No. 73688 and another wagon, the number of which is not legible. Significantly, the challan-cum-invoice refers to Wagon No. ER 73688 and not 94491. The offer letter dt. 07.01.1992 relates to the subsequent quarter (January-March, 1992) but the second offer letter dt. 02.03.1992 relates to previous quarter, i.e. October-December'91, and hence, it is evident that the initial offer letter relating to the said period (October-December'91) has not been filed. Nevertheless, it is manifest that the supply of goods to the party is on a continuous basis being spread over different quarters, which pre-supposes an existing link between the customer and the manufacturing unit.

So, the sequence of events is as under :

Offer → Acceptance → Movement of goods → Sale.

24. M/s. Mechanical Wire Industries Ltd. (Assessment Year 1991-92) (Plain Plates) –

It is pertinent to note that Hon'ble CST Appellate Authority in their order dt. 15.03.2010 have also examined a transaction relating to this Company in which the registration of demand was made on 21.11.1991 followed by offer letter on the same date and subsequent offer on 12.02.1992 for supply of GC Sheets, GP Sheets and CR Sheets. However, it is clarified that the present

transaction examined by us relates to the period October-December'91 as evident from the registration of demand on 26.07.1991 against which a pre-offer was given on 31.08.1991 and subsequent offer was on 08.10.1991. Further, the goods indented in the present case are Plain Plates. Therefore, this transaction is entirely different from the one examined by the Hon'ble CST Appellate Authority.

Sl.No.	Date	Transaction
1	26.07.1991	M/s. Mechanical Wire Industries Ltd. submits application for registration of demand under the Scheme for the period October-December'91 to BSO, Howrah for different goods including Plates.
2	31.08.1991	BSO, Howrah intimates the party about booking of demand of 60 MT (Offer) of Plates for October-December'91.
3		EMD exempted (As stated by the dealer in the List of Dates and Analysis of Sample Transactions).
4		Work order No. WO/91/3/0005 issued.
5	19.09.1991	Stockyard Advice No. Y 10393 dt. 19.09.1991 raised by RSP for 58.00 MTs of Plates. This Stockyard Advice is in favour of BSO, Howrah.
6	08.10.1991	Offer letter dt. 08.10.1991 issued in favour of the party for 4 MT of Plates to be delivered against Wagon No. SE 60327.
7	14.10.1991	The party makes payment of Rs.45,600/- and Money Receipt No. 04197 is issued against the same.
8	14.10.1991	Delivery Order dt 14.10.1991 issued in respect of Plates booked.
9	24.10.1991	Challan-cum-Invoice No. 9656 dt. 24.10.1991 is issued in favour of the party by BSO, Howrah for sale 3.040 MT Plates.

As it appears, the dealer registered itself under the TBS Scheme raising demand of different products for the period October-December'91. The offer was made by BSO, Howrah by 31.08.1991 offering 60 MT of Plates. On 19.09.1991, 58 MT of Plates were moved from RSP to Stockyard at Howrah. On 08.10.1991, BSO, Howrah offered 4 MT of goods (Plates) to the party. Therefore, as against initial offer of 60 MT, only 4 MT of Plates was offered and 3.040 MT was actually delivered. The supply was indicated to be made from a specific wagon. Therefore, it is to be seen whether the goods that had moved were earmarked for sale to the party only or not.

It is to be noted that Revenue has also furnished documents relating to this very transaction. It is contended by the dealer that as against a pre-offer given for 60 MT of Plates, only 4 MT was finally offered and accepted. Sri Pattnaik has argued that the movement of goods in this case has no bearing with the initial offer and hence, it must be construed that there was no link between the two. Learned Standing Counsel (CT) appearing for the Revenue, on the other hand, has forcefully argued that after registration of demand, a Code No. is issued to the party, which in the present case is MO18. Basing on the registration, an offer was given for October-December'91. The same was accepted by the party. Thereafter a work order was issued for the period from October-December'91.

The subsequent offer letter issued to the party on 08.10.1991 refers to the work order. This shows a link between the

movement of goods and the work order issued earlier. Since the work order was in existence even before production and movement of the goods, there is no way by which it can be held that the movement of goods did not have any relation with it.

The following sequence of events is thus, clearly discernible from the above analysis :

- (i) Offer of supply given by BSO, Howrah against registration of demand by party.
- (ii) Acceptance of such offer by party by making EMD.
- (iii) Work order issued for supply of goods.
- (iv) Goods are moved from RSP to Stockyard of Howrah.
- (v) Offer is given to party to lift the materials on payment of 100% advance as stipulated in initial offer letter.
- (vi) Party makes payment and lifts the materials.

So, the sequence of events is as under :

Offer → Acceptance → Work Order → Movement of goods → Sale.

25. M/s. Mechanical Engineering Industries (Assessment Year 1992-93) (GP Sheets) –

Sl.No.	Date	Transaction
1	21.05.1992	M/s. Mechanical Engineering Industries, Calcutta submitted application for registration of demand for the period of July to September, 1992 to Branch Manager, SAIL, BSO, Howrah for GP Sheets of 130 MT.
2	17.06.1992	AGM, CS, Eastern Region Calcutta in his memo No. ER/CS/12/Avail/92-93, dt. 17.06.92 communicated to BM BSO Howrah the availability

		of GP Sheets and other materials.
3	16.07.1992	SAIL, BSO, Howrah issued offer No. SWS/TBS/ July-September'92 dt. 16.07.92 to the party offering GP Sheets for 85 MT :
4	16.07.1992	SAIL, BSO issued another offer letter (Offer) No. HWS/July- September, 1992 dt. 16.07.92 to the party offering CR Coils of Untested Quality for 100 MT : Through these offer letters (Offer) party was requested to deposit earnest money through Bank Guarantee for an amount of ₹80,000/-, ₹75,000/-, ₹42,000/- and ₹35,000/- or alternatively make payment through Demand Draft or Pay Orders for lesser amount of ₹64,000/-, ₹60,000/-, ₹34,000/- and ₹28,000/-.
5	25.07.1992	The party deposited 2 Bank Guarantees, one for amount of ₹1,47,000/- and another ₹1,27,000/- to BSO, Howrah covering EMD for supply of these items.
6	01.08.1992	SAIL, CMO, Calcutta issued dispatch programme for the month of August 1992 to RSP to dispatch GP Sheets to different BSOs including BSO Howrah as per the details.
7	22.08.1992	GP Sheet of 58.100 MT was dispatched by RSP in Wagon No. ER 105677 and Stockyard Advice No. Y10051 dt. 22.08.92 raised on AM, SAIL, BSO Howrah amounting to ₹13,62,681.28 as per details RR No. 304825 dt. 22.08.92 issued by Railway :
8	28.08.1992	BSO, Howrah received the Wagon No. ER 105677 on 28.08.92 and entered in Railway Receipt Register, Wagon Card Register of BSO, Howrah.
9	04.09.1992	BSO, Howrah issued Offer Letter No. OL/HOW/92 /02943 dt. 04.09.92 to the party offering 13.920 MT of .5mm GP Sheets and requested party to deposit ₹3,24,000/- towards the cost of the material. This offer was valid upto 11.09.92.
10	05.09.1992	The party deposited ₹3,24,000/- to BSO, Howrah vide Cheque No. 515047 dt. 05.09.92 and BSO

		issued a money receipt to the party dt. 05.09.92.
11	05.09.1992	Delivery Order No. 2268 dt. 05.09.92 issued by BSO in favour of the party for sale of 2 GP Sheets weighing 6.490 MT and 7.430 MT (total 13.920 MTs).
12	08.09.1992	Challan-cum-Invoice No. 4367 dt. 08.09.92 issued by BSO, Howrah in favour of the party after receiving full value of the goods for actual sale of 13.720 MTs. 2 GP Sheets in .5 mm size against the Delivery Order dt. 05.09.92 for 13.920 MT.
13	08.09.1992	The party lifted 13.720 T and challan-cum-invoice No. CH/HOW/92/4410 dt. 08.09.92 amounting to ₹3,19,264.40 issued to the Party.

In this case, the dealer registered itself under the TBS Scheme raising a demand of 130 MT of different products for the period from July, 1992 to September, 1992. On 13.07.1992, 15.07.1992 and 16.07.1992, BSO, Howrah offered different quantities of goods, asking the party to deposit Bank Guarantee. On 22.08.1992, 40.510 MT of goods were despatched from Rourkela to Kolkata Stock Yard by railway wagon. On 04.09.1992 BSO, Howrah issued the second offer (firm offer) for 13.920 MT of 0.5 mm of GP Sheets on the condition of delivery against 100% advance payment. Accordingly, the materials were delivered.

