# BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
## (Full Bench)

## S.A. No. 82 (C) OF 2005-06

(Arising out of order of the learned ACST, Balasore Range,
Balasore in First Appeal Case No. AA.- 38/BAC/1998-99,
disposed of on dated 30.05.2005)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

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

-Versus-

M/s. Jaiswal Plastic Tubes Ltd.,
Ganeswarpur Industrial Estate,
Januganj, Balasore ... Respondent

For the Appellant : Sri S.K. Pradhan, ASC (CT)
For the Respondent : Sri P.K. Jena, Advocate

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Date of hearing: 09.09.2020 ***** Date of order: 07.10.2020

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## O R D E R

Instant appeal under Section 23(3) of the Odisha Sales Tax Act, 1947 (in short, 'the Act') read with Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') is preferred by the State challenging the impugned order dated 30.05.2005 promulgated in Appeal No. AA- 38/BAC/1998-99 by the learned Assistant Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'FAA') for having partially confirmed the order of assessment dated 17.12.1998 passed by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, 'AA') under Rule 12(5)

of the Rules for the impugned period 1995-96 on the grounds inter alia that the transactions in question are unreasoned for not being treated as inter-State sales and, therefore, the findings to be bad in law and thus, it deserves to be interfered with for the sake of justice.

2. In fact, an assessment in terms of Rule 12(5) of the Rules was initiated against the dealer assessee, a Small Scale Industrial Unit bearing Registration No. BAC-1249, engaged in the manufacture and sale of PVC pipes and fittings and in selling the goods intra-State as well as in course of inter-State trade and commerce. During such proceeding, the AA vis-a-vis the fraud case reports examined the transactions and arrived at a decision that the dealer assessee allegedly disposed of goods which are essentially inter-State sales in the garb of branch transfers and thus, raised additional demand which was challenged before the FAA, who, however, allowed certain claims as branch transfers and resultantly, reduced the demand and directed it to pay the differential amount. The State being aggrieved, questioned the legality of the impugned order dated 30.05.2005 alleging that the alleged transactions to be inter-State sales and not branch transfers and in so far as the objections pointed out by the AA, it had been fully established, inasmuch as, the branch transfers were rightly disallowed and taxed under the CST Act. Contra, the dealer assessee justified the decision of the FAA and simultaneously, raised a cross-objection with respect to transactions amounting to ₹15,13,379/- on the ground that in regular course of business only standard goods are despatched to its branches not being earmarked to any

specific buyers and, therefore, it ought to have been treated as branch transfers instead of inter-State sales. Apart from the above, for not furnishing declaration in Form-F in respect of certain transactions, an amount of ₹3,07,105/- was disallowed. Besides that, suppression of sales to the tune of ₹52,347.87 was confirmed which was based on a fraud case report submitted by the IST, Investigation Unit, Balasore. However, the primary dispute is respecting the nature of the transactions effected by the dealer assessee whether to be branch transfers or inter-State sales, as is alleged by the State.

3. The learned ASC (CT) appearing for the State contended that the order of assessment dated 17.12.1998 is fully justified vis-a-vis the transactions carried out between the dealer assessee and the buyers, but the FAA without any basis allowed some of it as branch transfers instead of inter-State sales which is, thus, liable to be set aside. The learned Counsel for the dealer assessee, on the other hand, contended that the impugned order dated 30.05.2005 with regard to the branch transfers in respect of the transactions in question is just and according to law which needs no interference at all and as regards the cross-objection, a similar view was required to be taken to hold that the alleged transactions not to be inter-State sales, but branch transfers simpliciter. With respect to the sales suppression to the tune of ₹52,347.87, according to the dealer assessee, the alleged goods were not sold out to the buyer concerned and the chalan in respect thereof was inadvertently not cancelled, the explanation which was not accepted and consequently, it was upheld.

