



assessee (the appellant in the present case) pertaining to the period 2003-04.

2. The facts as revealed from the case record are that the dealer-assessee named and styled as "M/s. World Link Corporation, Rourkela" carries on the business of trading iron and steel goods as well as machinery spares only. In course of an assessment done u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the period 2003-04 it was noticed by the assessing officer that the dealer had made some intra-State sales while showing the same as transit sale for which he raised a demand of `14,58,499.00 and issued the demand notice accordingly.

Being aggrieved with the aforesaid finding of the assessing officer the dealer-appellant preferred appeal before the first appellate authority. Considering the materials on record and upon coming across the fact that one of the employees of the dealer-appellant having released the goods from the transporter had supplied the same to M/s. SAIL, Rourkela Steel Plant, Rourkela (SAIL, RSP) by hand came to a conclusion that the aforesaid questionable transactions were intra-State sale transactions and as such liable for levy of tax. Thus he confirmed the order of the assessing officer.

The dealer-appellant being dissatisfied with the aforesaid order preferred appeal before this Tribunal.

3. In course of hearing learned Counsel appearing on behalf of the dealer-assessee submitted that the first appellate authority had grossly erred both in law and fact by confirming the order of assessment which was done by determining the GTO and TTO of the dealer-appellant at `1,13,71,857.00 and `1,13,52,131.00 respectively for the period under assessment. Both the authorities below had not given any opportunity to the appellant to explain its case even though the appellant could furnish some documents to prove that the purchase order issued by SAIL, RSP to the appellant clearly indicated that the goods involved in the transaction being of specific nature which are manufactured by one M/s. ABB Limited, Bangalore were to be despatched directly to SAIL, RSP by M/s. ABB Limited, Bangalore. The spare parts for which order was placed by SAIL, RSP being tailor made were to be used by SAIL, RSP alone and none-else. The dealer-assessee had submitted a certificate in this regard which was obtained from M/s. ABB Limited before the first appellate authority but the same was not considered. It was submitted by the learned Counsel appearing on behalf of the dealer-assessee that in the instant case the carrier of the goods being the possessor and bailee of the goods received from the consignor i.e. M/s. ABB Limited, Bangalore as per Sec. 148 of the Indian Contract Act is not authorized to deliver those goods to anyone else except the SAIL, RSP who is the consignee or any person authorized on

behalf of the consignee as otherwise the transporter would be liable for damages under the Indian Contract Act. Therefore, the ownership of the property during the period i.e. when the goods were delivered to the transporter till delivery of those goods at the source of SAIL, RSP was never transferred legally to the dealer-appellant and always remained as the property of SAIL, RSP since the same being ascertained goods were ready for delivery as per the prior existing contract. It was also urged by the learned Counsel for the dealer-assessee before the Bench that in the present case the assessing officer had not decided each of the relevant transactions separately but came to a conclusion that those transactions were intra-State transactions and as such the dealer-assessee was held liable to pay tax thereon. In the aforesaid circumstances, he urged before the Bench to hold the assessment in question as arbitrary and illegal.

In support of his argument learned Counsel for the dealer-assessee cited a number of decisions reported in [1992] 87 STC 502 (Ori.) (State of Orissa Vs. Rolta Motors); [1981] 47 STC 1 (SC) (Indian Oil Corporation Ltd. and another Vs. Union of India); [1976] 38 STC 475 (SC) (English Electric Co. of India Ltd. Vs. Deputy Commercial Tax Officer); [1996] 102 STC 373 (SC) (Bharat Heavy Electricals Ltd. Vs. Union of India); [1979] 43 STC 457 (SC) (Union of India and Another Vs. K.G. Khosla & Co. Ltd. and others) and [1966] 17 STC 473

(SC) (Khosla & Co. (P) Ltd. Vs. Deputy Commissioner of Commercial Taxes).

4. The State-respondent has not filed cross-objection in the instant case. However, in course of hearing learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that on examination of the books of account of the dealer-assessee it could be found that during the year under assessment the dealer had shown the opening balance as nil and have purchased goods worth `4,44,363.20 from outside the State against Form-C and goods worth `67,75,041.05 against E-I. Thus, the total purchases came to `72,19,404.25. Further against the aforesaid purchases the dealer-assessee sold goods worth `4,93,180.00 under the OST Act and goods worth `1,17,748.00 under the CST Act against Form-C and `1,08,58,951.00 u/S. 6(2) of the CST Act. There was no inside purchasing of goods during that year and the dealer had shown closing balance at `5,80,055.21 as on 31.03.2004. It was found from the accounts of the dealer-assessee that it had effected sales on machinery spares worth `1,08,58,951.00 as per Sec. 6(2) of the CST Act to SAIL, RSP during the year against Form E-I and Form-C conditions. According to the dealer-assessee the manufacturer M/s. ABB

