

**Before the Central Sales Tax Appellate Authority
New Delhi**

10th January, 2019

PRESENT

Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson

Appeal No. CST/ 10/ 2013

Name & address of the Parties (Appellant(s) / Respondent (s))	:	M/s Pacific Roofings (P) Ltd., Chennai versus The State of Tamil Nadu & Others
Present for the appellant(s)	:	Mr. V.V. Sampathkumar Mr. V.V. Ramesh
Present for the respondent(s)	:	Mr. K.V. Vijaya Kumar Mr. K.V. Ram Kumar for State of Tamil Nadu Mr. Nishe Rajen Shonker for State of Kerala

ORDER

The appellant, M/s Pacific Roofings (P) Ltd., is a manufacturer and dealer in Asphalt Roofing Sheets. The appellant's place of business is 54, Jawaharlal Nehru Salai, Ashok Nagar, Chennai-83. In this appeal, the appellant has challenged order dated 19.10.2012 passed by the Tamilnadu Sales Tax Appellate Tribunal (“**the Tribunal**” for short) in STA No. 411/2005.

Facts of the case could be gathered from the original assessment order dated 28.02.1998 passed by the Commercial Tax Officer, Saligramam Assessment Circle. For the year 1995-96, the appellant had reported a total and taxable turnover of Rs. 55,49,165.48 as per the Form I returns filed under the Central Sales Tax Act, 1956 (“**the CST Act**” for short). The appellant’s accounts produced earlier for check had accounted for total sales of Rs. 2,86,13,824.00 under the CST Act as shown below:-

Inter-State sales as per accounts	-	Rs. 55,40,350.00
Value of goods sold to Inter-State consignee	-	Rs. 2,30,73,474.00
Total	-	Rs. 2,86,13,824.00

The Assessing Officer found that the appellant had not reported the consignment despatches as required under the CST Act. He also found that the inter-State sales were overstated by Rs. 8,815.00 (Rs. 55,49,165.00 – Rs. 55,40,350.00). This difference being not reconcilable, the Assessing Officer proposed to treat this turnover as unaccounted sales for bringing them under the tax net. The Assessing Officer noted that though the appellant had not reported inter-State consignment despatches as required, it had filed the following documents in support of the consignment transfers:-

- (1) Statement of consignment sales showing monthwise and agentwise details of consignment despatches along with particulars of G.C. notes.
- (2) Consignment sale pattials received for the inter-State agents.
- (3) Copies of consigner copy of transport document (L.R.)
- (4) Copies of consignment agreements.

On 12.04.1996, the place of business of the appellant was inspected by the officers of the Enforcement Wing. Certain irregularities such as not maintaining cash-books properly were detected during inspection. During the inspection, consignment records in respect of certain inter-State agents were scrutinized. The Assessing Officer noted that the records revealed that the goods despatched on consignment basis to the agents were found to have been sold in most cases on the same day of their receipt in same quantity or within a day or two in some cases which was not possible unless there were pre-existing purchase orders. A clause in the consignment agreement has been relied upon which according to the Assessing Officer indicated that ownership of the goods was transferred by the appellant. The Assessing Officer also noted instances of consignment despatches without raising consignment invoices on agent at the time of despatch.

In view of the above, the Assessing Officer was not inclined to accept the appellant's claim for exemption in respect of Rs. 2,30,73,474.00 projected as value of goods despatched to inter-State consignee. The Assessing Officer noted that the appellant had not filed necessary forms in support of its inter-State sales of Rs.

55,49,165.00 reported in its Form-I returns. The appellant had filed the following statement before the Enforcement Officer:

Consignment turnover	-	Rs. 2,36,39,542.00
CST sales	-	Rs. 58,38,570.00
Total	-	<hr/> Rs. 2,94,78,112.00
Turnover as per Accounts	-	<hr/> Rs. 2,88,13,824.00

The Assessing Officer observed that since there was shortfall in the accounts produced by the appellant earlier for check and figures furnished by the appellant to Enforcement Wing officers, he proposed to reject turnover figures accounted for and reported in Form-I as incorrect and incomplete and determine the inter-State sales turnover on the basis of the figures furnished by the appellant to the Enforcement Wing. He proposed to determine Rs. 2,94,78,112/- as total and taxable turnover for the year 1995-96 and assess it to tax under the CST Act. He also proposed to levy penalty. Notice was accordingly served on the appellant. The appellant filed its objections.