4. According to the State, in the guise of branch transfers, the dealer assessee allegedly indulged in inter-State sales in respect of the goods manufactured by it but the FAA vis-a-vis some transactions concluded that the same are not proved to be inter-State sales and thus, treated it as branch transfers. It is strongly urged that on the indents being received from the buyers, the dealer assessee apparently supplied the goods through its branches situated outside the State and under such circumstances, the same were to be treated as inter-State sales exigible to tax under the CST Act but the FAA erred in holding it to the contrary. The learned Counsel for the dealer assessee claimed that only standard goods were sold out without any specification, or contract for sale, inasmuch as, the goods were sent to the branches on stock transfer from its factory and it was indeed a continuous and regular process and was not related to the requirements of any particular customer/buyer, its principal object being to make the stock available to its branches to meet the demands of the local customers. It is further contended that the transfers from the factory to its branches outside the State are pure and simple branch transfers which can in no way be treated as inter-State sales and since, are unrelated internal transfers made from the factory to the branches clearly fall beyond the purview of Section 3(a) of the CST Act. As per the dealer assessee, the goods were despatched from its factory without being earmarked, or appropriating any particular goods against the specific orders meant for particular purchaser/ buyer and that apart, there was no special manufacture of goods undertaken and in such view of the matter, the alleged transactions had to

be treated as branch transfers and not inter-State sales. A similar view was required to be taken vis-a-vis the transactions under Exhibits 65, 73, 74, 76 and 98, but it was erroneously disallowed and taxed @ 12% under Section 8(2) of the CST Act.

5. Furthermore, the learned Counsel for the dealer assessee contended that its branches received the goods and the same were unloaded in their godown; the goods so received duly entered in the receipt register and stock register maintained at the branches concerned; the insurance and freight charges were also paid to the transporters; so to say, the ownership of the goods always remained with it till the time the sales were effected. In this connection, the learned Counsel for the dealer assessee relied upon a decision of the Hon'ble Apex Court in the case of The Bengal Immunity Co. Ltd. Vs. The State of Bihar and others reported in (1955) 6 STC 446 (SC) to claim that a sale only could be said as accomplished in course of inter-State trade, if the conditions of sale of goods and transfer of goods from one State to another are concurrently satisfied, which in the present case, had never existed. That apart, an authority of the Hon'ble Apex Court reported in (1976) 37 STC 207 (SC) in the case of Balabhagas Hulaschand Vs. State of Orissa was placed reliance by the learned Counsel for the dealer assessee in order to persuade the Tribunal that by the nature of transactions, the same were nothing but branch transfers, inasmuch as, its case falls in the category of one of the illustrations under Case No. II as described therein. The Constitution Bench judgment of the Hon'ble Apex Court in the case of State of A.P. Vs. National Thermal Power Corporation Ltd. is also referred to in order to justify the claim that the alleged transactions were

in fact branch transfers and not to be inter-State sales. The aforesaid contentions of the parties need examination by the Tribunal by looking at the materials on record.

6. From impugned order dated 30.05.2005, it is understood that the FAA allowed the claim of branch transfers in respect of Exhibits 71, 74, 91, 92, 95 and 104 dismissing the same as inter-State sales so concluded by the AA. The learned ASC (CT) for the State contended that the AA on examination of the exhibits found that the goods were despatched to the branches of the dealer assessee with reference to specific buyers containing details of the specifications and quantities as per the orders received and, therefore, all the transactions were inter-State sales, but in the pretext of branch transfers were despatched to the branches, the fact which was not duly taken cognizance of and was completely lost sight of by the FAA. On the contrary, alleging the transactions to be branch transfers vis-a-vis Exhibits 65, 73, 74, 76 and 98, the dealer assessee claimed that the FAA did not consider and appreciate things in proper prospective and wrongly held it as inter-State sales.

7. Before dealing with the rival claims of the parties, the Tribunal is inclined to highlight upon the distinctive features of branch transfers and inter-State sales. In fact, a sale or purchase of goods is deemed to take place in course of inter-State if it occasions the movement of goods from one State to another; or is effected by a transfer of document or title to the goods during its movement from one State to the other as is envisaged in Section 3(a) and (b) of the CST Act. In such a case, tax on the inter-State sales is payable under Section 6 of the CST