In this case, the dealer has filed a typed copy of the application for registration of demand by the customer submitted on 21.05.1992 for the period July-September'92. But the attached sheet containing details of the quantity of different items registered is not

legible at all. Nevertheless, in the write up furnished by the dealer in respect of the transaction, it is stated that the registration of GP Sheets was for 130 MT. Offer letter bearing No. SWS/TBS/July-September'92 dt. 16.07.1992 has been furnished which shows offer of 85 MT of GP Sheets and is described as "Quarterly Contract". It further appears that the party was called upon to make EMD of Rs.34,000/- if paid by Demand Draft of Pay Order or, Rs.42,500/- if paid through Bank Guarantee. The party furnished Bank Guarantee on 25.07.1992 with reference to the offer letter No. SWS/TBS/July-September'92 dt. 16.07.1992 and requested for issue of work order accordingly. The dealer has not filed the copy of work order issued in respect of the above referred quantity of GP Sheets, but has filed statements showing availability of different items for the quarter July-September'92 in respect of Howrah/ Kolkata branches, earmarked to Rourkela Steel Plant. The document at page-80 of the list of documents filed by the dealer on 11.06.2018 shows that in so far as GP Sheets are concerned, the availability thereof in relation to Rourkela Steel Plant vis-à-vis other branches has been enumerated in a tabular form. Significantly, it also includes the column titled "Backlog adjusted by CPPD and net availability". This implies that the quantities offered to different customers for the relevant quarters are consolidated branch-wise. Obviously, it would include the quantity offered to the instant party, viz. M/s. Mechanical Engineers Ltd. The dealer has not filed the despatch plans or despatch advices. The wagon card for GP Sheets

issued in respect of Rourkela Steel Plant mentions wagon number, invoice number. The offer letter was issued on 04.09.1992 for 6.490 MT (0.5 mm) and 7.430 MM (0.6 mm) after receipt of goods. It contains the party code, i.e. M-056, and the wagon number, i.e. ER-105677. At the bottom of the offer letter, there is clear reference under the heading "Remarks" - "QC/J-S (I.L.O.U/T)" meaning "Quarterly contract/July-September". Further, Packet No. 76134 of size 0.50 X 900 X 2500 for quantity 6.490 MT and Packet No. 76224 of size 0.50 X 900 X 2500 for quantity 7.430 MT with reference to the aforementioned wagon numbers is mentioned in the offer letter dt. 04.09.1992. The said packets are mentioned in the stockyard advice issued by Rourkela Steel Plant to BSO, Howrah. There is reference to the quarterly contract vide offer letter dt. 16.07.1992. The wagon card for Wagon No. ER-107677 relates to the aforementioned packet numbers mentioned in the offer letter. The delivery order also bears reference to the aforementioned quarterly contract. The challan-cum-invoice refers to wagon number and consignment advice number. Therefore, there is link between pre-offer and movement of goods as well as the subsequent offer.

From the above analysis, the following sequence of events can be thus, culled out :

- (i) Offer of supply given by BSO, Howrah against registration of demand by party.

- (ii) Party accepted such offer by furnishing Bank Guarantee with request for issuing work order.
- (iii) Goods are moved from RSP to Howrah Stockyard.
- (iv) Offer is given to party referring to the initial offer letter to lift the materials on payment of 100% advance as stipulated in the initial offer letter.

So, the sequence of events is as under :

Offer → Acceptance → Movement of goods → Sale.

26. M/s. Durez Engineers (P) Ltd. (Assessment Year 1993-94) (Chequered Plates) –

Sl.No.	Date	Transaction
1	06.04.1993	M/s. Durez Engineers (P) Ltd. Submits application for registration of demand under the Scheme for the period of April, 1993 to March, 1994 to BSO, Howrah and for total quantity of 1110 MT of materials including Plates, Chequered Plates (20 MT), HR Sheet, CR Sheets, MS Rounds of different dimensions and qualities.
2	13.05.1993	BSO of Howrah intimates the party about booking of 263 MT (offer) of materials for April-June, 1993, i.e. 25% and requiring them to submit EMD either through Bank Guarantee or through Demand Draft.
3	03.06.1993	Reminder given to the party for payment of EMD and party informed that no booking will be done for 2 nd quarter (July-September, 1993) against annual booking in absence of EMD.
4	20.09.1993	Work order issued by BSO, Howrah for 2.5 + 2.5 MT of Chequered Plate for supply during October-December'93 for 1050 MT of different items including 20 MT of Chequered Plates.
5		SRM, Rourkela which is part of CMO forwarded demand in respect of different Regions to RSP

		<p>which inter alia includes the demand of different branches of Eastern Region as well as other Regions.</p> <p>Movement Plan (Mill wise) for the month of March, 1994 given for Chequered Plates is for 220 MT with respect to 5/6 mm quality/grade for Howrah Branch. It also contains reference of movement of 110 MT 6 mm Chequered Plates to Bhilai Branch. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)</p>
6	03.03.1994	<p>Loading of Chequered Plates of 55.800 MT (21.200 MT of 6 mm & 34.600 MT of 5 mm) is loaded into Wagon No. WR-70800 and RR No. 394715 dt. 03.03.1994 is issued by Railways. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)</p>
7	06.03.1994	<p>Stockyard Advice No. Y 17768 & Y 17767 dt. 03.03.1994 raised by RSP for 55.800 MTs Chequered Plates of 5 mm & 6 mm. This Stockyard Advice is in favour of BSO, Howrah.</p>
8	09.03.1994	<p>Rakes containing different wagons including Wagon No. 70800 containing consignment of Chequered Plates reach Howrah and the delivery of the consignment was taken by BSO, Howrah. The material was stacked with earlier material lying in the yard.</p>
8	16.03.1994	<p>Offer letter dt. 16.03.1994 issued 'subsequent to pre-sale' in favour of the party for 2.5 MT of Chequered Plates (Work Tested) in 5 mm size against booked quantity of 10 MT with stipulation that material would be supply from "any wagon". This offer letter was valid upto 22.03.1994.</p>
9	17.03.1994	<p>The party makes payment of Rs.43,700/- and Money Receipt No. 5134 is issued against the same.</p>
10	17.03.1994	<p>Delivery Order No. 3997 dt 17.03.1994 issued in respect of Chequered Plates of 5 mm for a quantity of 2.5 MT in favour of the party only after receiving full money as mentioned in DO Money Receipt No. 5134 dt. 17.03.1994. This DO also stipulate that material would supply from</p>

		"Any Wagon".
11	18.03.1994	Challan-cum-Invoice No. 9423 dt. 18.03.1994 with Challan No. 9573 is issued in favour of the party by BSO, Howrah for sale 2.740 MT is of 5 mm Chequered Plates.

As it appears, the party registered itself under the TBS Scheme raising demand of 1110 MT of different products for the period April, 1993 to March, 1994. The offer was made by BSO, Howrah by 13.05.1993 offering the following quantity :-

Material	Dimensions	Quality	Quantity(MT)
Cheq. Plates	5.00	WTD	10.00
Cheq. Plates	6.00	WTD	10.00

On 03.03.1994, 55.800 MT of Chequered Plates were moved from Odisha to Kolkata. On 16.03.1994, BSO, Howrah offered 2.5 MT of goods (Chequered Plates) to the party. Therefore, as against initial offer of 20 MT only, 2.5 MT of Chequered Plates was offered.

It is pertinent to mention that the Revenue has also furnished documents relating to this transaction. It is contended by the dealer that as against a pre-offer given for 20 MT of Chequered Plates, only 2.500 MT was finally offered and accepted. Sri Pattnaik contends that the movement of goods in this case has no bearing with the initial offer and hence, it must be construed that there was no link between the movement of goods and contract. Learned Standing Counsel (CT), on the other hand, has forcefully argued that after registration of

demand a Code No. is issued to the party which, in the present case is D036. Basing on the registration an offer was given for 1050 MT for the entire year, i.e. from April'93 to March'94, including for 20 MT of Chequered Plates. The same was accepted by the party by payment of EMD. Thereafter a work order was issued for the period from October-December'93 for 2.5 + 2.5 MT. Referring to the pre-offer letter, it is submitted by learned Standing Counsel (CT) that the party was required to book for the quarter April-June'93 to the extent of 25% of the total amount offered.