The Assessing Officer overruled the appellant's objections. The Assessing Officer held that though the appellant had filed the copies of lorry receipts, those lorry receipts are not found to contain any evidence to show that the goods were delivered at the warehouses or business premises of the concerned agent duly

accounted for in their stock account. Copies of the goods consignment notes raised by the appellant were not filed. Mere statements were filed. Hence facts could not be verified. The Assessing Officer further observed that the details of remittances of sales proceeds of the goods by the agents were not produced for verification. The addresses of the agents where the goods were sent or consignments were delivered were not disclosed nor any proof of existence of such warehouses and actual delivery of the goods at that place could be ascertained from the records produced by the appellant. The Assessing Officer, further, observed that in view of this, the correctness of Form 'F' declarations could not be verified and bona fide nature of the consignment transfers could not be ascertained. The Assessing Officer further observed that some of the consignments were sold in the same quantity in which they were sent either on the same day or the next day. The Assessing Officer concluded that since the documents produced by the appellant are incomplete, the appellant's claim for exemption will have to be rejected and the entire turnover has to be brought under the tax net. So far as penalty is concerned, the Assessing Officer observed that there is sufficient ground to suspect that the appellant had suppressed a large percentage of its inter-State sales by camouflaging them as consignment despatches to other State agents. Hence the appellant's objections to levy of penalty under Section 9(2)(A) of the CST Act and under Section 2(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 ("**the TNGST Act**" for short) is not

sustainable. The Assessing Officer noted that the transactions in question were completed in March, 1996. Even after lapse of 23 months, the appellant had not filed proper records in support of consignment transfer or stock transfer. The Assessing Officer therefore determined the taxable turnover as Rs. 2,94,78,112/- based upon statement filed by the appellant before the Enforcement Wing Officer. Penalty was also levied

Being aggrieved by this order, the appellant filed appeal being CST AP 63 of 98 before the Appellate Assistant Commissioner (CT) (vi). The appellant pointed out to the Appellate Assistant Commissioner that the Assessing Officer has wrongly assessed the turnover of Rs. 2,94,78,112/- at 11.6% and 4% as follows:

- i) Rs. 2,36,39,542/- at 11.6% disallowing Consignment sales.
- ii) Rs. 55,30,385/- at 4% covered by C Forms.
- iii) Rs. 3,08,185/- at 11.6% not covered by C Forms.

The main contention of the appellant was that the appellant had all the necessary documents and the appellant may be given a chance to produce those documents.

The Appellate Assistant Commissioner held that the assessment made on Rs. 58,38,570/- (Rs. 55,30,385/- + 3,08,185/-) does not call for interference. So far as remaining turnover of Rs. 2,36,39,542/- is concerned he observed that the appellant had made a statement that it had all the required documents and at the

time of hearing the appellant had produced copies of agreements entered into by the appellant with its respective consignment agents and also the copies of the assessment orders passed by the respective Assessing Officers in other States. The appellant had also produced transport documents in support of proof of consignment transfers and other related statements of accounts. The appellant submitted before the Appellate Assistant Commissioner that merely because the documents were not presented in the required form that will not make the appellant ineligible for exemption on consignment sales. Taking note of all the documents and the submissions, the Appellate Assistant Commissioner held that the appellant must be given an opportunity to produce the documents which are in its possession. He, therefore remanded turnover of Rs. 2,36,39,542/- to the Assessing Officer for giving the appellant one more opportunity to produce the documents for claiming exemption on consignment sales. Question of levy of penalty was also consequently remanded.

On remand, the Assessing Officer vide order dated 30.09.2002 restored the original assessment order. He observed that the appellant was required to produce the following documents:

1. Copies of Agreement entered into with the Agents in other states.
2. Copies of indents placed, if any, by the Agents for sending the goods.
3. Copies of stock Transfer Invoices.
4. Copies of Lorry Receipts for the movement of goods to outside the state.

5. Copies of sale pattials rendered by the Agents in other States.
6. Copies of stock account maintained by both the principal and the Agents in respect of Consignment sales.
7. Details of mode of payment made by the Agents in other states.
8. Copies of assessment orders passed by the Assessing officers concerned in other States.

