Before the Central Sales Tax Appellate Authority
New Delhi

27th February, 2019

PRESENT

Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Mr. Ramayan Yadav, Member (Law)

Appeal No. CST / 11 / 2013

Name & address of the Parties (Appellant(s) / Respondent (s)	:	M/s Viraj Steel & Energy Limited, Sambalpur, Odisha versus State of Odisha & Others
Present for the appellant(s)	:	Mr. Ashok Anand, Advocate
Present for the respondent(s)	:	Mr. Soumyajit Pani, Advocate for the State of Odisha Mr. Chittaranjan Singh Ms. Rama Ahluwalia, Counsel for the State of Maharashtra

ORDER

The appellant, M/s Viraj Steel & Energy Limited, has challenged in this appeal the order dated 08.05.2013 passed by the Odisha Sales Tax Tribunal, Cuttack ("Tribunal" for short) in First Appeal No. 2 (C) of 2011-12. The said appeal was filed by the appellant against the re-assessment order dated 24.01.2011 passed by the Deputy Commissioner of Sales Tax (LTU), Sambalpur Range ("DCST" or "the Assessing Authority" for

convenience) under Rule 12(4) of the Central Sales Tax (Orissa) Rules, 1957 ("the Rules" for short). By the reassessment order dated 24.01.2011, the DCST has disallowed the branch transfer claim of the appellant and reassessed the tax liability of the appellant for the tax period 01.04.2007 to 30.09.2007 raising a demand of Rs. 15,04,953.00.

Brief facts of the case need to be stated.

The appellant company is engaged in the manufacture and sale of M.S. Billets and Sponge Iron at their factory located At/ Po-Gurupali, Lapang, Rengali, Dist- Sambalpur Odisha. The appellant sales its finished goods in the course of intra State trade and also in the course of inter-State trade.

The original audit assessment of the appellant for the year 01.07.2006 to 30.09.2007 was completed under Section 12(3) of the Rules raising 'Nil' demand but the case was reopened under Rule 12(4) of the Rules for the period 01.04.2007 to 30.09.2007 relying on a Tax Evasion Case Report (" the TECR" for short) relating to the year 2007-08 received from the Vigilance Wing Sambalpur.

The TECR stated that the appellant had made consignment sales worth Rs. 1,25,41,276.00 to its consignment agent – M/s Gauri Sales, Nagpur and that the appellant had a pre-existing contract with the buyer and had projected the said sales as branch transfer to evade payment of tax. After receipt of the TECR, notice was sent to the

appellant asking him to produce the books of account for verification. The appellant produced its books of account. The appellant was confronted with the TECR. The appellant denied the allegations. The appellant, inter alia, contended that the assessment cannot be reopened on the basis of the TECR when the audit assessment has been completed. In this connection, the appellant relied on Ashok Leyland Ltd. versus State of T.N. and Another[1]. ("Ashok Leyland II" for short). The appellant contended that its stock transfer claim was based on material produced by it and was genuine.

The DCST rejected all the contentions of the appellant and passed the re-assessment order. The DCST confirmed the extra tax demand of Rs. 5,01,651/- pertaining to the period from April, 2007 to September, 2007 and imposed penalty of Rs. 10,03,302/- under Rule 12(4)(c) of the Rules aggregating to Rs. 15,04,953/- on the ground that during the period under consideration the appellant had sold goods of the value of Rs. 1,25,41,276/- to its consignment agent in the guise of stock transfer against pre-existing contract. Being aggrieved by the said order, the appellant preferred an appeal to the Tribunal. The Tribunal vide its order dated 08.05.2013 confirmed the order of the DCST and dismissed the appeal. Being aggrieved by the said order dated 08.05.2013, the appellant has filed the present appeal.

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[1] (2004) 134 STC 473 (SC); (2004) 3 SCC 1.

