

**BEFORE THE CHAIRMAN: ODISHA SALES TAX TRIBUNAL: CUTTACK.**

**S.A. No. 118(C) of 2016-17**

(Arising out of order of the learned JCST, Cuttack-I Range, Cuttack, in First Appeal Case No. 107121612000085, disposed of on 30.12.2016)

**Present :** **Smt. Suchismita Misra,**  
**Chairman**

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

. . . Appellant

**- V e r s u s -**

M/s. Patro Sales Agency,  
Plot No.833, Mahanadi Vihar,  
P.O.- Naya Bazar, Dist. Cuttack.

. . . Respondent

For the Appellant ... Mr. M.S. Raman, Addl. S.C. (CT)  
For the Respondent ... Mr. H.S. Patra, Advocate

-----  
Date of hearing: 23.07.2018 \*\*\*\* Date of order: 20.08.2018  
-----

**ORDER**

This appeal by the State is directed against the order passed by the Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack (first appellate authority) in First Appeal Case No. 107121612000085 on 30.12.2016 in the following circumstances.

2. The facts involved in the case as revealed from the record are that the dealer-assessee in the instant case is the proprietor of the business establishment named and styled as M/s. Patro Sales Agency at Mahanadi Vihar, Cuttack and further deals in the trading of goods like cycle

parts, rickshaw parts and its accessories like tyres and tubes. Pursuant to Audit Visit Report (AVR) it was detected that the dealer-assessee had purchased goods on 'C' form condition but returned some of those purchased goods beyond the stipulated time in violation of the conditions declared in Form-C for which a notice was issued to him in Form VAT-306 for assessment of tax. In course of assessment for the periods 2013-14 and 2014-15, the Sales Tax Officer, Cuttack-I East Circle, Cuttack (assessing authority) could find that the dealer had contravened the provisions contained u/S. 8(3)(b) of the CST Act as the goods such as cycle tubes as well as tubes and tyres worth `13,71,286.00 and `15,19,330.00, in total `28,90,625.00 were returned to the original seller in deviation of the conditions of 'C' form and as such, the dealer-assessee was liable for levy of penalty u/S. 10A of the CST Act. Accordingly, the assessing authority imposed penalty of `24,426.00 on the dealer-assessee.

Being aggrieved by the above order of the assessing authority, the dealer-assessee filed an appeal before the first appellate authority while contending before the authority that after purchase of goods he had sold the same to different dealers. However, due to defect in some of those goods worth `3,19,290.00 the sub-dealers returned those articles to him and he in turn returned the same (numbering 3401 in quantity) to the original seller through Government Way Bills. It was also stated by the

dealer that those items were returned on 19.09.2014, but by that time i.e. on 25.07.2013 he had already issued the declaration in Form-C to the original selling dealer on the total invoice amount of `28,90,625.00. Further being the dealer while selling the goods he had collected VAT amount in respect of aforesaid goods and deposited the same as per OVAT Rules. Learned first appellate authority after considering the aforesaid submissions of the dealer-assessee as well as considering the documents such as credit notes and supporting debit notes in question alongwith way bills in respect of the goods returned outside the State of Odisha, came to a conclusion that imposition of penalty amounting to `24,426.00 as per Sec. 10A of the CST Act for violation of provisions of Form-C towards the return of defective goods was not proper and also not as per the provisions of law. Therefore, he allowed the appeal and set aside the order of penalty imposed on the dealer-assessee as per Sec. 10A of the CST Act.

3. Now in this second appeal, the State challenged the aforesaid order on the grounds that the order passed by the assessing authority was just and proper but the same was set aside erroneously. It is also contended by the State-appellant that in this case the goods were purchased on 30.11.2012 from two registered dealers which are outside the State and 'C' forms were issued in respect of those transactions on 25.07.2013 but the goods i.e. tubes (numbering 3401) worth `3,19,290.00

were returned on 19.09.2014 i.e. much beyond the stipulated time as provided in OVAT Rules which are applicable mutatis mutandis CST (O) Rules. Therefore, in course of hearing the argument it was urged on behalf of the State to set aside the order of the first appellate authority and restore the order of the assessing authority.