It is observed that the total quantity offered in respect of all items is 1050 MT, 25% of which comes to 263 MT. The party was asked to make EMD @ Rs.100/- per MT, i.e. ₹26,300/-. Significantly, the quantity mentioned in the work order, i.e. 2.5 MT of 5 mm Chequered Plates and 2.5 MT of 6 mm Chequered Plates is 25% of the total quantities offered against such items, i.e. 10 MT + 10 MT. Thereafter, summary of work orders issued by all branches in respect of different customers being forwarded to the CMO, were compiled branch-wise/product-wise/ quality-wise. The despatch programme was also summarized branch-wise/ product-wise/ quality-wise. Finally, movement plans were generated for each month in respect of individual Steel Plants by the SRM's Office. This movement plan bears a number, i.e. R/CP/9403/93. This movement plan number is mentioned in the Stockyard Advice issued by Rourkela Steel Plant on 02.03.1994. This shows a link between the movement of goods and the specific

movement plan generated by SRM on the basis of Despatch Advice issued by the CMO. The total quantity to be moved under the aforementioned movement plan, i.e. 228 MT of Chequered Plates obviously includes 5 MT of Chequered Plates covered under the work order issued to the party. Therefore, there is a clear link between the movement of goods and the movement plan which in turn is based upon the consolidation of all work orders issued by the BSO in respect of the customers. While it is true that around 55.800 MT of Chequered Plates was moved from Rourkela Steel Plant to BSO, Howrah, yet as per offer letter dt. 16.03.1994, 2.5 MT 5 mm Chequered Plates was offered to the party against the aforementioned work order. Since the work order was in existence right from 28.09.1993, i.e. even before production and movement of the goods, there is no way by which it can be held that the movement of goods did not have any relation with it.

Analysis of the above transaction thus, reveals the following sequence of events :

- (i) Offer of supply given by BSO, Howrah against demand registered by party with instruction to book 25% of the total amount.
- (ii) Work order was issued for supply of goods.
- (iii) Goods moved from RSP to Howrah Stockyard.
- (iv) Offer is given to party with reference to the work order to lift the materials against payment of 100% advance.
- (v) Party makes the payment and lifts the materials.

So, the sequence of events is as under :

Offer → Acceptance → Work Order → Movement of goods → Sale.

27. M/s. Dekon India (Assessment Year 1993-94) (Chequered Plates) –

Sl.No.	Date	Transaction
1	19.03.1993	M/s. Dekon India submits application for registration of demand under the Scheme for the period of April to March, 1994 to BSO, Howrah. The demand is for different types of steel materials, i.e. Plates, HR Sheets, CR Sheets and Chequered Plates in various sizes/dimensions and different quantity items wise made, these items are to be manufactured in any Steel Plants. Out of total 1445 MT steel materials, 45 MT Chequered Plates in two different sizes/dimensions, i.e. 5 mm (20 MT) and 6 mm (25 MT) were registered.
2	29.03.1993	BSO, Howrah intimates the party about booking/offer of 1175 MT against the above total demands of 1445 MT quantity of different sizes/dimensions of steel for the said period and requiring them to submit EMD either through Bank Guarantee or through Demand Draft for 25% of the booked quantity for April-June, 1993.
3	15.06.1993	Party vide its letter dt. 15.06.1993 communicated/requested BM, BSO, Howrah to adjust the amount of ₹29,500/- against BG No. 3/91 dt. 07.09.92 for Rs.1 lakh.
4		SRM, Rourkela which is part of CMO forwarded demand in respect of different Regions to RSP which inter alia includes the demand of different branches of Eastern Region as well as other Regions. Movement Plan (Mill wise) for the month of March, 1994 given for Chequered Plates is for 220 MT with respect to 5/6 mm quality/grade for Howrah Branch. It also contains reference of

		movement of 110 MT 6 mm Chequered Plates to Bhilai Branch. (As stated by the dealer in the List of Dates and Analysis of Sample Transactions)
5	03.03.1994	Loading of Chequered Plates of 55.800 MT (21.200 MT of 6 mm & 34.600 MT of 5 mm) is loaded into Wagon No. WR-70800 and RR No. 394715 dt. 03.03.1994 is issued by Railways.
6	08.03.1994	Stockyard Advice No. Y 17768 & Y 17767 dt. 08.03.1994 raised by RSP for 55.800 MTs Chequered Plates of 5 mm & 6 mm. This Stockyard Advice is in favour of BSO, Howrah.
7		Rakes containing different wagons including Wagon No. WR 70800 containing consignment of Chequered Plates reaches Howrah.
8	16.03.1994	Offer letter No. 5355 dt. 16.03.1994 issued by BSO in favour of the party for sale of 5.000 MT of Chequered Plates (Work Tested) in 5 mm size/dimension. This offer letter was valid upto 22.03.94.
9	17.03.1994	The party makes payment of ₹91,700/- and Money Receipt No. 5135 dt. 17.03.1994 was issued against the same.
10	17.03.1994	Delivery Order No. 3999 dt. 17.03.1994 was issued in respect of offer dt. 17.03.1994 for sale of 5.000 MT of Chequered Plates of 5 mm in favour of the party only after receiving full money as mentioned in DO, Money Receipt No. 5135 dt. 17.03.1994.
11	18.03.1994	Challan-cum-Invoice No. 9424 dt. 18.03.1994 is issued in favour of the party by BSO, Howrah. In this sale proceed actual sale of 5.220 MT of Chequered Plates in 5 mm size was effected against the offer letter dt. 16.03.1994 and DO dt. 17.03.1994 in which an offer/ DO was made for 5.000 MT Chequered Plates.

The party registered under TBS Scheme for the period April, 1993 to March, 1994 for 1445 MT of different goods. The party

was offered 1175 MT including 45.000 MT of Chequered Plates in pre-offer dt. 29.03.1993. On 02.03.1994, 55.800 MT of Chequered Plates moved from Odisha to West Bengal. On 16.03.1994 offer was given to the party for sale of only 5 MT of Chequered Plates. Thus, it is clear that against the initial offer of 45 MT, the party was finally offered only 5 MT, which being accepted also appears to have been supplied.

It is pertinent to mention that the Revenue has also furnished documents relating to this transaction. It is contended by the dealer that as against a pre-offer given for 1445 MT including 20 MT + 25 MT = 45 MT of Chequered Plates, the dealer was offered 1175 MT including 20 + 25 MT = 45 MT. The party was asked to book 25% of the total quantity, i.e. 1175 MT equal to 295 MT and asked to make EMD of Rs.29,500/- @ Rs.100/- per MT. Accordingly, work order was issued on 01.10.1993 for 5 + 6.250 MT which is 25% of 45 MT preliminarily offered. Out of the said 11.25 MT, the party was finally offered only 5 MT with reference to the above work order. Since the work order was in existence right from 01.10.1993, i.e. even before production and movement of the goods, there is no way by which it can be held that the movement of goods did not have any relation with it.

Analysis of the above transaction thus, reveals the following sequence of events :

- (i) Offer of supply given by BSO, Howrah against demand registered by party with instruction to book 25% of the total amount.

- (ii) Party accepted such offer by adjusting its Bank Guarantee already given to BSO.
- (iii) Work order was issued for supply of goods.
- (iv) Goods moved from RSP to Howrah Stockyard.
- (v) Offer is given to party with reference to the work order to lift the materials against payment of 100% advance.
- (vi) Party makes the payment and lifts the materials.

So, the sequence of events is as under :

Offer → Acceptance → Work Order → Movement of goods → Sale.

28. In addition to the above transactions relied upon by the dealer, Revenue has also furnished the details of several transactions, which include the ones relating to M/s. Flakt India Ltd. (1993-94) and M/s. Citadel Engineers (P) Ltd. (1993-94). Since the transactions relating to M/s. Mechanical Wire Industries, M/s. Durez Engineers (P) Ltd. and M/s. Dekon India are common and have already been analyzed and discussed herein before, the same are not examined again.

29. **M/s. Flakt India Ltd. (Assessment Year 1993-94)
(Chequered Plates) :-**

Sl.No.	Date	Transaction
1	15.02.1993	M/s. Flakt India Ltd. submits application for registration of demand under AC/LTC for the April, 1993 to March, 1994.
2	23.03.1993	BSO of Howrah intimates the party about booking

		of total demand of 8025 MT and asks for EMD.
3	08.09.1993	Work order issued for 50 + 15 MT.
4	03.11.1993	Branch-wise dispatch programme prepared for October-December'93 along with branch-wise/product-wise/quantity wise summary of DP.
5	04.11.1993	Summary of work order prepared by Eastern Regional Office for October-December'93.
6		Despatch programme for March'94 prepared by SRM, Rourkela for 220 MT.
7	02.03.1994	Stockyard advice issued by RSP in favour of BSO, Howrah.
8	16.03.1994	Offer letter issued by BSO, Howrah for 24 MT.
9	17.03.1994	Delivery order issued.
10	17.03.1994	Challan-cum-invoice issued.

As it appears, as against the demand raised in the application for registration, an offer was made for 8025 MT of the said product. On such basis, a work order was issued on 08.09.1993 being WO/93/3/0022. In the said work order, the quantity of Chequered Plates was stated as 50 MT and 15 MT. The said work order finds place in the movement plans for the year 1993-94 prepared by SRM's Office at Rourkela. The despatch programme indicates despatch of 220 MT. Finally on 16.03.1994, the party was offered 24 MT of Chequered Plates. Since the offer letter contains a reference to the Work Order No. WO/93/3/0022, it is contended by the Revenue that it pre-supposes that the goods had moved in pursuance thereof and, therefore, is an incident of sale.