The Assessing Officer observed that the appellant did not produce the above documents despite a reminder letter sent on 25.02.2002. He, therefore, proposed to restore the original assessment order along with penalty imposed. Notice dated 13.06.2002 was accordingly issued to the appellant. By its letter dated 13.07.2002, the appellant prayed for time on medical ground. The appellant was granted time till 05.08.2002 for filing objections. The appellant again asked for time by letter dated 12.08.2002. It was granted time till 28.08.2002. The Assessing officer observed that the appellant did not file any objections nor did it produce any record. In the circumstances, the Assessing Officer confirmed the original assessment order dated 28.02.1998.

Being aggrieved by this order, the appellant preferred an appeal i.e. A.P.C.S.T. 4/2003 before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner in his order dated 18.08.2004 noted that the appellant had produced the necessary record which was required by the Assessing Officer at the time of hearing of the appeal. The Appellate Assistant Commissioner referred to those documents and discussed them. The said observations are very

important for the disposal of this appeal. Hence it is necessary to give its gist.

The gist is as under:

- (a) The appellant has filed copies of Assessment Orders in certain cases. These orders show that the consignments received from the appellant had been sold and taxes have been paid in the respective States.
- (b) The appellant has filed Form 'F' declarations. They contain details furnished by the appellant such as invoice number and date, GC number and date, copies of invoices, copies of Goods Carriers Agency Agreements, Assessment Orders as well as sale pattials, quantity despatched, quantity sold, commission paid, taxes paid etc. which prove that the consignments have been received by the respective consignment agents.
- (c) Form -13 Register filed by the appellant contains details such as invoice number and date, State to which consignment was moved, name of the agent, commodity, quantity, value, vehicle number and Form 'F' declarations.
- (d) The sale pattials filed by the appellant contain details such as delivery challan number, vehicle number, lorry receipts number and date, lorry freight, quantity received, value, quantity sold, tax collected, the bill number and date which prove that the consignments which moved out of State were accounted for and taxes were paid thereon. Details of remittances would be available in the sale pattials.
- (e) Consignment sales statement shows month-wise and agent-wise details of consignment despatches along with particulars of GC notes,

consignment sales pattials received from the inter-State agents, consignor copies of transfer documents (LR) and copies of consignment agreements.

The Appellate Assistant Commissioner was not impressed by the observation of the Assessing Officer that the lorry receipts in respect of consignment transfer did not contain any evidence to show that the goods were delivered at the warehouse of the concerned agent and were duly accounted for in their stock account because according to him the necessary details were available from other documents. The Appellate Assistant Commissioner held that the goods were sent by Goods Carriers. They had been received by the agent. Only copies will be retained by the appellant. He further observed that the consignment agent duly accounted for these transactions and filed Form F declarations which contain the details. He further observed that admittedly the appellant had filed sale pattials which had been verified by the Assessing Officer. They contain all the required details.

Regarding the observation that due to non-disclosure of the addresses of the warehouse of the agents where the goods were sent and lack of proof of existence of warehouse, the actual delivery of the goods at the place could not be ascertained, it is observed that such details were not required to be disclosed by the agent even to the principal. The agreement which contains the details are important and they were filed by the appellant. It is pertinent to note that in the

original assessment order dated 28.02.1998 the Assessing Officer has confirmed that the appellant had filed-

- (1) Statement of consignment sales showing monthwise and agentwise details of consignment despatches along with particulars of G.C. notes.
- (2) Consignment sale pattials received for the inter-State agents.
- (3) Copies of consigner copy of transport document (L.R.)
- (4) Copies of consignment agreements.

Thus the consignment agreements were produced by the appellant.

The Appellate Assistant Commissioner emphasized that the goods in question were not specific to any contract or earmarked for specific buyers and that there was no inextricable link between the indents and the movement of goods. He also observed that in stray cases bills were raised before the consignment despatches but that does not alter the character of consignment sales. He further observed that merely because the goods were sold on the same date of arrival or two or three days thereafter no inference can be drawn that there was no stock transfer.

Having considered all the documents and particularly the documents filed before him, the Appellate Assistant Commissioner came to a conclusion that the sales were consignment sales and that the details found in Form ' F ' declarations were supported by record. He, therefore, allowed the appeal and set aside the levy of tax at 11.6% on the turnover of Rs. 2,36,39,542/- which was treated by the

Assessing Officer as arising out of inter-State sales. Order of penalty was also set aside.