Act. As to branch transfers, according to Section 6-A of the CST Act, a dealer claims it to be so on the ground that the movement of goods was occasioned not by reason of sale but by reason of transfer of the same to any other place of its business or to its agent or principal, as the case may be, and the burden of proving such nature of movement of goods shall be on the dealer and in that respect, evidence as to despatch of goods with declarations need to be furnished. It is the settled law that in case of movement of goods, presumption as to inter-State sale is always in favour of the State which can be rebutted by the dealer since burden of proof lies on it in terms of Section 6-A of the CST Act. In this connection, it would be quite profitable to quote a decision of the Hon'ble Apex Court in the case of Sahney Steel & Press Works Ltd. and another Vs. Commercial Tax Officer and others reported in (1985) 60 STC 301 (SC), wherein, it has been observed that when the customer places an order with the branch which is communicated to the registered office with the terms and specification of goods, and the branch office itself is concerned with despatching, billing and receiving of the sale price, such an order is, in fact, placed with the company and for the purpose of obliging that order, if the manufactured goods moved from the registered office situated in one State to the branch stationed outside the State for delivery of goods to the customer, such movement is an incident of contract and, hence, the transaction is inter-State sale under Section 3(a) of the Act. Further, in this regard, a reference may be had to a ruling of the Hon'ble Apex Court in the case of M/s. Hyderabad Engineering Vs. State of A.P. (decided in 04.03.2011), where considering the nature

of transactions vis-a-vis the agreement and voluminous correspondences made, it was held that there was indeed inter-State sales camouflaged as branch transfers and as such, it would be exigible to tax under the CST Act. Elaborately, the Hon'ble Apex Court, while discussing its earlier ruling on the subject in the case NTPC Ltd. ibid, outlined the basic features with respect to inter-State sales. It has been categorically held therein that the essential ingredients, such as, there must be a contract of sale incorporating a stipulation express or implied regarding inter-State movement of goods; the goods must actually moved from one State to another pursuant to the contract of sale; the sale being the proximity cause of movement; and such movement of goods must be from one State to another, where the sale is at last concluded are to be established to the hilt. If the authorities, as discussed supra and the principles deduced therefrom are summed up, then the irresistible conclusion would be that an inter-State sale takes place when there is movement of goods from one State to another as a result of a covenant either with express means or by necessary implication, or as an incident of contract, inasmuch as, such covenant need not be specified in the contract itself and it would be enough, if the movement was in pursuance of and incidental to the contract of sale and most importantly, there must exist a conceivable link between the contract of sale and such movement of goods beyond the State, if precisely speaking. At the same time, it is equally significant to bear in mind the following factors which necessarily constitute a branch transfer, such as, the branch office estimates the bulk requirement of the area falling within its limit; it required the HO/RO to supply to it

such estimate in bulk quantity; HO/RO sends the quantity accordingly from time to time to meet the requirement of its branches; the appropriation of goods takes place in the branch office only; the branch office retains the choice to supply or sale the goods which means it has the option of diversion of goods; and the movement of goods is from the HO/RO to the branch; and there is no appropriation of goods to a particular customer at the time of such movement from its HO/RO. Keeping in view the above and the settled principles of law as enunciated by the Hon'ble Apex Court, the Tribunal is to determine, whether, the claim of the State with respect to the alleged transactions can be accepted or otherwise and so also that of the dealer assessee vis-a-vis Exhibits 65, 73, 74, 76 and 98.

8. With respect to Exhibit 71, the contention of the dealer assessee is that the goods were not despatched. The FAA did consider the same along with the claim of despatch of certain goods on 06.12.1995 and subsequently, it received at HO on 07.12.1995 and finally, about its disposal on 15.12.1995 in different quantities. However, in spite of such evidence on despatch of goods to the HO, it could not be ascertained, if the same were received by the buyers or not and on such a ground, the FAA allowed the claim of the dealer assessee. It was also held that the transactions with respect to Exhibit 71, in absence of goods being despatched to the buyer could not be presumed. Similar is the case vis-a-vis Exhibit 74 as the FAA did not find any evidence on record as to the despatch of goods pursuant to a message dated 27.06.1995. On Exhibit 91, the transaction was not

