

passed by the learned Sales Tax Officer, Cuttack II Circle, Cuttack (in short, AA/STO) under Rule 12(4) of the CST (O) Rules raising an extra demand of Rs.7,09,022.00 and Rs.2,92,469.00 for the years 1999-2000 and 2000-01 respectively.

3. The case at hand is that the dealer assessee is a private limited company and carries on business in wholesale distribution of coal only. Pursuant to the notice issued under Rule 12(5) of the C.S.T.(O) Rules, the dealer assessee produced the books of accounts relating to the business activities such as purchase, sales, stock registers and purchase and sales invoices for verification. On verification, it is revealed that the dealer did not have any opening stock of goods and during the year it has purchased 540.10 MT in course of interstate trade, imported 22,500.00 MT from Australia and received 142.860 MT of coal from its branch at Ranchi, thus making the total quantity available for sale to Rs.23,182.870 MT. The books of accounts of the dealer assessee revealed that it has sold 882.200 MT of coal during the year in course of interstate trade for a gross amount of Rs.22,93,746.00 which it has disclosed as the GTO in the returns filed and claimed deduction of Rs.87,974.00 towards CST collected. The dealer has also transferred 3881.98 MT of coal to its branch at Ranchi during the year for a gross value of Rs.87,89,085.64. In support of the sales interstate the dealer could furnish declaration Form 'C' covering net turnover of Rs.20,64,719.50, and failed to furnish the same for the balance amount. Similarly, the dealer has failed to furnish declaration Form 'F' in support of the branch transfer of goods but could not produce any conclusive evidence such as branch account or payment particulars. Therefore, the claim of the dealer towards branch transfer of goods was disallowed and the particulars as determined as sales in course of interstate trade. The value of the goods was added to the GTO and NTO of the dealer and in absence of any declaration form 'C' was taxed at the appropriate rate of 8%. So, the gross turnover of the dealer was determined at Rs.1,10,82,781.64 and after allowing deduction of

Rs.87,974.00 towards CST collected, the net turnover was determined at Rs.1,09,94,807.64. CST @ 4% on Rs.20,64,719.50 and @8% on Rs.89,30,088.14 comes to Rs.7,96,995.83 or Rs.7,96,996.00. As the dealer has already paid Rs.87,974.00 before filling of the returns, he is required to pay the balance amount of Rs.7,09,022.00 as per the terms and conditions of the demand notice.

4. As against such order of assessment, the dealer assesse preferred first appeal case No.AA-60 & 61 (CU-II-C) 02-03 before the learned First Appellate Authority in which assessment for the year 1999-00 and 2000-01 was reduced to Rs.7,03,123.00 and Rs.2,87,812.00 respectively and appeals for both the years were allowed in part.

5. Being dis-satisfied with the order of the learned First Appellate Authority, the State has preferred these present appeals on the grounds that the order of the learned ACST is unjust, illegal, arbitrary and bad in law; that the learned STO in completing the assessment under Rule 12(4) of the C.S.T. (O) Rules for the years 1999-2000 and 2000-01 raised a demand of Rs.7,09,022.00 and Rs.2,92,469.00 respectively; that the learned ACST has reduced the demand to Rs.5899.00 and Rs.4657.00 respectively which is found to be arbitrary and bad in law; that the learned ACST has allowed as branch transfer without obtaining declaration Form 'F'; that the learned ACST has not ascertained the reasons of non-submission of declaration Form 'F' while the goods have been mentioned being transported to registered branches; that acceptance of branch transfer in absence of detailed documents and 'F' Forms has been proved arbitrary and bad in law; that the order of the learned ACST being devoid of merit may be quashed and that the order of the learned STO being just and proper may be restored.