Being aggrieved by this order, the State of Tamil Nadu preferred an appeal being STA 411 of 2005 to the Tribunal. The said appeal was allowed by the Tribunal vide its order dated 19.10.2012 which is impugned in this appeal.

Mr. V.V. Sampathkumar, learned Counsel for the appellant submitted that the appellant has filed the necessary documents as observed by the Appellate Assistant Commissioner in his order dated 18.08.2004. The Tribunal has not considered those documents and wrongly held that the appellant has failed to prove its claim for exemption. Counsel submitted that the Tribunal has wrongly observed that the appellant has failed to disclose consignment transfers in the books of accounts when in fact they are clearly reflected in the books of accounts. Counsel submitted that by filing Form F declarations, the appellant has discharged the burden and hence the impugned order be set aside.

Mr. K.V. Vijaya Kumar, learned Counsel for the State of Tamil Nadu on the other hand supported the impugned order. Counsel submitted that no case is made out for interference with the same. It is, therefore, necessary to now turn to the impugned order.

The Tribunal concurred with the observations of the Assessing Officer that in most cases the goods were found to have been sold on the same day of the

receipt in same quantity and in some cases they were found to have been sold within a day or two. This was not possible unless there was pre-existing purchase order hence consignment despatches were ineligible for exemption under section 6A(1) of the CST Act. The Tribunal also agreed with the Assessing Officer on the clause in the consignment agreement which according to the Assessing Officer indicated transfer of ownership to the agent.

The Tribunal was of the view that though ample opportunity was given to the appellant, the appellant did not produce any documents as required by the order dated 24.12.1999 passed by the Appellate Assistant Commissioner while remanding the matter. The Tribunal observed that the appellant's Counsel produced copies of assessment orders of some of its agents in other States but did not produce copies of documents related to the present dispute. The Tribunal further observed that the appellant did not report the transactions in the monthly returns under the CST Act and in the books of accounts. The Tribunal took note of the Assessing Officer's observations that there were instances of consignment despatches without any consignment notes. The Tribunal observed that the appellant had not produced main accounts for the year 1995-96 except stock-register and other subsidiary records. The Tribunal further observed that the appellant has not produced day book, ledger for the year 1995-96 before the Enforcement Wing Authority from which it could have been verified whether the consignment transactions had been properly entered into the accounts or not. The

Tribunal concluded that since the appellant willfully did not disclose turnover, levy of penalty was warranted and was in order.

Unfortunately, the Tribunal's order does not discuss all the documents which are stated to have been produced before the Appellate Assistant Commissioner as reflected in his order dated 18.08.2014. I have given the gist of the said documents hereinabove. It may be recalled that the Appellate Assistant Commissioner has observed that the consignment agents had duly accounted for all the transactions and filed Form F declarations which contain the details. Besides admittedly sale pattials have been filed. They have been referred to in the original assessment order. They have been verified by the Assessing Officer. According to the Appellate Assistant Commissioner the sale pattials also contain the required details and therefore observations of the Assessing Officer that lorry receipts did not contain any evidence to show that the goods were delivered at the warehouse of the agent and were duly entered into in the stock account, accepting it to be true may not by itself disprove the appellant's claim. It is, therefore, necessary for the Tribunal to examine the sale pattials and Form 'F' declarations. It is observed by the Assessing Officer that addresses of the warehouses of the agents are not disclosed therefore actual place of delivery of goods could not be ascertained. In this connection, it is important to note that the Appellate Assistant Commissioner has observed that the consignment agreements are on record. This is accepted by the Assessing Officer in its original assessment order.

Therefore, it was necessary for the Tribunal to discuss the consignment agreements which according to the Appellate Assistant Commissioner contain necessary details. There is no discussion about this aspect. While the Appellate Assistant Commissioner categorically states that the required documents were submitted and has discussed them in depth the Tribunal order states that no documents related to this dispute were submitted. The Tribunal's order is cryptic.