It is contended by the dealer that as against a pre-offer given for 200 MT + 100 MT of Chequered Plates, the party was asked to book 25% of the total quantity, i.e. 75 MT. Accordingly, work order was issued on 08.09.1993 initially for 75 MT, but subsequently amended to 50 MT + 15 MT. It must be noted that the so-called pre-offer was for Annual Contract, April'93 to March'94, but the work order was issued for October-December'93. Out of the said 65 MT, the party was finally offered only 24 MT with reference to the above work order. Since the work order was in existence right from 08.09.1993, i.e. even before production and movement of the goods, there is no way by which it can be held that the movement of goods did not have any relation with it.

Analysis of the above transaction reveals the following sequence of events :

- (i) Offer of supply given by BSO, Howrah against demand registered by party with instruction to book 25% of the total amount.
- (ii) Work order was issued for supply of goods.
- (iii) Goods moved from RSP to Howrah Stockyard.
- (iv) Offer is given to party with reference to the work order to lift the materials against payment of 100% advance.
- (v) Party makes the payment and lifts the materials.

So, the sequence of events is as under :

Offer → Acceptance → Work Order → Movement of goods → Sale.

30. M/s. Citadel Engineers (P) Ltd. (Assessment Year 1993-94) (Chequered Plates) :

Sl.No.	Date	Transaction
1	06.04.1993	M/s. Citadel Engineers (P) Ltd. submitted application for registration of demand under AC/LTC for April'93 to March'94.
2	13.05.1993	BSO of Howrah issued offer asking the party to submit 25% booking and EMD.
3	03.06.1993	Reminder issued to the party.
4	28.09.1993	Work Order issued for 2.5 MT (5 mm) and 2.5 MT (6 mm) of Chequered Plates.
5	03.11.1993	Branch-wise dispatch programme and summary of DP prepared for October-December'93.
6.	04.11.1993	Summary of work order prepared by Regional Office for October-December'93.
7	06.03.1994	Stockyard advice issued to BSO, Howrah.
8	16.03.1994	Offer letter issued for 2.5 MT of Chequered Plates
9	17.03.1994	Delivery order issued.
10	17.03.1994	Chalan-cum-invoice issued.

As it appears, the customer registered demand for 20 MT of Chequered Plates for the year 1993-94 comprising of 10 MT of 5 mm thickness and 10 MT of 6 mm thickness. The party was offered 2.5 MT of 5 mm and 2.5 MT of 6 mm. Ultimately, the party was also offered 2.5 MT of 5 mm of Chequered Plates. Thus, the party was not supplied 6 mm of Chequered Plates as offered.

It is contended by the dealer that as against a pre-offer given for the April'93 to March,94 of Chequered Plates of 20 MT, the party was asked to book 25% of the said quantity, i.e. 5 MT. Accordingly, work order was issued 2.5 MT + 2.5 MT = 5 MT on 28.09.1993. Out of the said 5 MT, the party was finally offered only 2.5 MT with reference to the above work order. Since the work order was in existence right from 28.09.1993, i.e. even before production and movement of the goods, there is no way by which it can be held that the movement of goods did not have any relation with it.

Analysis of the above transaction reveals the following sequence of events :

- (i) Offer of supply given by BSO, Howrah against demand registered by party with instruction to book 25% of the total amount.
- (ii) Work order was issued for supply of goods.
- (iii) Goods moved from RSP to Howrah Stockyard.
- (iv) Offer is given to party with reference to the work order to lift the materials against payment of 100% advance.
- (v) Party makes the payment and lifts the materials.

So, the sequence of events is as under :

Offer → Acceptance → Work Order → Movement of goods → Sale.

31. Thus, prima facie, it is observed that the methodology adopted in each of the cases examined by us is, as follows:-

The customer registers his demand for iron and steel materials with the BSO for a certain period (Annual or Quarterly), which makes an initial offer of certain quantities out of the total quantities registered. The party is asked to book a portion of the total quantity so offered and to submit EMD/Bank Guarantee as token of acceptance. The same being complied by the party, a work order representing the said portion of the goods in question is issued. The goods in question is manufactured by any of the constituent Steel Plants including the dealer in the present case (RSP) and despatched to the branch office. Upon receipt of the goods in question, the BSO again makes an offer to the party of a certain quantity of the materials from out of the total quantity received, but with clear reference to the earlier work order/pre-offer issued. There is, therefore, a link between the work order/pre-offer and the movement of goods. Now, the question is whether the said work order/pre-offer can be treated as a contract of sale. Moreover, in some cases supplies are made to the same party relating to different periods (quarter), which suggests continuity in the process. So, the goods are found to be supplied to a pre-identified buyer but whether against a pre-existing contract, is to be determined.

32. In addition to the aforementioned eight numbers of transactions, we have examined the details of some despatches, sales

and pending allotments as directed by the Hon'ble CST Appellate Authority. The dealer filed the following documents in original before this Tribunal : -

- (i) Dispatch programme and movement plan of CMO for Steel Material for Rourkela Steel Plant and Bokaro Steel Plant;
- (ii) Stock Yard Advice of Rourkela Steel Plant;
- (iii) Movement plan of CMO for Rourkela Steel Plant to different branches;
- (iv) Delivery orders issued by BSO, Kolkata to parties;
- (v) Challan-cum-Invoice issued by BSO, Kolkata to the parties;
- (vi) Despatch advice and stock yard advice of RSP issued to BSO, Kolkata No. 51-99;
- (vii) Despatch advice and stock yard advice of RSP issued to BSO, Kolkata No. 151-199;
- (viii) Despatch advice and stock yard advice of RSP issued to BSO, Kolkata No. 200-250;
- (ix) Despatch advice and stock yard advice of RSP issued to BSO, Kolkata No. 300-350;
- (x) Despatch advice and stock yard advice issued by Rourkela Steel Plant No. 351-399;
- (xi) TBS register of BSO, Rourkela; and
- (xii) TBS register of BSO, Madras.

On perusal of these records, it came to light that none of them relate to BSO, Howrah, but to BSOs of Kolkata, Rourkela and Madras. Of course, the stockyard advice of RSP as well as movement plans issued by Central Marketing Organization (CMO) or RSP to different branches have been filed, but they relate to the

Southern Region of SAIL. On query by us, learned Counsel appearing for the dealer stated that the BSO, Howrah has been closed since last 17 years and hence, it is not possible to trace out any documents relating to it, but asserted that, the documents produced are typical documents inasmuch as SAIL and its branches spread all over the country follow an uniform procedure. In view of such assertion, the records/documents filed by the dealer are accepted for verification.

Before proceeding to analyze the documents, it would be pertinent to mention here that on the last date of hearing, these records being produced by the dealer were not only perused by the Tribunal, but also were shown by Officers of SAIL to the Senior Officers of the State present during hearing in the open Court. This Tribunal specifically directed learned Counsel for the dealer to furnish copies of relevant extracts from the records produced to the Revenue as a condition for taking the same on record. It is highly significant to note that the Revenue closed its argument on 18.06.2018 and the matter was adjourned to 19.06.2018 for reply by the dealer. The Revenue filed a petition on 19.06.2018 calling for certain documents. Since the dealer had filed the aforementioned documents, which, according to it more or less related to evidence of "branch transfer", the petition of Revenue was rejected, more so being highly belated. However, in the written submissions filed on 23.06.2018, the Revenue contends at Page-4 that *"... Being directed by the Chair, the appellant showed the very same register to the respondent for a few minutes. The respondent could only*

get a chance to glance through the register where upon it was found that this register was related to CMO, Madras and unrelated to the present case, i.e. not relating to movement of goods from Odisha to West Bengal which falls under the jurisdiction of CMO, Calcutta. On being so informed by the respondent, the appellant took away the Register. No other record or document was given or shown to the respondent on 19-06-2018. The hearing was concluded shortly thereafter on 19-06-2018 itself. On 21-06-2018 afternoon, the appellant served copies of some documents relating to 12 registers. Photocopies of only a few pages of the registers have been given, without mentioning the period to which the registers related. There was no page marking. Some pages are not legible at all. As complete set of records and documents were not given to the respondent, the respondent could not examine the contents. However, prima facie, it is found that the registers mostly related to CMO, Madras; not to CMO, Calcutta. These records and documents were found to be illegible and not verifiable. Therefore, reasonable opportunity was not given to the respondent to examine the requisite registers, records and document to argue its case.” Further, the Revenue contends at Page-44 that “...In spite of the appellant not giving any record to the respondent, the hearing was concluded on 19-06-2018. Therefore, the respondent did not get any opportunity to examine the records. He could not confront the appellant relating to contents. As a result, the respondent is aggrieved by the violation of natural justice. As the matter stood thus,

the appellant on 21-06-2018, gave certain records and documents to the respondent. As already stated in Para-2, these records are not in legible and verifiable format. Therefore, these documents submitted belatedly, i.e. after conclusion of the hearing should not be admitted by the Hon'ble Tribunal for meeting the ends of natural justice..."

