

suggestion of the A.G. Audit, the assessment was reopened comprising tax period 01.04.2005 to 31.08.2011. The assessing authority verified the 'C' forms with reference to the books of account and invoices produced and found the declaration form 'C' in five cases are defective not in original or not produced as the case may be. As a result, it has held the dealer is not entitled to reduction in tax to the tune of Rs.77,487.00. When raising the tax to that amount, penalty twice of the tax due was also levied at Rs.1,54,974.00. Thus, the total demand against the dealer was raised at Rs.2,32,461.00.

3. In appeal, learned JCST (Appeal), Balasore Range, Balasore as first appellate authority verified the counter foil, photocopy, duplicate declaration form on being produced by the dealer and accepted the documents. As a result, he allowed the rebate in tax as claimed by the dealer. Resultantly, the demand became reduced to nil.

4. When the matter stood thus, Revenue being aggrieved preferred this appeal challenging the order of first appellate authority as not sustainable in law since the first appellate authority has accepted the evidences led by the dealer before him without following the due procedure under law. It is contended that, the first appellate authority has mechanically accepted the plea of the dealer before him and allowed the concession in rate of tax. In absence of any cogent proof, such a concession in tax given by the first appellate authority is incorrect both factually and legally.

5. The appeal is heard without cross objection but in the hearing the dealer has supported the order of first appellate authority.

6. **Findings:-**

This is a case of concession in rate of tax in case of CST sale against declaration form 'C'. When the dealer claims the concession, Revenue denied the same as the dealer has failed to produce the declaration form in support of his claim. Law is no more *res integra* keeping view the plethora of decision of Hon'ble Court that,

the dealer is required to furnish declaration form 'C' and other evidences in support of his claim of interstate sale, whereas on failure to do so, when the dealer could succeed to show the bona fides of the transaction and failure to produce declaration form for no fault on his part, in that case also Revenue only can impose tax at full rate but not the penalty.

Learned Counsel appearing for the dealer argued that, originals of the declaration forms were given to the assessing authority during the regular assessment but in a later period when the assessment was reopened on the basis of fraud case report, the dealer only could produce the duplicate or counter foils. He adduced two number of declaration form 'C' downloaded from the website of issuing dealer.

7. On perusal of the order of assessing authority, it is found that, the dealer is required to give declaration form 'C' or connected documents in support of interstate sale for five number of transactions. The dealer could furnish the counter foil and other documents. Original is not in possession of the dealer, however, the claim of the dealer is, those were submitted before the assessing authority. In such view of the facts as pleaded by the dealer, it is believed that, the matter should be remitted back to the assessing authority for proper verification on which basis the dealer was initially granted the concession and thereafter the assessing authority also needs to verify the documents available with the dealer and if feels so, can also summon or enquire for the interstate purchaser in support of the claim of the interstate sale by the dealer and only thereafter, a conclusion can be drawn, whether the dealer is entitled to concession as claimed or not.

8. Be that as it may, it is believed that, the impugned order need to be set aside and the matter should be remitted back to the assessing authority for assessment afresh after due scrutiny of the evidences led by the dealer.

In the result, it is ordered.

The appeal is allowed on contest. The matter is set aside. The matter is remitted back to the assessing authority for assessment afresh in the light of observation hereinabove.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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