It is true that the appellant repeatedly asked for time to submit documents. This conduct of the appellant will have to be deprecated. The appellant should have placed all the documents before the Assessing Officer promptly. But it appears that in the interest of justice, the appellant was given time to produce documents and the Appellate Assistant Commissioner in its order dated 18.08.2004 has stated that the appellant did submit documents. He has discussed all the documents in great detail and passed a reasoned order. It was, therefore, necessary for the Tribunal to discuss those documents and give a finding whether those documents disclose the required details or not. It is possible that the documents in a particular format may not have been produced but if the details can be gathered from some other documents like consignment agreements, Form F declarations, sale pattials etc. which according to the Appellate Assistant Commissioner have been produced, they may, perhaps, serve the purpose.

The Assessing Officer has referred to the clause in the consignment agreement which is as follows. *"In case goods become un-saleable, the agent*

shall be wholly liable to make the payment.” The Assessing Officer has observed that transfer of ownership is inherent in this clause. The Tribunal has concurred with this view. The Appellate Assistant Commissioner in his order observed that there are other clauses in the agreement which show that the goods were sent only for sale on commission basis by other State agents. It was therefore necessary for the Tribunal to consider all the clauses of the consignment agreement and then opine whether transfer of ownership was inherent in them. While the Tribunal states that consignment transfers are not reflected in the books of accounts, Counsel for the appellant has contended that this is a wrong statement. The book of accounts and the annual returns do disclose the turnover regarding consignment transfers. This aspect needs to be looked into.

There is another important aspect of the case which needs to be noted. The appellant has filed Form ‘F’ declarations. Filing of Form ‘F’ declaration is of vital importance to a dealer who claims that he is not liable to pay tax because there are no inter-State sales. Section 6A(1) of the CST Act states that where any dealer claims that he is not liable to pay tax under the CST Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned is on that dealer and for this purpose he may furnish to the assessing

authority a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods. Section 6A(1) of the CST Act further states that if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of the CST Act to have been occasioned as a result of sale. Sub-section (2) of Section 6A of the CST Act states that if the assessing authority is satisfied after making such enquiry as he may deem necessary, that the particulars contained in the declaration furnished by the dealer under sub-section(1) are true and that no inter-State sale has been effected, he may, at the time of, or at any time before the assessment of the tax payable by the dealer under the CST Act, make an order to that effect and thereupon the movement of goods to which the declaration relates, shall be deemed for the purpose of the CST Act to have been occasioned otherwise than as a result of sale.

These provisions make it clear that the burden of proving that the movement of goods was occasioned not by reason of sale is on the dealer and to discharge this burden he must furnish to the assessing authority a declaration duly filled by the principal officer of the other place of business of the dealer along with the evidence of despatch of such goods. The assessing authority to whom such a declaration is furnished has to then make an enquiry to find out whether particulars

contained in the declaration furnished by the dealer are true. If upon making such an enquiry, the dealer is satisfied that there is no inter-State sale, he may at the time of, or at any time before the assessment make an order to that effect and the movement of the goods to which such declaration relates shall then be deemed for the purpose of the CST Act to have been occasioned otherwise than as a result of sale. Such order can be passed before the assessment or along with the assessment. In the event, the dealer fails to furnish such declaration by reason of legal fiction such movement of goods would be deemed for all purposes of the CST Act to have been occasioned as a result of sale.

Section 6A of the CST Act fell for the consideration of the Supreme Court in **Ashok Leyland Ltd versus State of T.N. and Another**¹. The relevant portions of the judgment of the Supreme Court could be quoted:

“44.....Section 6-A provides for exception as regards the burden of proof in the event a claim is made that transfer of goods had taken place otherwise than by way of sale. Indisputably, the burden would be on the dealer to show that the movement of goods had occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be. For the purpose of discharge of such burden of proof, the dealer is required to furnish to the assessing authority within the prescribed time a declaration duly filled and signed by the principal office of the other place of business or his agent or principal. Such declaration would contain the prescribed particulars in the prescribed form obtained from the prescribed authority. Along with such declaration, the dealer is required to furnish the evidence of such dispatch of goods by reason of Act 20 of 2002. In the event it fails to furnish such

¹ (2004) 3 SCC 1

declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the said Act to have occasioned as a result of sale. Such declaration, indisputably, is to be filed in Form F. The said form is to be filled in triplicate. The prescribed authority of the transferee State supplies the said form. The original of the said form is to be filed with the transferor State and the duplicate thereof is to be filed before the authorities of the transferee State whereas the counterfoil is to be preserved by the reason where the agent or principal of the place of business of the company is situated.