held to be inter-State sale by the FAA on the premise of a predetermined buyer, since there was no trace of it in the record to show that as per the communication dated 06.11.1995, any goods had really been despatched. Such a communication was, in fact, based on a production programme which was revealed from the official correspondence dated 06.11.1995. A similar opinion was formed in respect of Exhibit 92. As to Exhibit 95, the FAA did not agree with the finding of the AA and disbelieved the alleged transaction accepting the defence of the dealer assessee to the effect that the goods were not despatched pursuant to the message dated 09.08.1995. Likewise, with respect to Exhibit 104, since there was no material on record to satisfy that the goods had been moved in accordance with the instructions received, the FAA did not consider it to be proper to treat the transactions as inter-State sales to predetermined buyers. In fact, all the exhibits are with reference to the internal correspondences exchanged between the officials of the dealer assessee and its branches. According to the dealer assessee, some are alleged merely referring to a production programme. As a matter of fact, it is not the claim of the State that the alleged transactions to be based on any agreement for sale or contract inter se parties. In so far as the dealer assessee is concerned, the declarations in Form-F were furnished after being obtained from its branches. Undeniably, the AA did not find any fault with the declaration forms. Only on the strength of the internal correspondences revealed from the fraud case reports that the alleged transactions were claimed as inter-State sales. As far as the initial burden which rests on the dealer assessee, once declaration in Form-F is furnished

and there is evidence to show that the goods have, in fact, been moved from one State to another, it can be said to be reasonably discharged. If at all, the AA did entertain objection to the nature of transactions alleging it to be inter-State sales instead of branch transfers, it was incumbent upon him to conduct an enquiry and further directing the dealer assessee to submit the relevant documents for examination and verification. In the instant case, the AA does not appear to have exercised jurisdiction to hold an enquiry with respect to the declaration forms so furnished by the dealer assessee. At the cost of repetition, it is stated the moment the declarations in Form-F are procured and furnished by the dealer assessee and it is proved that the goods suffered transfer out of State to its branches or agents, as the case may be, the burden of proof stands substantially discharged, whereafter, the onus shifts on to the assessing authority either to accept or reject it and in case of any reservation from receiving it, to hold an enquiry by calling upon production of the relevant documents. After having accepted the declarations in Form-F, an assessing authority cannot be permitted to turn around and allege that the transactions in question to be inter-State sales by disallowing the claim of branch transfers. In this respect, the learned Counsel for the dealer assessee apprised the Tribunal about the settled law by placing reliance on the rulings of the Hon'ble Madras High Court rendered in State of Tamil Nadu Vs. Cocoa Products & Beverages Ltd: (1998) 109 STC 634 (Mad.) and State of Tamil Nadu Vs. Shree Munigan Flour Mills Pvt. Ltd: (2005) 142 STC 399 (Mad.). The Tribunal considering the aforesaid contention is in complete agreement with the dealer assessee with

the conclusion that the AA without rejecting the declarations in Form-F could not have alleged the transactions to be inter-State sales when it were, prima facie, branch transfers. So, it can fairly be said that the FAA did not commit any wrong or error by considering the factual aspects of the case vis-a-vis the disputed transactions to hold that the relevant exhibits do not relate or convey inter-State sales but are referable to branch transfers only.

9. As regards the cross-objection, the nature of transactions is to be discussed by the Tribunal keeping in view the settled principles of law on branch transfers. There is no denial to the fact that in certain cases, inter-State sales are allegedly passed on as branch transfers, where the assessing authorities are to be extremely cautious and to examine the records with care and circumspection. In the case at hand, as it seems, the State alleged that the dealer assessee in the guise of branch transfers engaged itself in inter-State sales and avoided the tax liability under the CST Act. The learned Counsel for the dealer assessee, while advancing argument against such a claim, referred to the decision of the Hon'ble Apex Court in Ballabhagas Hulaschand case and pressed into service an illustration in Case No. II described therein claiming that it squarely applies to them and as such, all the transactions are branch transfers, the fact which failed to be appreciated at the time of assessment. The Tribunal deems it appropriate to quote the said illustration which runs thus: 'Case No. II – A, who is a dealer in State X, agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter, the goods are delivered to B