We are surprised yet again at the above approach of the Revenue. Firstly, the documents were not submitted after conclusion of hearing, but on the last date of hearing when arguments were in progress and no objection was raised by Revenue at that time. Secondly, as has already been stated herein before, the representatives of the State Govt. present in the Court and dealing with the matter all through, were shown the records by the Officers of SAIL in the open Court and no objection whatsoever was raised in such respect. Thirdly, on own admission of Revenue, the dealer gave some records and documents to the respondent, though they were purportedly not legible and in a verifiable format. Since the original records were available in the Tribunal, the Counsel for Revenue could have sought for some time to verify the same with permission of this Tribunal, but no such step was taken. At the same time, the quality of records furnished by the dealer to the Revenue was complained of and the whole issue was deliberately projected in a manner to show violation of natural justice by making subtle allegations against this Tribunal. The above conduct of Revenue, which is not expected, is hence, not appreciated.

Be that as it may, Hon'ble CST Appellate Authority has directed this Tribunal to look into the above referred documents to cross-check whether the movement of goods can be attributed to incident of contract of sale.

(A) Documents relating to dispatch :-

(i) Despatch programme and movement plan of CMO for steel material for RSP and Bokaro Steel Plant :-

This register contains the details of movement plans generated by SAIL, Southern Division, Madras and shows despatches made by RSP to different branches under the Southern Division such as Madras, Cochin, Bangalore, Trichi, Coimbatore, etc. and also to Howrah Stockyard at different times. We have seen that all the dispatch plans are in identical format. We shall, therefore, refer to one such despatch programme issued by General Marketing Manager, CS/ SR/ Madras to BM, BSO, Madras and other branches in the Southern Region. A dispatch programme has been issued in the said Inter Office Memo in respect of RSP for HR Coils for the quarter April-June, 1992. Enclosed to such Inter Office Memo is a list containing piecemeal despatches mentioning the names of different stockyards enumerated as Sl. No. A to Z (ii). Howrah Stockyard finds place at Sl. No. V against which total quantity is mentioned as 206 MT. This implies that the quantity to be dispatched is in relation to the demand apportioned to Howrah BSO by CPPD. Para-6 of written

note of submission filed by the dealer being relevant to the context, is quoted here under :-

“6. The demand from various customers collected by Branches and forwarded to the Regional Office of Kolkata. Similarly, other branches under Eastern Region also forwarded their requirement in respect of their branch. Regional office of Eastern Region as well as **other Regions** forwarded their demands to CPPD Kolkata. CPPD Kolkata consolidates the demand from different regions and apportions them to different plants. The apportioned demand is forwarded by CPPD to SRM situated at different plant sites. SRM, Rourkela which is part of CMO forwarded demand in respect of different Regions to RSP which inter-alia includes the demand of different Branches of Eastern Region as well as **other Regions.**”
(Emphasis supplied)

STEEL AUTHORITY OF INDIA LIMITED
SOUTHERN REGION
MADRAS

INTER OFFICE MEMO

From : General Marketing Manager CS/SR/Madras	To BM:BSO: Madras/ Trichy/ Coimbatore/ Cochin /Hyderabad/Vizag/Vijayawada Bangalore/Belgaum.
--	---

Ref. No.....SR/CS/B(MP)92-93/2490

Date : 29.8.92

Enclosed please find the following D. Programme for necessary action at your end :

PLANT	:	ROURKELA
PRODUCT	:	HR Coils
DP REF. NO	:	RHC AJ 92 I 166-167
QUANTITY	:	1476
MONTH / QUARTER	:	April– June'92
REMAKRS	:	Despatch programme

Encl : As above

Sd/-
(GMM/CS/SR)"

The fact that the despatches are relatable to pre-identified buyers is also apparent from an Inter Office Memo from AC (M), CSSR Madras to the Chief SRM, Bokaro which reads as under :-

"Ref. No. SR/CS/8/HRCS/JS/92/2959

Date : 18.9.92

Sub : Despatch of SAIL MA MR Coils, SAIL Form HR Coils 6 mm.

1. M/s. TPI, Madras has booked 150 MTs of SAIL MA HR Coils 300/350 HI for urgent supply. This is in response to your confirmation vide endorsement dt. 2.9.92 on our IOM of even No. 2321 Dt. 25.8.92. This quantity must have been released by GMM/ HRCS/ CPPD/ Calcutta.

Since the party requires the materials urgently, it is requested that priority be given on dispatch of this materials.

2. We had also planned for 100 MT of SAIL Form HR Coils in 6 mm. You are requested to arrange for immediate dispatch.

Please confirm.

CC to GMM/ HRCS/ CPPD/ Calcutta at BR/ Madras for information please."

So, from a perusal of the register/record, it is evident that the dispatch programme for different units is prepared by Marketing Department of each region and that the same shows the demands received by different branches under the said region.

(ii) Stockyard Advice :

We have perused the file "Stockyard Advice of Rourkela Steel Plant" containing the stockyard advices from 31.03.1989 to 04.01.1991. All the said advices are identical and have been issued by Rourkela Steel Plant to BSO, SAIL at Kolkata. The advice, inter alia, refers to dispatch advice number, RR No., Wagon No., particulars of the quantity dispatched etc. Since the dealer has filed the Despatch Advice and Stockyard Advice Register, it would be proper to examine the same since it contains the necessary correlation between the dispatch advice and corresponding stockyard advice.

(iii) Despatch Advice and Stockyard Advice of Rourkela Steel Plant issued to BSO, Kolkata No. 151-199 :

In this register, there are dispatch advices along with corresponding stockyard advices. It must be noted at the outset that a common register appears to have been maintained for direct sale to parties as well as stockyard sales effected by BSO. We have perused some dispatch advices. Each of them appear to be identical and it is seen that similar details as in the stockyard advices are mentioned in the dispatch advice, but there is a reference to "Despatch Programme" in both the documents. For example, in the Despatch Advice No. PMDG9619 dt. 4.4.91, there is reference to Despatch Programme No. PP/91/03/01/027. In the stockyard advice also, there is reference to the aforementioned dispatch programme (DP), but under the heading "Heat/Slab No.- Planning No." Though the dealer has not filed the register of Despatch Programme maintained by CPPD yet in the written note of submission of the dealer it is stated under Para-6 referred earlier that the apportioned demand is forwarded by CPPD to different SRMs situated in Plant Sites. Therefore, reference to the DP in stockyard advice and dispatch advice relates to despatches being made in pursuance of the DP issued by CPPD. Moreover, we have already seen such correlation between Movement Plan issued by SRM to RSP and the Stockyard Advice issued by RSP in respect of transactions relating to M/s. Durez Engineers (P) Ltd., M/s. Flakt India Ltd., M/s. Citadel Engineers (P) Ltd. and M/s. Dekon India filed by the Revenue.

This register shows that production and dispatch of particular goods by an Unit (Steel Plant) is as per the dispatch plan forward by the CPPD.

(B) Documents relating to sales :

(i) Delivery Order Register relating to BSO, Kolkata :

There is reference to the subsequent offer given by BSO after receipt of goods in stockyard, but there is endorsement that the delivery relates to a particular quarter. This implies reference to the goods that were booked for the said quarter earlier in the preliminary offer letter/work order.

(ii) Challan-cum-invoice issued by BSO, Kolkata to parties :

This register contains the account copy of chalan-cum-invoice issued by BSO after delivery order is issued. The same bears reference to Wagon No., Consignment Advice (CA) No. in addition to other details including Party Code No.

This document shows the link between the goods sold and movement thereof generated by Consignment Advice.

(iii) TBS Register of BSO, Rourkela :

The register contains the following information with reference to a customer.

- (a) Name and address of the customer
- (b) Customer status
- (c) Customer Registration No.
- (d) Sale pre-offer No./Date

- (e) Customer acceptance/REF/EMD
- (f) Work order reference No./Date
- (g) Supply period
- (h) Last date of supply

Apart from the above, the same page contains entitlement/ allocation details, such as, plant, category, dimension, quality, quantity registered, pre-offer quantity, work order quantity, offer number, date, quantity, delivery order number, date, quantity, challan number, date, quantity and remarks.

This register clearly shows the sequence of events taking place after registration of demand by a customer and in particular, shows a clear link between the pre-offer and supply of goods.