Limited, Bangalore had supplied materials directly to SAIL, RSP and issued certificate E-I to M/s. World Link Corporation (the dealer-assessee) but as per the report submitted by the IST, Investigation Unit, Rourkela bearing No. 22/2003-2004 dated 28.02.2004 some sales effected by the dealer u/S. 6(2) of the CST Act were not actually transit sale but intra-State sales since it was found that goods involved in those transactions were actually received by one D.C. Tripathy, an employee of the dealer-assessee from the transporter and then the said employee had handed over those goods to SAIL, RSP. No evidence has been furnished by the dealer-assessee to the effect that its employee namely D.C. Tripathy was an authorized agent of SAIL, RSP to receive the goods from the transporter and then to hand over the same to SAIL, RSP. Thus it is revealed from the record that those transactions were only intra-State sales attracting tax @ 12% under the OST Act. In the instant case the investigating officer as well as the assessing officer had noticed the aforesaid discrepancy and further found that though the dealer had claimed that the goods after being despatched by the supplier/manufacturer were inspected at site by the inspecting authority of the purchaser yet on verification of the accounts it was found that the goods were inspected inside the plant after the delivery was made by the party. Therefore, the assessing officer determined the nature of transaction and tax liability of the dealer-assessee as those were found

to be only intra-State sales and not sales in transit. Learned Addl. Standing Counsel (CT) for the State thus submitted that under the aforesaid circumstances no fault can be found either with the order of the assessing officer or with the order of the first appellate authority who upheld the same while disposing of the appeal preferred by the dealer-assessee.

5. Perused the documents furnished by the dealer-assessee which are found to be some correspondences made by M/s. ABB Limited, Bangalore, declaration of M/s. Gati Limited i.e. the transporter of the goods in question, statement containing details of purchases from M/s. ABB Limited, Bangalore for sales u/S. 6(2) of the CST Act for the year 2003-04 by the dealer-assessee, invoice-cum-challans issued by M/s. ABB Limited, Bangalore. However, in the present case the dealer-assessee sought exemption from its tax liability on the ground of inter-State sale in course of transit as per the provisions of Sec. 6(2) of the CST Act. While justifying its claim that the goods after being delivered by M/s. ABB Limited, Bangalore to the transporter i.e. M/s. Gati Limited were taken to SAIL, RSP as per the communication between M/s. ABB Limited and SAIL, RSP. The dealer-assessee took a plea that it was not involved in the aforesaid transactions in between the delivery of goods and acceptance of goods by the parties concerned. In this regard learned Addl. Standing Counsel (CT) appearing on behalf

of the State cited the case of Voltas Limited Vs. State of Odisha, reported in [2008] 15 VST 401 (Ori.) and submitted that in the instant case the dealer-assessee in fact involved itself in two sales, viz. the first sale from outside the State dealer i.e. M/s. ABB Limited to the dealer M/s. World Link Corporation, a registered dealer inside the State and the second sale by the appellant itself to the SAIL, RSP inside the State of Odisha. Learned Addl. Standing Counsel (CT) also apprised this Bench as to what was the view of this Tribunal in a case of this nature as quoted in para-37 of the above stated judgment passed by the Hon'ble Court. For better appreciation, we would like to quote the said para in this order :

Quote : "... So what is determinative of whether it is a sale in course of inter-State trade is the priority of events between the transfer of documents of title to the goods and taking delivery of goods. If the transfer of documents of title to goods is an event prior to the event of taking delivery of goods the sale is one in course of inter-State trade. The dealer-assessee is making a claim of exemption on the ground that the sale is one in course of inter-State trade. So the onus is upon him to prove the transfer of documents of title to the goods is earlier than taking delivery of goods. The dealer-assessee could have discharged the onus by

showing the date of transfer of documents of title to the goods and the date of taking delivery of the goods...

For the reasons elaborated above, I find that Sale B, and therefore, sale D, are not sales in course of inter-State trade and commerce, and therefore, I disallow the claim of exemption of the dealer-assessee on the plea of subsequent sale under Section 6(2). When the sales made by the dealer-assessee are thus found to be not in course of inter-State trade, they remain subject to tax under the State Act, for they are not sales outside the State, nor in course of export or import. The State, while taxing these sales, have not transgressed the restrictions imposed by the Constitution, discussed in the order at para-6. These sales are now held to be intra-State sales subject to tax under the OST Act." Unquote.

Apart from this decision, learned Addl. Standing Counsel (CT) cited some other decisions rendered by the Hon'ble High Court of Orissa in the cases of M/s. Voltas Ltd. Vs. State in STREV No. 174 of 2007 dated 12.01.2009 and M/s. M.M. Motors and Tractor Vs. State in STREV No.46 of 2003 dated 05.12.2018.