in State Y and if B accepts them, a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of agreement to sale nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of Section 3(a) of the CST Act not being an inter-State sale'. The case of the dealer assessee is that there has been no contract or any agreement to sell the goods existed between them to supply the goods. It is also not the stand of the State that on account of any such contractual obligations, the dealer assessee despatched and sold the goods to the buyers through its branches. It is pure and simple a movement of goods not on account of any sale, but transfer of goods to the branches of the dealer assessee, wherefrom, the buyers have received it. At times, demands are also received by a dealer from its branches with estimates to meet the local and regular or frequent requirements, which must not ever be misunderstood as interstate sale. If an order is placed and received by the dealer assessee either directly or through its branch and such an order is with specifications of goods and quantities and the goods are manufactured in terms of the order received from the buyer which are then despatched to the branches and sold thereafter, it would indisputably be an inter-State sale and not a branch transfer. But, in a case, where there is no such indent or order being placed by the buyer without special description of goods needed to be manufactured and the request is received either by the HO or the branches of the dealer for its despatch and delivery outside the State, it would be a branch transfer

and not an inter-State sale, for that matter. The above is the conclusion, which, according to the Tribunal, is clearly deducible from the settled law as laid down by the Hon'ble Apex Court in the decisions ibid. In South India VIscose Ltd. Vs. State of Tamil Nadu reported in (1981) 48 STC 232 (SC), it is categorically observed by the Hon'ble Apex Court that if there is a conceivable link between contract of sale and the movement of goods from one State to another, interposition of the agent of the seller, who may have temporarily received and delivered the goods to the buyer, would not alter the inter-State character of the sale. If the said decision is properly understood, it means that in case of a special indent for manufacture of goods with necessary specifications received from a buyer and on its manufacture, the goods are supplied through the branches or agents of the dealer outside the State, it would not be branch transfers, but shall have to be treated as inter-State sales exigible to tax under the CST Act. In the present case, none of the features as discussed above found to exist vis-a-vis the alleged transactions to suggest that they were inter-State sales of goods. A dealer can straight away receive an order from a buyer, or it can receive through its branches for standard goods which needs no special manufacture but only to be promptly delivered and in case, delivery is effectuated through its branches, no inter-State sale can be attributed as the transactions would be within the realm of branch transfers specified in Section 6-A of the CST Act. Here, the dealer assessee emphatically suggested that the delivery was made through the branches to the buyers and the goods were of no special indent, inasmuch as, only standard goods were supplied and despatched

from factory without earmarking or appropriating any particular goods vis-a-vis specific orders received from buyers and as there was no special manufacture of goods, the transactions are to be understood as branch transfers and not inter-State sales. In fact, the Tribunal does not find any clear and categorical objection from the side of the State in juxtaposition to the said claim of the dealer assessee. Having appreciated the materials on record and the principles of law, the Tribunal arrives at an inescapable conclusion that such aspects were either completely ignored or not taken cognizance of, while deciding, whether, the goods despatched and disposed of by the dealer assessee were on account of stock transfers, or inter-State sales. It is reiterated that any despatch to a branch or consignment sale through an agent of the dealer and receipt of goods by the buyer outside the State without any specific demand being made for manufacture, the transactions shall have to be held as branch transfers and nothing else. Having said that, the Tribunal, thus, reaches at a logical conclusion that the transactions in question are not inter-State sales, rather, branch transfers.

10. As regards the sale suppression of ₹52,347.87, the claim of the dealer assessee could not be justified. As it appears, on verification of the books of account, sale of goods to the Executive Engineer, RWSS, Cuttack was accounted for but not the one made in favour of M/s. Shivasakti Polymer and according to the dealer assessee, the alleged goods were not sold to the latter and inadvertently, the chalan failed to be cancelled. It was for the dealer assessee to produce the books of account and all the relevant documents in that respect. As it seems, only a

bald claim was put forth without any evidence, as the dealer assessee, at any time, could have produced the materials before the authorities below in order to substantiate it. Furthermore, at this distant point of time, the Tribunal is not inclined to disturb the finding of the FAA on this score.

11. Hence, it is ordered.

12. In the result, the appeal stands dismissed. The cross-objection is, however, allowed. As a logical sequitur, the impugned order dated 30.05.2005 promulgated in Appeal No. AA- 38/BAC/1998-99 is hereby set aside to the extent indicated above. As a consequence, the AA is directed to recompute the tax liability vis-a-vis the dealer assessee for the impugned year in the light of the above findings of the Tribunal completing the whole exercise preferably within a period of three months from the date of receipt of the present order.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Smt. S. Mishra)
2nd Judicial Member

I agree, Sd/-
(P.C. Pathy)
Accounts Member-I