(iv) TBS Register of BSO, Madras :

In this register, apart from the name and address of the party, there is separate provision for incorporating the details under booking particulars as also of supply. Under the heading "booking particulars" are the sub-headings, such as, registration no., quarter, material, size, quality, quantity applied for, quantity indicated for booking and contractual offer no. and date, work order no. and planning reference no., quantity booked, details of EMD. Under the heading "supply details" are the sub-headings, such as plant, offer no./date, quantity offered, DO no. and date, quantity paid, quantity lapsed, penalty paid, EMD forfeited, etc.

This register clearly shows the sequence of events taking place after registration of demand by a customer and also shows a clear link between the pre-offer and supply of goods.

(C) Documents relating to pending allotments :

The parties have not filed any specific documents in this regard. But from the dispatch programme and movement plan registers for Rourkela Steel Plant and Bokaro Steel Plant, it is seen that there is some reference to backlog orders. In particular we have perused one Inter Office Memo sent by General Marketing Manager, CS/ SR, Madras to Branch Manager, BSO, Madras which reads as under :-

“Ref No. : SR/CS/8 (MP) 92-93/2714 Date : 7.9.92

Enclosed please find the following movement plan for necessary action at your end.

Plant : Rourkela

Product : HR Coils

MP Ref No. : RHC 920921011-014

Quantity : 250 MT

Month/Quarter : Sept'92

Remarks : As per release backlog memo No. SR/CS/Backlog

Encl : As above.

Sd/- Illegible
GMM/CS/SR”

We have also seen another Inter Office Memo bearing No. SR/CS/8 (MP) 92-93/ 2779 dt. 11.09.92 issued by General Marketing Manager, CS/SR Madras to BM, BSO, Madras forwarding the

movement plan for July-September'92, but referring to the backlog of April-July'92. That apart, we have already seen that backlog supplies, i.e. supplies relating to previous quarter are also made in case of M/s. Gold Mohar Industries and M/s. Sarda & Sons, discussed earlier.

FINDINGS:

33. From a conspectus of the analysis made herein before with respect to 8 (eight) numbers of typical transactions and records/documents relating to movement/despatch, sales and pending allotments, the following pattern emerges in respect of sale of iron and steel materials by RSP to different customers through BSO, Howrah :

Registration of demand by the customer → Issuance of offer for booking of materials → Acceptance by customer → Issue of work order → Consolidation of work orders by CPPD → Issue of despatch plans to respective units → Production of goods by the units → Issue of movement plan by the concerned Regional Office → Movement of goods to stockyard of branch → Offer by branch to customer to lift the goods on payment of 100% price followed by payment of price by customer → Issue of delivery order → Issue of challan-cum-invoice.

Now, in view of the dispute involved in the case, it is to be seen whether there is any contract/agreement of sale between the parties and if so, is there a link between the said contract/agreement and movement of goods.

34. According to Sri D. Behura, learned Standing Counsel (CT), the initial offer is a concluded contract or an agreement of sale since the necessary ingredients thereof, i.e. offer and acceptance are present. Amplifying his arguments further, Sri Behura submits that after registration of demand, the BSO makes an offer usually asking the party to book 25% (or a portion of the total quantity offered). The party is also asked to make EMD or furnish necessary financial arrangement, like bank guarantee, in token of its acceptance. Once the party makes the EMD or furnishes bank guarantee etc., it signifies a contract. Sri Behura has referred to a decision of Hon'ble Supreme Court of India in the case of ***Sri Hanuman Cotton Mills & another Vs. Tata Air Craft Ltd.***, reported in **1969 (3) SCC 522**, wherein the following principles were laid down regarding 'earnest' –

- (i) It must be given at the moment at which the contract is concluded;
- (ii) It represents a guarantee that the contract will be fulfilled or, in other words, 'earnest' is given to bind the contract;
- (iii) It is part of the purchase price when the transaction is carried on;
- (iv) It is forfeited when the transaction falls through by reason of default or failure of the purchaser; and

- (v) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest.

It is further submitted that a work order is issued only when the party has accepted the offer as above. The fact that the subsequent offer given to the party after receipt of goods at the stockyard refers to the work order, it implies that the movement has occurred in pursuance of or as an incident of the work order, which owes its origin to the contract/agreement of sale, i.e. the initial offer.

Per contra, it is contended by Sri Pattnaik at the outset that the Revenue cannot be allowed to argue that the pre-offer is a contract of sale since Hon'ble CST Appellate Authority has given a clear cut finding in its order dtd. 15.03.2010 that it is not and such finding, not having been challenged before the higher forum by Revenue, has attained finality. Sri Behura, on the other hand, contends that the observations/ findings of the Hon'ble CST Appellate Authority were passed in respect of one transaction examined by it, but cannot be treated as a general finding. Moreover, while remanding the matter, the Hon'ble CST Appellate Authority has directed this Tribunal to consider the contentions of the dealer in this regard on the basis of examination of some typical transactions.

The relevant observations of Hon'ble CST Appellate Authority in this regard find place under Para-6 of the order. At Para-6.1, the Hon'ble CST Appellate Authority held as under:-

“ xxx As we shall demonstrate later, it cannot be inferred that **in the case of Mechanical Wire Industries** the agreement of sale preceded the movement of goods, as assumed by the Tribunal.” (Emphasis supplied)

In para-6.2, the Hon’ble Appellate Authority has reproduced the contentions raised by the dealer-appellant before it. Towards the end of said para, it is observed that “xxx It is **further** submitted that not only all the documents relating to the transaction with Mechanical Wire Industries were filed, but certain other documents relating to sales to other parties like Flakt India Ltd., Brightex Engineering Corporation etc. were also filed before the Tribunal. But, the Tribunal has not examined them.” (Emphasis supplied)

It is manifest that the above observation refers only to the submissions made by the dealer-appellant and are hence, not independent findings of the Hon’ble Appellate Authority. Again at Para-6.3, it is observed as under :-

“We are of the view that the contentions of the appellant have considerable force and deserve further consideration. The learned Tribunal has not gone into details and failed to analyze the transactions at least to the extent of related documents being available on record.xxx”

Again at Para-7, the Hon’ble CST Appellate Authority have referred to the transaction relating to Mechanical Wire Industries to observe that “The Tribunal evidently presumed that the so-called

offer letter issued soon after the registration of the demand led to the acceptance of the said offer and to the formation of contract of sale. There is no basis for this assumption, ***going by what little material, the Tribunal had before it.***” (Emphasis supplied) Further, the transaction relating to Mechanical Wire Industries has been analyzed at Para-8.1 and held that “In fact, there is an endorsement in the offer letter “EMD exempted”. There is nothing to show that the customer (MWI) communicated acceptance of the offer specifically.”

It is in relation to the facts obtaining in the case of MWI that the Hon’ble CST Appellate Authority were pleased to make above observations and hence, they cannot be treated as binding for all the cases, more particularly when the Hon’ble CST Appellate Authority has itself directed this Tribunal to examine some other typical transactions for each year along with other documents to “cross-check whether the movement of goods can be attributed to antecedent contract of sale”. Therefore, by no stretch of imagination can it be inferred that the Hon’ble CST Appellate Authority has foreclosed the scope of inquiry relating to the true nature of the so-called pre-offer letter as well as the events occurring subsequent thereto.

35. Sri J. Pattnaik further argued that even otherwise, the pre-offer letter cannot be treated as a contract/agreement of sale rather it is just a preliminary offer given to the party without any obligation to supply. With regard to deposit of earnest money, it is submitted that it is a normal condition of tender and the object is to

ensure that only such parties who are financially sound and are serious in getting the work/contract, should make a bid. Sri Pattnaik has relied upon a decision of the Apex Court in the case of ***Global Energy Ltd. Vs. Adani Exports Ltd.***, reported in ***AIR 2005 SC 2653***.

36. On the rival contentions as noted above, it is to be seen whether the pre-offer/work order can be treated as a contract of sale.

As per Sec. 2 (e) of the Contract Act, "Every promise and every set of promises, forming the consideration of each other, is an agreement. As per Sec. 2 (h) of the Contract Act, "An agreement enforceable by law is a contract".

Sec. 7 of the Contract Act provides as under:

"7. Acceptance must be absolute – In order to convert a proposal into a promise, the acceptance must –

- (1) be absolute and unqualified;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise, but, if he fails to do so, he accepts the acceptance."

Therefore, unless there is acceptance, a mere offer cannot turn into an agreement. It is further seen that the nature of acceptance of an offer can be as prescribed in the offer (proposal) itself or inferred from conduct of the parties.