6. In the instant case, the order of the assessing officer clearly reveals that there was a Fraud Case Report submitted by the

IST, Investigation Unit, Rourkela bearing No. 22/2003-2004 dated 28.02.2004 with the allegation that some sales effected by the dealer- assessee u/S. 6(2) of the CST Act were actually not transit sale, but intra-State sale. The said report was confronted to the dealer during relevant assessment. On the said report the dealer- assessee had furnished its written submission to treat all its provisional sales as sales under transit as contemplated u/S. 3(b) of the CST Act and availed the exemption of tax in accordance with the provision u/S. 6(2) of the CST Act. The dealer claimed that he had received supply orders from SAIL, RSP and in turn placed supply orders to different suppliers outside the State for supply of materials directly to SAIL, RSP on the petitioner's account on the strength of Government Way Bills supplied by Rourkela Steel Plant, Rourkela who is a registered dealer within the jurisdiction of the Sales Tax Officer, Koraput-I Circle, bearing OST Registration No. RL-I-63 and RL-I-C-44. The goods had been despatched by the suppliers/ manufacturers after those were inspected at site by the inspecting authority of the purchaser. Those goods were consigned in the name of the purchaser i.e. Rourkela Steel Plant as is evident from the way bills as well as consignment notes. The supplier of those goods outside the State sent the copy of the invoice-cum-challans to the dealer mentioning therein clearly that the goods were consigned to Rourkela Steel Plant, Rourkela, Manager Stores, Rourkela. Those were the

transactions which were reported against the dealer by the IST, Investigation Unit, Rourkela which the dealer claimed to have been covered by Sec. 6(2) of the CST Act.

Sec. 3 of the CST Act provides –

Quote : “A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

- (a) occasions the movement of goods from one State to another; or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.” Unquote.

Section 6(2) of the CST Act provides-

Quote : “Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act.” Unquote.

7. Now the question comes whether the dealer-assessee had effected the questionable transactions in compliance with these

abovesaid provisions because there is certainly difference between the sale effected u/S. 3(a) and Sec. 3(b) of the CST Act. Section 3(b) of the CST Act has got its application to a sale effected after dispatch of the goods but before actual delivery of the goods. In the present case it is found that M/s. World Link Corporation, Rourkela had released the goods from the transporter namely M/s. Gati Limited through its employee namely D.C. Tripathy. Thereafter the said employee had delivered the goods to SAIL, RSP which could be detected from the documents verified by the investigation team as well as the assessing officer. That apart at the time of visiting the physical stock the assessing officer could find that the physical stock of consignment worth `15,381.00 supported by invoice No.0100230051 dated 12.12.2003 issued by M/s. Elster Metering (P) Ltd., Mumbai and another consignment worth `5,00,000.00 approximately against which the dealer could not produce any purchase bill and attributed the same to be the purchases pertaining to the year 2002-03 simply admitted that those consignments relate to 2002-03 whereas the assessment for the said year was completed with closing balance at nil. Therefore, it is clearly noticed that the dealer-assessee who was required to prove regarding the nature of sale to the satisfaction of the authorities concerned had completely failed to discharge its duty. It is clearly revealed that the

dealer-assessee had received orders from SAIL, RSP to provide some tailor-made goods and accordingly it had placed orders to M/s. ABB Limited, Bangalore to provide those articles. Therefore, the dealer-assessee was absolutely aware that those goods were to be transported to SAIL, RSP before procuring them from M/s. ABB Limited, Bangalore. In such a circumstance, the question of sale in transit in the instant case does not arise at all. That apart it is also noticed that the dealer has failed to submit any document revealing any sort of contract or arrangement between itself and the SAIL, RSP prior to those questionable transactions from which it could have been gathered that the sales involved in those questionable transactions were actually inter-State sales effected among the parties as per their agreement made prior to such transactions. On the contrary, the dealer-assessee is found to have failed in explaining the presence of its employee while taking delivery of goods from the transporter and its involvement in releasing the goods from the transporter when those goods were delivered at SAIL, RSP. All these affairs somehow indicate that the dealer-assessee had indulged itself in some transactions which can be considered as intra-State sale transactions only and not the exempted sales as envisaged u/S. 6(2) of the CST Act.

8. Thus, as per the discussion made in the foregoing paragraphs we find absolutely no reason to interfere with the order of

the first appellate authority confirming the order of assessment in respect of the dealer-assessee pertaining to the relevant period.

9. In the result, the appeal is dismissed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Ranjit Kumar Rout)**  
**Accounts Member-II**