45. When the dealer furnishes the original of Form F to its assessing authority, an enquiry is required to be held. Such enquiry is held by the assessing authority himself. He may pass an order on such declaration before the assessment or along with the assessment. Once an order in terms of sub-section (2) of Section 6-A of the Central Act is passed, the transactions involved therein would go out of the purview of the Central Act. In other words, in relation to such transactions, a finding is arrived at that they are not subjected to the provisions of the Central sales tax. It is not in dispute that thereunder no appeal is provided thereagainst.

The Supreme Court then quoted its observations in **C.P.K. Trading Vo. v.**

STO² as under:

“A plain reading of Section 6-A(2) of the Central Sales Tax Act points out that in cases where the dealer exercises the option of furnishing the declaration (F forms), the only further requirement is that the assessing authority should be satisfied, after making such enquiry, as he may deem necessary, that the particulars contained in the declaration furnished by the dealer are ‘true’. The scope or frontiers of enquiry, by the assessing authority under Section 6-A(2) of the Central Sales Tax Act is limited to this extent, namely, to verify whether the particulars contained in the declaration (F forms) furnished by the dealer are ‘true’. It means, the assessing authority can conduct an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord with facts or accurate or genuine. That alone is the scope of the enquiry

² 16 (1999) 76 STC 211 (ker)

contemplated by Section 6-A (2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other. As to what should be the nature of the enquiry, that can be conducted by the assessing authority under Section 6-A(2) of the Act, is certainly for him to decide. It is his duty to verify and satisfy himself that the particulars contained in the declaration furnished by the dealer are 'true'. As a quasi-judicial authority, the assessing authority should act fairly, and reasonably in the matter. During the course of the enquiry, under Section 6-A (2) of the Act, it is open to him to require the dealer to produce relevant documents or other papers or materials which are germane or relevant, to find whether the particulars contained in the declaration (F forms) are 'true'. It is not possible to specify the documents or other materials or papers that may be required, to be furnished in all situations and in all cases. It depends upon the facts and circumstances of each case. The power vested in the officer is a wide discretionary power, to find, whether the particulars contained in the declaration (F forms) are 'true'. It is not possible or practicable to lay down the exact documents or materials that may be required in all the cases, by the assessing authority, to come to a proper and just finding as required by Section 6-A(2) of the Act."

The Supreme Court then observed that the order of an authority under Section 6A is conclusive for all practical purposes.

Thus after receipt of Form 'F' declaration, it is the duty of the Assessing Officer to verify and satisfy himself that the particulars contained in the declaration furnished by the dealer are true. During this enquiry, it is open to the Assessing Officer to require the dealer to produce all relevant documents or other papers or materials which are germane or relevant to find whether the particulars contained in Form 'F' declaration are true. The relevant portion of Form 'F' declaration needs to be quoted:

“To..... (Transferor)

Registration Certificate No. of the
Transferor.....

*Certified that the goods transferred to me/ us as per details below
have been received and duly accounted for.*

Description of the goods

sent.....

Quantity of

weight.....

Value of the

goods.....

*Number and date of invoice [or challan or any other documents under
which goods were sent]*

*Name of Railway, Steamer or Ferry Station or Air Port or Post Office
or Road Transport Company's office from where the goods were
despatched..... No. and date of railway Receipt or Postal
Receipt or Goods Receipt with trip sheet of lorry or any other
documents indicating the means of
transport.....*

.....

*Date on which delivery was taken by the
transferee.....*

*The above statements are true to the best of my knowledge and
belief.*

(Signature)”