In the instant case, the pre-offer letter issued by BSO, Howrah in all the cases is in the same format and the relevant portions of the format are extracted hereunder :

"Dear Sir(s),

We thank you for your above letter and have pleasure in offering the materials as detailed below subject to the terms and conditions overleaf. **If our offer is not accepted** and commercial formalities are not complete on or before _____ failing which this offer shall stand withdrawn without any reference to you.

xx

xx

xx

(2) **In the event you accept our offer**, you are required to pay the earnest money deposit and also make an financial arrangement as indicated below.

xx

xx

xx

(5) **Notwithstanding your acceptance of this offer**, the contract for sale of material as detailed herein above shall be effected only when you deposit 105% of the price of the material and delivery order is issued by us." (Emphasis supplied)

From the above, it is manifest that the offer prescribes that acceptance must be followed by paying the EMD or by making other financial arrangement failing which the offer would stand automatically withdrawn. Therefore, once the EMD is made or the Bank

Guarantee is furnished for the amount stated in the offer letter, the same automatically signifies acceptance by the offeree even in the absence of a specific letter of acceptance by the offeree. The very fact that in every case examined by us such an offer has been made followed by deposit of EMD or bank guarantee by the party or further steps taken by the offeror pursuant to the offer, it must be treated as acceptance of the offer and hence, a concluded contract. Law is also well settled that though "*an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance – an agreement sub silentio. Therefore, the terms of the contract between the parties can be proved not only by their words but also by their conduct*". The above ratio was laid down by the Apex Court in the case of ***Bharat Petroleum Corporation Ltd. Vs. Great Eastern Shipping Co. Ltd.***, reported in ***AIR 2008 SC 357***.

In case of M/s. Sarda & Sons, the offer was made on 07.01.1992 and the dealer submitted the Bank Guarantee on 26.04.1990, valid till 31.08.1992 for acceptance. In case of M/s. Mechanical Engineering Industries, in response to the offer made on 16.07.1992, the dealer deposited the Bank Guarantee on 25.07.1992 for acceptance. Similarly, in case of M/s. Dekon India, the offer was made on 29.03.1993 and in response, the dealer requested for

adjustment of Bank Guarantee on 15.06.1993 towards acceptance. In case of M/s. Gold Mohar Industries, the offer was made on 26.09.1989 and the dealer as per its own admission in the list of dates and analysis filed by it on 11.06.2018, states regarding submission of EMD. In case of M/s. Durez Engineers (P) Ltd., the offer was made on 13.05.1993 and reminder for deposit of EMD was issued. Likewise, in case of M/s. Citadel Engineers (P) Ltd. the offer was made on 13.05.1993 followed by reminder on 03.06.1993 for deposit of EMD. In the case of M/s. Flakt India Ltd., the offer was made on 23.03.1993 but there is no evidence regarding the date of its acceptance and/or submission of EMD, but work order basing on the offer was issued on 08.09.1993. In case of M/s. Mechanical Wire Industries, the offer was made on 26.07.1991 and it is stated in the List of dates and analysis of sample transactions at page 24 filed by the dealer that "The party does not deposit EMD as it was exempted from depositing earnest money." But it is nowhere stated that the offer was withdrawn as per Clause-1 of the offer letter, rather, work order bearing No. WO/91/3/0005 was issued.

Thus, it is seen that there is clear-cut proof regarding submission of EMD/Bank Guarantee in the case of M/s. Gold Mohar Industries, M/s. Sarda & Sons, M/s. Dekon India and M/s. Mechanical Engineering Industries, which implies an acceptance of the offer. In respect of M/s. Durez Engineers (P) Ltd., M/s. Citadel Engineers (P) Ltd. and M/s. Flakt India Ltd., it is observed that the offer was followed by a reminder to the party to make the EMD, and/or followed by issue of

work order and ultimate sale of goods. In case of M/s. Mechanical Wire Industries, it is admitted that the party was exempted from depositing EMD. Therefore, having issued a work order and thereby carrying the contract forward, the parties, by their own conduct are deemed to have entered into a concluded contract. So, even if the specific evidence of submission of an acceptance letter or of EMD/BG is not forthcoming in the aforementioned cases, still the fact that the offer has moved forward and culminated in sale as originally proposed, implies that the initial offer was accepted and acted upon and taken to its logical end.

Further, Sec. 4(1) and (3) of the Sale of Goods Act provide as under-

“4. Sale and agreement to sell -

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

xx

xx

xx

- (2) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Clause (5) quoted above provides that the sale shall be finally effected only upon deposit of 105% price of the material. In such view of the

matter, the so-called pre-offer being accepted, becomes an agreement to sell.

37. Learned Sr. Counsel for the dealer has further argued that the pre-offer does not bear any reference to any specific Steel Plant for manufacturing which implies that the products offered can be supplied from any Steel Plant and not just RSP under SAIL. Therefore, even if the goods are produced from and supplied by RSP, it cannot be said that there was any binding contract between the RSP and the customer.

We are unable to accept the above argument, because firstly, there can be no segregation between SAIL as an organization and its constituent Units, i.e. 7 (seven) Steel Plants (including RSP) and nearly 40 (forty) branches. In such premises, even though the branch offers goods to the party which can be produced from any one or more of the Steel Plants, resultantly, the Steel Plant from which the goods in question are actually produced and supplied becomes the seller for the purpose of assessment of tax. Therefore, in our considered view, the offer letter issued after registration of demand by the party under TBS Scheme is nothing but an agreement of sale of goods at a future date between RSP and the buyer albeit, through the branch office. In this regard, we may profitably refer to the following observations of the Hon'ble Supreme Court of India in the case of ***Sahney Steel and Press Works Ltd. and Another***, reported in

[1985] 60 STC 301 (SC), wherein the Hon'ble Court have observed as under :-

“xxx Even if, as in the present case, the buyer places an order with the branch office and the branch office communicates the terms and specifications of the orders to the registered office and the branch office itself is concerned with the sales despatching, billing and receiving of the sale price, the conclusion must be that the order placed by the buyer is an order placed with the company, and for the purpose of fulfilling that order the manufactured goods commence their journey from the registered office within the State of Andhra Pradesh to the branch office outside the State for delivery of the goods to the buyer. We must not forget that both the registered office and the branch office are offices of the same company, and what in effect does take place is that the company from its registered office in Hyderabad takes the goods to its branch office outside the State and arranges to deliver them to the buyer. The registered office and the branch office do not possess separate judicial personalities.xxx”

38. Having held that there is an agreement of sale prior to production and that the presence of a branch in between RSP (dealer) and the ultimate seller is immaterial, it is now required to be seen whether the goods in question had actually moved from RSP in pursuance of or as an incident of the said agreement of sale or not. In this regard, it is the contention of Revenue that after acceptance of offer by the party, a work order is issued by the branch, which is forwarded to CPPD of CMO for consolidation along with similar work

orders in respect of other customers and other goods as also by other branches. The demand as reflected in the work orders being thus consolidated, are sent to the office of Senior Regional Manager situated at different Plant sites, who in turn, forwards them to RSP for production. After production, the SRM prepares a movement plan as per which RSP despatches the goods to the stockyard of the concerned BSO. In this regard, learned Standing Counsel (CT) has argued that once the initial offer is accepted by booking of a particular quantity of goods at the branch level, the subsequent steps are taken in pursuance thereof solely with the intent of supplying the said goods to the party as per the accepted offer. Since there is clear reference to the despatch plan generated by CPPD in the movement plan issued by SRM and reference to both in the Stockyard Advice issued by RSP, it clearly shows an inseparable link between the initially accepted offer and the movement of goods. Furthermore, the reference to the work order or the agreement of sale in the subsequent offer clearly proves the above.

Per contra, Sri Pattnaik argues that in the Stockyard Advice-cum-Invoice issued by RSP in favour of the BSO, there is no reference to any customer or the scheme under which the materials are to be sold by the branch ultimately. It is further contended that there is no apportionment in favour of any customer of BSO by RSP and it is also not clear as to which material goes to which party after it is stacked with earlier material lying in the stockyard and/or after reaching at stockyard or later on, being a continuous process.

We are unable to persuade ourselves to agree to the above contentions of Sri Pattnaik because firstly, as we have observed in the transactions examined by us supra, there is clear reference in the movement plan and stockyard advice to the despatch plan originally issued to the SRM by CPPD, which in turn, is nothing but a consolidation of specific orders registered by a particular branch. That apart, the subsequent offer given to the party after arrival of goods at the stockyard contains a clear reference to the earlier work order. Therefore, the movement of goods can be said to have been occasioned by the initial agreement of sale and automatically relates back to the work order/pre-offer. Even otherwise, it is seen that in the transactions relating to M/s. Durez Engineers (P) Ltd., M/s. Dekon India, M/s. Citadel Engineers (P) Ltd. and M/s. Flakt India Ltd., the goods have arrived in the stockyard on 09.03.1994 and the offer was given to the parties on 16.03.1994, i.e. within a week. Further, the challan-cum-invoice issued in favour of the party at the time of delivery of goods refers to a particular wagon number in all the cases examined by us. Therefore, the contention that the goods were stacked with earlier material lying in the stockyard and thereafter supplied to parties in a continuous process, cannot be accepted.