Mr. Ashok Anand, ld. Counsel appearing for the appellant reiterated the submissions made before the Tribunal. Counsel submitted that the rejection of stock transfer claim of the appellant is illegal and arbitrary and is contrary to the contents of Form - F declarations, evidence of dispatch of goods and other materials furnished by the appellant. Counsel submitted that the goods in question are not specific to any contract nor are they earmarked for any specific buyer. The consignment agent could sale them to any buyer. Counsel submitted that it is a settled position of law that sale of goods by the agent within few days of receipt, no unloading and reloading of the lorries by the agent at its place and receipt of the same price as mentioned in the invoices are irrelevant factors for inferring that there was pre-existing contract. In this connection he relied on the decisions in (a) Delhi Iron & Steel Co. Ltd. Vs. Commissioner of Sales Tax, UP (1989) 72 STC 294 ; (b) State of Tamil Nadu vs. PMP Iron & Steel India Ltd. (2010) 28 VST 370 (Mad); (c) CTT vs. Dharshan Olls Pvt. Ltd 2006 NTN (Vol.31)-154; (d) Associated Cement Companies Ltd. Vs. AC(CT) [2009] 23 VST 486 (Mad); and (e) State of Tamil Nadu vs. Kumaran Mills Ltd. (2010) 3 GST 408 (Mad). Counsel submitted that the Sale Order Acceptance which is made the basis for drawing adverse inference does not relate to the period under dispute and hence cannot be used for initiation of instant proceedings. In this connection, Counsel relied on Asna Cosmochems vs. State of Tamil Nadu (2010) 2 GST 165 (CSTAA- New Delhi).

Counsel further submitted that the intention of the appellant would be clear from the fact that the VAT @ 4% amounting to Rs. 5,01,650.00 paid by the consignment agent in their State during the period under dispute has been reimbursed by the appellant. Further, the appellant had to reverse ITC in excess of 4% in terms of proviso (b) of section 20(3) of the Orissa Value Added Tax Act, 2004 amounting to Rs. 2,51,724.00. The VAT paid by the consignment agent and ITC reversed aggregates to Rs. 7,53,374.00 whereas the rate of tax at the relevant point of time was only 3% against Form C under the Central Sales Tax Act, 1956 ("CST Act" for short) and had the appellant sold the said goods he would have had to pay just Rs. 3,76,238.00. Therefore, there was no motive for the appellant to resort to camouflage as alleged.

Counsel submitted that the TECR is entirely based on assumptions and presumptions. As regards the statement of Shri Agarwal, appellant's Accounts Officer dated 04.05.2010, on which reliance is placed, Counsel submitted that Shri Agarwal was not authorized and competent to speak on behalf of the appellant. Counsel pointed out that the sale patties disclose that lorry freight is paid by the appellant / consignment agent and not by the ultimate buyer. So far as penalty is concerned, Counsel submitted that penalty is leviable only if the dealer fails to show reasonable cause for escapement / under assessment of turnover. Counsel submitted that assuming that the appellant's claim of

stock transfer was wrong, penalty could not have been imposed on the appellant because it cannot be said that the appellant had failed to show reasonable cause for alleged under assessment of turnover. Relying on Hindustan Steel Ltd. versus State of Orissa[1970] 25 STC 211 (SC), Counsel submitted that penalty should not be ordinarily imposed unless the concerned party acted deliberately or dishonestly. Such conduct is absent in this case and hence levy of penalty is without jurisdiction. Counsel further submitted that in this case the consignment agent has paid VAT at 4% in their State which is reimbursed by the appellant. Further the appellant has reversed ITC of Rs. 2,51,724.00. Since the applicable rate of central sales tax at the relevant time was 3% against Form 'C' no mens rea could be imputed to the appellant. Counsel submitted that if the appellant had sold the goods under Section 3(a) read with Section 6 of the CST Act, the appellant would have paid less amount than the amount already paid by it. Finally, Counsel drew our attention to the Tribunal's order dated 15.03.2017 in appellant's Appeal No. F. A. No. 6 (c) of 2011-12 for the subsequent period 01.10.2007 to 30.09.2009 by which the Tribunal has set aside the order of the DCST rejecting the stock transfer claim of the appellant and raising a demand of Rs. 43,28,475.00 which included penalty of Rs. 28,85,650/-. Counsel submitted that since in similar fact situation the Tribunal has upheld the stock transfer claim of the appellant, the impugned order deserves to be set aside.

On the other hand, Mr. Soumyajit Pani, ld. Counsel for the State of Odisha supported the impugned order. Counsel submitted that the reassessment order 24.01.2011 is a well reasoned order. The DCST has considered all the aspects and rejected the stock transfer claim of the appellant. The Tribunal has rightly confirmed the said order. Counsel submitted that the order of the Tribunal passed in respect of subsequent period should not deter this Authority from confirming the impugned order because both the orders cover different periods. Counsel submitted that principles of res judicata do not apply to tax matters. Besides, the appellant had not drawn attention of the Tribunal to the said order.

