

short, 'CST (O) Rules') in respect of the dealer-assessee for the tax period 2004-05.

2. The facts as revealed from the case record are as follows :

The dealer-assessee M/s. Shri Mahavir Ferro Alloys (P) Ltd., Kalunga, Rourkela is a manufacturing concern and it manufactures as well as sells sponge iron at Industrial Estate, Rourkela. In order to verify the correctness of the returns filed by the dealer under the CST Act, a notice was issued to it (the dealer) for production of books of account pertaining to the relevant period before the assessing officer. On receiving the said notice the Chief Executive of the dealer-Company alongwith their Advocate appeared before the assessing officer with the books of account consisting of purchase, sale and stock registers which were to be verified by the assessing officer. In course of verification of the books of account of the dealer the assessing officer noticed that the dealer had effected some sales/despaches in course of inter-State trade and commerce/export during the relevant year. He (the assessing officer) had reflected the aforesaid transactions in a tabular form in his assessment order. The assessing officer also found that the dealer who claimed to have sold sponge iron worth ₹3,89,51,760.00 against 'C' form condition could submit valid 'C' form against such sale for ₹3,57,47,269.00 only and failed to submit 'C' form for the balance

amount. Therefore, the assessing officer included the balance amount of ₹32,04,491.00 in 8% tax group during the assessment. Further the dealer had claimed to have sold iron ore fines and sponge iron in course of export and claimed tax benefit in terms of provision u/S. 5(3) of the CST Act. However, the assessing officer also rejected its such claim on the ground of lack of proper documentary evidence in that regard. Then the assessing officer took note of a Fraud Case Report (FCR) submitted by the Inspector of Sales Tax, Investigation Unit, Rourkela against the dealer-assessee pertaining to the relevant tax period wherein it was alleged by the investigating officials that the dealer had in fact effected inter-State sales in the guise of consignment sales and as such had evaded to make payment of huge amount of tax dues to the State exchequer. In course of inspection the investigating officials had visited the place of business of the dealer on 22.06.2004 and had seized some documents relating to its (the dealer) business. They had verified those documents with the books of account of the dealer and found certain anomalies therein which were clearly described/reflected in the order of assessment. On verification of the books of account of the dealer-assessee vis-à-vis the allegations made against it by the investigating officers and other connected documents as well as transactions held by the dealer-assessee during the relevant period, the assessing officer believed the allegations made against it (the dealer) by the investigating

officials as genuine and then he rejected the books of account of the dealer. He completed the assessment as per his best judgment. He determined the GTO of the dealer at ₹28,01,91,280.00. After allowing deduction of ₹15,58,074.00 towards Sales Tax collected by the dealer he (the assessing officer) determined its (the dealer's) NTO at ₹27,86,33,206.00. The assessing officer computed tax under the CST Act @ 4% on ₹3,57,47,269.00 (against valid 'C' forms) and @ 8% on ₹24,28,85,937.00 which ultimately came to ₹2,08,60,766.00. Since the dealer had already paid ₹15,58,074.00 alongwith its return it was required to pay the balance sum of ₹1,93,02,692.00 only as per terms and conditions of the demand notice issued to it.

Being aggrieved with the aforesaid order the dealer-assessee preferred an appeal before the first appellate authority on the grounds that the impugned order was passed by the Sales Tax Officer in an arbitrary manner basing upon his own assumptions and presumption without any conclusive supporting evidence on record to that effect. The dealer-assessee had produced documentary evidence in course of discharging its obligation as cast u/S. 6A(1) of the CST Act but the same was not considered by the assessing officer. He (the assessing officer) rather relied upon some irrelevant materials and extraneous consideration to complete his assessment for which the dealer had to prefer an appeal before the first appellate authority with a prayer to

quash the same. The first appellate authority taking into account the grounds of appeal, averments made before him by the Counsel appearing on behalf of the dealer-assessee, the order of assessment, assessment record and FCR relating to the periods 2003-04 and 2004-05 submitted by the investigating officials came to a conclusion that the dealer had shown stock transfer of goods worth ₹23,08,06,246.00 out of which the consignment sale of goods worth ₹95,28,276.00 was rejected basing on the adverse inference drawn against the dealer. Since the dealer had submitted declaration in Form 'F' for ₹23,02,96,163.00 only the balance amount was subjected to tax @ 8% on the ground that it (the dealer) had failed to submit the declaration in Form 'F' in respect of stock transfer made by it. He (the first appellate authority) further held that in the event of dealer's submitting declaration in Form 'F' and furnishing evidence of dispatch of goods to agents alongwith other ancillary documents it (the dealer) would be entitled to get exemption from tax in respect of its consignment dispatch of goods valued ₹22,07,67,887.00. He thus determined the GTO, NTO and the tax to be paid by the dealer on ₹5,78,65,319.00. Then calculating the tax @4% on ₹3,57,47,269.00 since the dealer had submitted Form 'C' to that effect and @ 8% on ₹2,21,18,050.00 he came to a conclusion that the total tax dues of the dealer was ₹31,99,335.00 for that relevant period. Since the dealer had already paid ₹15,58,074.00 towards its tax dues

the first appellate authority held that it was to pay ₹16,41,261.00 only towards its tax dues for the period under assessment.