39. It is next argued by Sri Pattnaik that even if it is presumed that there was a pre-existing contract then also the registration of demand by the parties and booking made by BSO are tentative and indicative in general only and nothing beyond that and

that the subsequent offer of a definite quantity, i.e. the real or firm offer. It is further argued that goods in different size/ dimension/ quantity was offered but actual sale was made for a different quantity which cannot relate back. Therefore, it cannot be said that the movement of goods was in pursuance of any contract. Refuting the argument as above, Sri Behura has contended that the same is immaterial as long as there is a link between the movement and the contract.

In a case where the movement of goods is established to have occurred in pursuance of or as an incident of sale/ contract of sale, the quantity of goods so moved is not material as rightly contended by Sri Behura and, in fact, law is also well-settled in this regard. In the case of **Hyderabad Engineering Industries Vs. State of Andhra Pradesh**, reported in **[2011] 39 VST 257 (SC)**, the Hon'ble Court observed as under :-

"xxx In our view, it does not matter how much goods were delivered to the branch office which just acted as a conduit pipe before it ultimately reached the purchaser's end. All that matters is that the movement of the goods is in pursuance of the contract of sale or as of necessary incident to the sale itself. Further, the sales agreement is for a period of five years. If there is short supply of the goods than what was indented for, then the same could be adjusted in the subsequent despatch. xxx"

Since we have already held that the movement of goods can be said to have occasioned by the initial agreement of sale

the variation in quantity of goods offered and actually sold is of no consequence. Even otherwise, it is pertinent to note that the materials ultimately supplied have not been in excess of what was offered but invariably less than that and within the quantity offered and booked initially.

40. In addition to the contentions raised and discussed in preceding paragraphs, the dealer has referred to certain further points to buttress its claim, which are discussed herein below :

- (i) It is claimed that the goods being standard goods are manufactured and dispatched in bulk in a continuous process without specification of any customer. Further, the BSO has the discretion to give quantity of goods to a customer over which RSP has no control.

The above contention is not acceptable because the very objective of TBS Scheme is "xxx to establish a long term commercial relationship of confidence between SAIL and its customers with a commitment of supply of materials within a predetermined time schedule. It is based on a commitment on the part of SAIL to meet the demands of customers and supply the materials **against confirmed orders** within a time schedule." (Emphasis supplied)

That apart, it is seen that the quarterly production plans of the Steel Plants are decided centrally by the CPPD on the basis of work orders issued by different branches. The said plans (dispatch plans) are sent to the concerned regional offices for production by the

Plants. Again, the goods so produced are dispatched to the branch offices bearing reference to the dispatch plans and work orders. In any case, the dealer has not adduced cogent evidence to support its contention that the goods are produced in bulk and in continuous process.

The further contention that the BSO has discretion to give quantity of goods to a customer over which RSP has no control does not in any manner dilute the position that the goods in question had moved from RSP to BSO. In so far as the question of offering a particular quantity to a customer is concerned, the same is governed by the provisions of the TBS Scheme in the following manner :

"XVI - GUIDELINES FOR DISPOSAL OF MATERIALS ON RECEIPT IN THE STOCKYARD:

OBJECTIVES : xx xx xx

1. xx xx xx xx

2. xx xx xx xx

3. xx xx xx xx

4. On receipt of materials/documents/details of dispatch, branches will correlate DP reference given in the CA with registrations under different allocations/schemes and issue offers within a maximum of 3 working days.

5. If against an item, there are more than one registrations/orders pending, BSOs would endeavour to offer the item as widely as possible, keeping in view the registrations under various status groups / schemes.

xx xx xx xx

From the above, we fail to see as to how the BSO can be said to have any discretion to give quantity of goods to a customer on the face of such clear-cut guidelines/instructions in this regard being present in the scheme itself. That apart, we have already held that no distinction can be made between RSP and BSO nor can both be treated as separate juridical personalities.

- (ii) It is further contended that the sale price of the materials is determined by the branches, which shows that RSP has no control in this regard.

A reference to Clause 2 of Terms and Conditions covering TBS Scheme (Enclosure 2 to the Scheme) provides that the prices (including extras, rebates and other charges) payable for the goods shall be those prevailing on the date of delivery as fixed by SAIL or any other statutory body, irrespective of whether (i) the property in the goods has passed to the buyer before delivery, (ii) any payment has already been made towards supply of such goods. The prices chargeable from the customer shall be deemed to be provisional and subject to such addition or reduction or revision as may be announced/made by SAIL or the above bodies. But, however, subject to always adjustment, if any, according to such terms and conditions as may be prescribed by SAIL from time to time.

Therefore, to contend that the prices are determined by the BSO is entirely fallacious.

41. Therefore, we find no merit in the additional contentions also raised by the dealer as above.

42. Law is well settled 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.

Reference may be had to the decision of the Hon'ble Supreme Court of India in this regard in the case of ***Balabhagas Hulaschand and another Vs. State of Orissa***, reported in **[1976] 37 STC 207 (SC)**. In this case, it has already been held that the pre-offer upon its acceptance becomes a contract and in the present cases the movement of goods from RSP to BSO is in pursuance and/or incident of such contract. Such agreement by necessary implication covers the contract regarding supply of the goods from any of SAIL's constituent Units situate in other States also. It is also proved that the goods having so moved are ultimately sold in pursuance of the said contract. Thus, all the three ingredients necessary to constitute an inter-State sale are

present in this case. In such view of the matter, the claim of branch transfer raised by the dealer has no legs to stand.

43. It is stated at the cost of repetition that from the materials on record it can be clearly discerned that SAIL has evolved a centralized marketing programme for all its constituent Units including RSP. The production aspect is also centralized by consolidating demands received by BSO and apportioning them to the individual Steel Plants. So, whatever is apportioned to a Unit including RSP for production and dispatch, is to be treated as a sale by the said Unit. It is immaterial that such sale takes place through the BSO, which acts as an agent for RSP only in respect of a particular transaction. As has been discussed in detail herein before, the aforementioned process commences upon receipt of registration of demands by the BSO followed by issuance of offer letter. Such offers being accepted become agreements of sale of future goods, production is carried on accordingly and the goods are moved from RSP to the BSO for onward sale to the registered customer. There is thus, a complete circle commencing from the issuance of offer letter by the BSO and culminating in sale of goods moved from RSP to the Stockyard in Howrah. In other words, there is an inextricable link between the initial contract of sale and movement of goods from one State to another. Since the branch office acts only as a conduit being interposed between RSP and the buyer, the transaction does not partake the nature of branch transfer but is an out and out inter-State sale within the meaning of Sec. 3(a) of the CST Act.

44. In the final analysis thus, this Tribunal after examining the detailed particulars of as many as eight different transactions, certified as typical by both parties, as also connected documents/records as directed by the Hon'ble CST Appellate Tribunal in its order dt. 15.03.2010, is of the considered view that the movement of goods from Rourkela (Odisha) to BSO, Howrah (Stockyard) (West Bengal) was occasioned by an antecedent contract of sale and hence, is of the nature of an inter-State sale, but not branch transfer as claimed by the dealer.

45. Coming to the impugned orders, this Tribunal without commenting on the reasoning adopted by the authorities below, but on an independent appreciation of the materials on record as directed by the Hon'ble CST Appellate Authority holds that the ultimate finding rendered by the authorities below in the cases in question do not warrant any interference whatsoever.

46. It is pertinent to note that S.A. No. 110(C) of 1997-98 was preferred by the State on the ground that learned first appellate authority had wrongly allowed claim of branch transfer to the tune of Rs.1023,58,09,691.67 as against Rs.234,03,33,606.00 allowed by the assessing authority and further that the first appellate authority committed error in accepting the figure of Rs.327,26,89,65,214.33 under the TBS Scheme only when the assessing authority had computed the transactions under all the schemes at Rs.1116,89,65,300.00. It is also contended that the CST sales were

wrongly converted to branch transfer on the plea of unfructified sales and further that the first appellate authority has wrongly allowed concessional rate of tax against 'C' and 'D' forms produced at the appellate stage.

It is made clear that the present lis before this Tribunal was with regard to the claim of branch transfer as a whole in principle and was decided as per directions of the Hon'ble CST Appellate Authority. In so far as the above grounds are concerned, the same were not specifically urged nor argued by the State and the effort of the State was confined to arguing the issue of branch transfer on principle along with other connected appeals. We, therefore, find no reason to interfere with the impugned order in S.A. No. 110(C) of 1997-98 on the grounds urged by the State.

47. In the result, the appeals filed by the dealer (SAIL, RSP) as well as State fail and are, therefore, dismissed. The impugned orders are hereby confirmed.

Dictated & Corrected by me,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III