6. Cross objection is filed in both these cases by the dealer respondent.

7. Per contra, the dealer respondent has vehemently contended that the learned assessing officer was not legally justified to levy tax on Rs.87,89,035.64 and Rs.37,42,696.53 respectively for the years 1999-2000 and 2000-01 representing stock transfer to its own branch at Ranchi (Jharkhand) for non-submission of declaration in Form 'F', as the same could not be received on account of non-issuance by the authorities. The submission of the dealer assessee is that in course of assessment proceeding, it (dealer assessee) had duly submitted the consignment challan, transport LR, statutory way bills duly checked and stamped at the border checkgate before crossing the border, wherein both consignee and consignor had been shown as the same. The learned assessing officer should have allowed deduction on the basis of other evidences. In absence of any clear finding on "sale" the levy of tax on the goods lacks jurisdiction, as the consequent order of assessment is not legally sustainable. Further, contention of the dealer assessee is that the claim of branch transfer can be substantiated in any manner and the provisions of production of declaration Form 'F' is not mandatory as held by the Hon'ble High Court of Odisha in the case of **State of Odisha Vrs. Orissa Small Industries Corporation, reported in 67 STC 262**, wherein it has been held that the furnishing of declaration in Form 'F' is not mandatory but directory and as such, the deduction under Section-6 A should have been allowed. During the course of hearing of the first appeal, the dealer assessee had filed an affidavit admitting the fact that actually the goods despatched to its own branch located at Ranchi by way of stock transfer, statutory way bills, stock transfer invoice, transport L.R. duly checked and stamped at the border checkgate before crossing the border of the State. The submission of the dealer is that after scrutiny of the documents and evidences produced and cited by it (the dealer assessee) allowing of branch transfer by the learned First Appellate Authority is quite justified.

8. Heard the contentions and submission of both the parties in this regard. Perused the grounds of appeal vis-à-vis the materials available on record including contentions and submissions of the dealer assessee.

The sole question in the instant case to be adjudicated upon is whether the First Appellate Authority was correct in its approach to allow the claim of branch transfer to the tune of Rs.37,42,696.53 when the dealer failed to furnish statutory declaration in Form 'F'?

To substantiate such claim, the dealer assessee has emphasized that it (dealer assessee) had submitted the consignment challan, transport LR, statutory way bills duly checked and stamped at the border check gate before crossing the border which were verified by the learned Assessing Officer. Further contention of the dealer is that those documents clearly reveal that both the consignee and the consignor has been shown as same for which one cannot sale to self. So in absence of any clear finding of 'sale', levy of tax on the goods is not proper. Another contention of the dealer is that in view of the verdict of the Hon'ble Odisha High Court decided in the case of **State of Odisha Vrs. Odisha Small Industries Corporation reported in 67-STC-262** furnishing of declaration in Form 'F' is not mandatory but directory. Of course, it is true. But fact remains that had it (declaration 'F' Form) been filed by the dealer, onus would have been shifted to the revenue to have an enquiry to ascertain its genuineness with regard to branch transfer of goods. So, in absence of such, there was no occasion at all to make any enquiry by the revenue. If 'F' Form could have been produced, matter would have been otherwise. Moreover, for the sake of argument assuming that 'F' Form is not produced, the same being directory, but what prevented the dealer not to rely a single document stating the name of specific branch where the goods were transported. So in absence of declaration of 'F' form and document naming the specific branch where the goods were transported, no inference can be drawn to

the effect that there was branch transfer simply relying on a gate pass and way bill. So, from the above analysis, it can certainly be told that it was not branch transfer nor goods were transported out of State. If that is so, to our view; the adjudication of learned First Appellate Authority is not based on the material on record. Therefore, the impugned order of the First Appellate Authority is not sustainable.

9. In the result, the appeal filed by the State is allowed. The order passed by the learned First Appellate Authority is set aside and the order of learned Assessing Officer is hereby confirmed. Cross objection is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(Shri S.K.Rout)
Judicial Member-II

Sd/-
(Shri S.K.Rout)
Judicial Member-II

I agree,

Sd/-
(Shri A.K.Das)
Chairman

I agree,

Sd/-
(Shri S.Mishra)
Accounts Member-II