3. The State then came up with this second appeal on the grounds that the first appellate authority allowed exemption sales i.e. stock transfer covered u/S. 6A of the CST Act which was not only arbitrary and erroneous but also totally against the provision of law. There was a Fraud Case Report against the dealer containing the allegations that the dealer had sold goods to the parties outside the State against pre-existing contract but intentionally disclosed the same as stock transfer in its return. It thus claimed exemption in order to evade payment of tax to the State. The dealer had camouflaged its transactions which were clearly proved from its record but the first appellate authority though upheld the finding of the assessing officer in this regard yet erroneously disallowed some of the transactions to be covered under CST Sale as per Sec. 3(a) of the CST Act instead of stock transfer. He thus allowed tax relief in favour of the dealer-assessee which was in fact rejected by the assessing officer correctly. Further the first appellate authority allowed exemption for ₹23,02,96,163.00 and disallowed claim for ₹95,28,276.00 in a wrong manner without even examining the nature of transactions held by the dealer during that relevant period. Thus for the aforesaid reasons it was contended on

behalf of the State to set aside the impugned order and restore the order of assessment.

In this case a cross-objection has been filed on behalf of the dealer-assessee.

4. In course of hearing learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that in the instant case the assessing officer had to apply his best judgment for determining the tax liability of the dealer since he had noticed some aberrations in the business transactions held by the dealer during that relevant period. He also took note of the allegations made against the dealer-assessee by the investigating officials in their report. He (the assessing officer) categorically described the entire business transactions held by the dealer-assessee during that relevant period and found out clearly the manner in which the dealer had conducted its business and could manage to evade tax during the said period. The first appellate authority did not accede to the finding of the assessing officer. He reduced the tax liability of the dealer-assessee for that relevant period and accordingly a modified demand notice was issued to it (the dealer) for making payment of balance tax. Learned Addl. Standing Counsel (CT) for the State apprised the Bench that the Registration Certificate of the dealer-assessee does not reveal about existence of its branch

anywhere in the country. Therefore, the question of branch transfer by the dealer-assessee does not arise at all in the present case.

In response to this argument on behalf of the State as described above learned Counsel appearing on behalf of the dealer-assessee submitted that while verifying the transactions held by the dealer-assessee during the period under assessment the first appellate authority found out some anomalies in respect of some consignment sales only for which he rejected those transactions as well as the dealer's claim for exemption of tax on those account. The dealer had not preferred any appeal against the order of the first appellate authority. The first appellate authority, as revealed from the impugned order, had examined each and every documents furnished by the dealer-assessee himself and then came to a conclusion that the dealer was certainly entitled for exemption in respect of some stock transfer made by the business establishment. The dealer had also cited a number of decisions in course of hearing the instant appeal in support of its case. Those decisions were rendered in the cases of *Tata Locomotive Co. Ltd. Vs. Asst. CCT*, reported in [1970] 26 STC 354 (SC); *Associated Cements Co. Ltd. Vs. State of Orissa*, reported in [2008] 13 VST 90 (Ori.); *SAIL Vs. State of Kerala*, reported in (2011) 19 KTR 42 (CSTAA); *State of Karnataka Vs. Jindal Aluminium Ltd.*, reported in [2002] 126 STC 458 (Ker.); *Ahura Welding Electrode Mfgrs. Ltd. Vs. State of Tamil Nadu*,

reported in [1999] 115 STC 626 (Mad.); CIT Vs. Darshan Oil Pvt. Ltd., reported in (2006) NTN (Vol.31) 154; Associated Cement Co. Ltd. Vs. ACCT, reported in [2009] 23 VST 486 (Mad.); State of Tamil Nadu Vs. Shree Murugan Flour Mills (P) Ltd. and another, reported in [2005] 142 STC 399 (Mad.); Tropicana Beverages Vs. State of Karnataka, reported in (2012) 21 STJ 737 (Kar.) and Ashok Leyland Ltd. Vs. State of Tamil Nadu, reported in (2004) 3 SCC 1 including the orders passed by this Tribunal in some other cases.

5. On a thorough scrutiny of the impugned order it could be gathered that the first appellate authority had examined all the materials placed before him pertaining to this case and after proper examination he could find that except for a transaction of sponge iron worth ₹95,28,276.00 by the dealer the rest others were done by it (the dealer-assessee) on stock transfer basis in accordance with the provision u/S. 6A of the CST Act. As the dealer had furnished relevant records and documents before the first appellate authority at the stage of appeal in support of its aforesaid claim of stock transfer and the first appellate authority found that the other transactions were made by the dealer-assessee in compliance of the provision of law which would entitle it (the dealer) to claim the benefit of tax exemption, he (first appellate authority) thought it proper to reduce the assessment. The first appellate authority has clearly reflected in its order chronologically

as to why he accepted the averments advanced on behalf of the dealer before him. No infirmity in the order of the first appellate authority has been brought to the notice of this Bench to interfere with the same.

6. In the result, the appeal preferred by the State is dismissed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
1st Judicial Member

I agree,

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