It is clear from a bare reading of the above form that it provides sufficient information about the transaction. The Assessing Officer can get sufficient clues from the details furnished in the Form to conduct an enquiry. He can ask for further documents also. Besides, as per Section 6A(1) of the CST Act, the dealer

is required to file evidence of despatch of such goods also along with the declaration. There is no indication in the order of the Assessing Officer that he conducted any such enquiry and made any order. It is for the Assessing officer to decide the nature of inquiry he wants to conduct. There is no particular mode or procedure prescribed for this enquiry. When Form F declarations are filed he has to either accept them as true or reject them as untrue if his inquiry discloses so. He should record a finding one way or the other. In this case, the Assessing Officer in his original order dated 28.02.1998 has on the contrary accepted that he has not conducted any enquiry. He has stated that "correctness of Form 'F' declarations could not be verified". The reason for this inability to verify correctness of Form 'F' declaration is stated to be non-filing of documents. The Assessing Officer in his original assessment order has admitted that the appellant filed sale pattials, consignment agreements, copies of consignor, copy of transport documents, statement of consignment sales showing monthwise and agentwise details of consignment despatches along with particulars of G.C. notes. The Appellate Assistant Commissioner in his order dated 18.08.2004 has referred to several documents. It is difficult therefore to come to a conclusion that the Assessing Officer was unable to make any enquiry because of lack of documents. There is no positive statement made in the order that the Assessing Officer has found the Form F declarations to be untrue. There is no clarity on this aspect.

The Tribunal has considered certain circumstances which according to the Tribunal disprove the claim of stock transfer or consignment despatches made by the appellant. It has noted that some of the consignments were sold in the same quantity in which they were sent either on the same day or on the next day. It is observed that in some cases bills were raised before the consignments were despatched. Whether in a given case the claim of stock transfer is genuine or not can be decided after considering all the attendant circumstances. Undoubtedly, in a given case if the consignments are found to have been sold in the same quantity in which they were sent either on the same day or on the next day or if the consignments are found to have reached directly to the buyers or if bills are found to have been raised before the consignments were despatched, the claim of stock transfer may be found to be false. But a solitary circumstance may not in a given case disprove the claim. Totality of circumstances may have to be taken into account. There are no hard and fast rules or rigid formulas which the Assessing Officer can follow while deciding the claim of stock transfer. The Assessing Officer will have to consider all the documents such as consignment agreements, sale pattials, Form F declarations and the attendant circumstances and come to a conclusion whether the claim of stock transfer is genuine or not. If almost in all transactions the consignments are found to have been sold in the same quantity in which they were sent on the same day or on the next day, it may be a pointer to inter-State sale. If regularly the goods are not offloaded at the agent's premises or

directly sent to the buyer that could be another pointer to inter-State sale because such repeated transactions cannot be described as a co-incidence. But one circumstance by itself may not be sufficient. At the cost of repetition, it must be stated that the Assessing Officer has to take an overall view of the matter and draw his conclusion.

In this case it bears repetition to state that the Appellate Assistant Commissioner in his order dated 18.08.2004 has referred to number of documents furnished by the appellant. The Tribunal, in the impugned order, has, however, not discussed them but come to the conclusion that the documents were not so furnished. The record does not show that the Assessing Officer has conducted any enquiry to find out whether Form 'F' declarations are true or not. In the circumstances, in the peculiar facts of this case the only course left to this Authority is to remand the matter not to the Tribunal but to the Assessing Officer who will be better equipped to go through all the documents and to examine whether the appellant's claim is genuine or not. At this stage, it must be made clear that the appellant has been shown enough latitude. The appellant has consistently sought for time. The Assessing Officer and the Appellate Assistant Commissioner were good enough to give the appellant time to submit documents but this cannot go on in perpetuity. On remand of this matter, the appellant will have to cooperate with the Assessing Officer. No procrastination should be allowed.

It needs to be made clear that this Authority has not expressed any opinion on the merits of the case. Nothing said in this order should be treated as expression of opinion on the merits of the appellant's claim. The Assessing Officer shall examine the matter independently after perusing the documents in depth after remand. Hence the following order:

The impugned order dated 19.10.2012 is set aside. The matter is remanded to the Assessing Officer. The Assessing Officer shall consider all the documents filed by the appellant. He shall find out after making such inquiry as he deems necessary whether Form 'F' declarations are true or not and shall record a finding one way or the other. If the appellant wants to furnish any document(s) it may be permitted to do so. The appellant shall not be permitted to delay the matter unnecessarily by seeking time. The Assessing Officer shall conduct this exercise in accordance with law as expeditiously as possible without being influenced by any observations made on the merits of the case either by the Appellate Assistant Commissioner or by the Tribunal in any of their orders which have been referred to in this order.

The appeal is disposed off in the above said terms.

Sd/-
(Justice Ranjana P. Desai)
Chairperson