4. On the other hand, learned Counsel for the respondent supported the order of the first appellate authority and argued that the dealer-assessee had submitted the related credit notes, debit notes, copies of the way bills in respect of the goods returned to the original dealer outside Odisha. On verification learned first appellate authority also found that those goods were returned to the original dealer since those were found to be defective. Therefore, imposition of penalty of `24,426.00 on the dealer-assessee as per Sec. 10A of the CST Act for violation of certain conditions declared in Form-C towards return of defective goods was not proper being not in consonance with the provision of law.

5. In course of hearing learned Counsel appearing from both sides urged before the Court to go through the original case records in order to find out whether way bills produced by the dealer-assessee covers the goods returned to the original dealer outside the State and whether the dealer-assessee had violated any of the conditions of 'C' form during the tax period commencing from 01.04.2013 to 31.03.2015.

6. It is not disputed by either of the parties that the dealer-assessee sells the goods i.e. cycle parts to different dealers by purchasing the same from the dealers having their establishments outside the State. During the relevant period i.e. 01.04.2013 to 31.03.2015, the dealer-assessee had purchased goods worth `28,90,625.00 with the condition of reselling the same as per Form-C obtained by him. However, as per the AVR it was found that he had returned some goods without reducing the value of those goods which contravened the provision of CST Act since the 'C' form was issued against purchases at concessional rate for sale. It is also found from the LCR that the dealer-assessee had admitted that he had utilized two way bills bearing Nos. 21W-14182579420 and 21W-14182590803 dt. 25.09.2014 to return goods purchased from outside the State on the strength of Form-C. Further, he also admitted that as 3401 nos. of defective goods were found in that consignment, he returned the same to the original dealer on 19.09.2014 but on 25.07.2013 he had issued the 'C' form to the original dealer on the total invoice amount pertaining to invoice Nos. 12000197 dt. 30.11.2012 and 12000100 dt. 30.11.2012 relating to the relevant 'C' form. When the dealer afforded with an opportunity to explain the anomaly noticed during the audit as well as by the assessing authority, he stated that after purchase of goods he had sold the same to his sub-dealers but due to defect in the goods the sub-dealers returned the same to him and he in turn returned those defective items to the original dealer. However, at that time he could not produce any supportive document justifying his explanation before the assessing authority. He gave his statement before the STO, Cuttack-I East Circle, Cuttack on 13.05.2016 wherein he admitted that he could not produce the credit notes and debit notes involved in the relevant transactions.

7. Learned Counsel appearing on behalf of the dealer-assessee tried to apprise this forum that the credit notes and debit notes

were shown to the STO but he did not take note of the same whereas the first appellate authority found those to be correct. This argument of the dealer-assessee was vehemently opposed by the learned Addl. Standing Counsel (CT) for the State and in course of advancing his argument, learned Addl. Standing Counsel (CT) for the State urged before this forum to read the CST (R&T) Rules pertaining to certificate of registration and Rule 12(1) along with Sections 6, 6A and 8 of the CST Act which would amply indicate that the dealer-assessee had violated certain provisions of law by not making his declaration for return of some goods to the original dealer within the stipulated time and kept the fact suppressed till the time the same was detected by the assessing authority. Therefore, he cannot escape from penalty as imposed on him.

8. On perusal of records, it is also found that the dealer-assessee during the relevant period had nowhere made his intention clear about the returning of goods to the original seller on some eventualities within the stipulated time. He had obtained the 'C' form in respect of invoice No.12000100 worth `8,93,729.00 vide way bill No. 21W-12143491841 dt. 30.11.2012 and 'C' form in respect of invoice No. 12000197 worth `12,71,267.00 vide way bill No. 21W-12143492039 dt. 30.11.2012. He has not filed any document showing return of goods to the original dealer through appropriate paper transactions as per rules. Therefore, it cannot be accepted that he had not violated the mandatory requirement of law in this regard. He had certainly furnished incorrect statement in Form-C while making inter-State transaction of goods i.e. cycle tubes etc. As envisaged u/R. 7(3)(d) of the OVAT Rules such return of goods should be made within three months from the date of sale.

Therefore, as per the provision contained u/S. 10A of the CST Act, the dealer-assessee is liable for penalty and as such I do not find any infirmity in the order passed by the assessing authority in this regard.

9. Thus, as per the discussion made in foregoing paragraphs, the order passed by the first appellate authority is set aside and the assessment order passed by the assessing authority is hereby restored. The dealer-assessee is hereby directed to make payment of the penalty as determined by the assessing authority in the order of assessment within three months from the date of receipt of this order.

Dictated & Corrected by me,

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

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