Counsel further submitted that the appellant has claimed to have reversed ITC of Rs. 2,51,724/- on the proportionate inputs used in the manufacturing of goods sold as consignment sale for the period July, 2007 to September, 2007. Counsel submitted that the said amount of reversed ITC of Rs. 2,51,724/- cannot be taken as a "Payment of Tax" against the tax demand of Rs. 15,04,953/-. Counsel submitted that this claim is made for the first time in this appeal. Besides, there is also no evidence on record to show that the appellant had actually reversed ITC of Rs. 2,51,724/- by making payment to that effect. Counsel submitted that if reversal of ITC is taken into consideration, it will give rise to increased tax dues. The appellant will then have to pay Rs. 17,56,677/-. Counsel further submitted that the claim of payment of VAT of Rs. 5,01,600/- by M/s Gauri Sales to the State of Maharashtra is subject to verification. However, since the State of Maharashtra

has submitted in its written submissions that M/s Gauri Sales has paid taxes, if this Authority comes to a conclusion that the appellant's claim of stock transfer is not genuine and that its transactions are inter-State sales, the State of Maharashtra may be directed to return the VAT collected from the appellant to the State of Odisha in terms of Section 22(1B) of the CST Act. Counsel submitted that the appellant has already deposited the amount of Rs. 3,76,238/- pursuant to this Authority's interim order dated 24.09.2015. If pursuant to this Authority's order the State of Maharashtra returns the amount of Rs. 5,01,600/- collected as VAT from the appellant to the State of Odisha, the appellant will be liable to pay Rs. 6,27,115/- to the State of Odisha out of the total tax demand of Rs. 15,04,953/-. This Authority may therefore while dismissing the appeal direct the appellant to pay Rs. 6,27,115/- to the State of Odisha.

Ms. Rama Ahluwalia, Ld. Counsel for respondent no. 3 i.e. the State of Maharashtra and respondent no. 4 i.e. the Commissioner of Sales Tax Department, Maharashtra filed written submissions and reiterated contents thereof. Counsel submitted that stock transfer claim of the appellant deserves to be upheld. Counsel submitted that the appellant's goods were sent to the consignment agent, M/s Gauri Sales and not directly to the buyer/ purchaser. M/s Gauri Sales sold the said goods to the purchasers. Counsel submitted that M/s Gauri Sales obtained necessary F forms from the Sales Tax Department. Turnover of branch transfer was duly disclosed in the returns and taxes were paid accordingly.

Counsel heavily relied on the Tribunal's order dated 15.03.2017 for subsequent assessment period i.e. 01.10.2007 to 30.09.2009 in appellant's appeal being First Appeal No. 6 (C) of 2011-12 where the Tribunal upheld stock transfer claim of the appellant in similar fact situation. Counsel submitted that the appellant has sought refund of Rs. 5,01,651/- paid as VAT on the goods sold by M/s Gauri sales. However, there is no prayer made to that effect. Counsel submitted that since appellant's stock transfer claim is genuine, refund sought by the appellant is not justifiable and tenable.

TECR is of seminal importance to this case. Material contents of TECR have been explained in brief in the reassessment order. It is necessary to reproduce its gist. The gist is as follows.

> On 04.05.2010, the Vigilance Team, Sambalpur visited the business premises of the appellant and seized certain documents. Verification of the said documents resulted in detection of various ingredients in the nature of inter-State sale in the appellant's transactions. Shri Agarwal, Accounts Officer of the appellant clearly stated that the goods were directly moved from the factory to the ultimate buyer without being unloaded or stored by the consignment agent. So there was no appropriation of goods by the agent for independent sales. The particulars in the Sale Patties and the invoices issued by the principal and the agent also reinforce the fact that the goods were directly despatched to the ultimate buyers in the same lot and in the same vehicle. Shri Agarwal stated that the Sale Order Acceptance is generated by the appellant's head office at New Delhi. It incorporates Customer Reference and Customer Reference Date. It states the name of the actual buyer who

has placed purchase orders. Some Sale Order Acceptances bear order number and in some Sale Order Acceptances order number has been mentioned as 'Nil'. This order number is the purchase order on the basis of which goods are manufactured as per requirements and despatched to the customers either out of the available stock or subsequently manufactured stock. The Sale Order Acceptances also mention the name of the broker 'Ravi' through whom goods have been brokered and moved from the place of production to the place of ultimate buyer pursuant to the pre-existing contract. The consignment agent has also shown sale of goods in the same rate as dispatched from the factory. Thus the movement of goods from one State to another is pursuant to pre-existing contract for a fixed quantity with a pre-negotiated price. There is movement of goods from the place of production to the place of ultimate buyer. In course of verification of seized documents with reference to the Sale Patties and the Ledger Accounts, it was revealed that the appellant had effected dispatch of Billets to Agent M/s Gauri Sales, Nagpur as per details given below:

M/s Gauri Sales, Nagpur

Sale Order No. & Date	Quantity in sale order	Quantity dispatched in MT	Rate and other charges in Rs.	Name and address of the ultimate buyer
SM07Y – 00019 dt. 8.10.2007	Not available	194.93 during July 2007	Not available	M/s Sanvijay Rolling Engg. Ltd. Ind. Area, Hingra Road, Nagpur
SM07Y00032 dt. 7.8.2007	200 MT	193.89 during Aug. 2007 and 3.9.2007	19300+ED	M/s Khatushyamji Re-Rolling MIDC
SM07Y00038 dt. 15.9.2007	150 MT	144.44 during Sept., 2007	19800+ED	-do-

The above table indicates that the dispatched quantity of goods against a particular Sale Order is meant for a specific buyer at a pre-negotiated price. Similarly, specific quantity of goods at a specific rate is delivered to a specific buyer at a negotiated price. There is a visible contract of sale being governed by a definite sale order meant for a specific ultimate buyer. Hence the movement of goods from the factory till the delivery to the ultimate buyer forms an integrated process of an inter-State sale without there being a break in the inter-State movement of the goods. The buyer remains identified before commencement of the inter-State movement of goods. Thus these transactions from the very outset contain the ingredients of inter-State sale.

It is extremely significant to note that the DCST has not blindly relied upon the TECR. The reassessment order shows independent application of mind to the facts of the case. There is a categorical statement made by the DCST that books of account produced by the appellant were verified with reference to the contents of allegations highlighted in the TECR. It revealed the nature of the sales of goods made by the appellant. It is noted that as regards proof of dispatch of these goods, the appellant has produced documentary evidence such as consignment agreement copy, original invoices, lorry receipts, copies of government waybills used and Sale Patties. It is clearly stated that on verification of Accounts Ledger in the name of agent, M/s Gauri Sales, Nagpur, it was revealed that the appellant had made respective debit entries in the ledger with a particular sale order number. The DCST has further stated that verification of Bank Account Statement revealed

that the appellant has received payments in lump sum at regular intervals from the agent. It is further stated that verification of receipt and sale details in the Sale Patties furnished by the agent revealed that the agent has sold the entire stock as such received during July 2007 to a single customer namely, M/s Sanvijay Rolling Engg. Ltd., Industrial Area, Hingra Road, Nagpur and entire stock received during August and September, 2007 to a single customer namely M/s Khatusyamji Re-Rolling, MIDC. Each consignment received was found to have been sold on the same day. The description of goods, quantity, amount as were shown in receipt details were also found the same in the sale details. These observations provide intrinsic evidence of the fact that DCST has examined all documents. Independent conclusions are drawn after conducting meticulous exercise of verification of documents.

From the TECR it appears that the officers of the Vigilance Branch recorded the statements of Mr. N. Agrawal, Accounts officer and Mr. B.B. Pati, Controller of Finance & Account of the appellant. As regards the Sale Order Acceptance, Shri Agrawal stated as under:

> "Our H.O. at New Delhi receives order for dispatch / sale of finished goods over phone from the consignment agents. Our H.O. prepares the Sale Order Acceptance which is available to us on on-line connection on the basis of which we arrange for dispatch of the specified goods in specific quantity."

As regards to sale of M.S. Billets Sri Agrawal has categorically stated that "M.S. Billets are loaded on the vehicles by crane at our factory and directly unloaded at the factory of the ultimate buyers with the help of crane. In other words, M.S. Billets directly moved from factory without being unloaded or stored by our agent"

On the other hand, Mr. Pati tried to salvage the situation created by Mr. Agrawal's statement by saying that the Sale Order Acceptance forms are internal records for the smooth functioning of the appellant. He further stated as follows:

> "Except the description of items, quantity and rate other data fed to the forms are irrelevant relating to the consignment sales. As because there is a common package for sale, some datas have to be fed, therefore our concerned person has fed irrelevant datas to generate the forms".

He went on to state that he was unaware of despatch of goods in the same lot, same quantity and in the same vehicle by the appellant's agent as despatched from the appellant's factory. Mr. Pati's statement does not inspire confidence. But it appears that his statement being contrary to what Mr. Agrawal had stated the DCST went through the contents of the Sale Order Acceptance form and noted his observations as under:

(a) It is addressed to M/s Gauri Sales, Nagpur whose name appears both as buyer and Consignee.

(b) It bears Sale Order No. and Sale Order Date as above.

(c) It bears Customer Reference and Customer Reference Date i.e. 330 for sale order No. SM – 07Y-00032 and Nil for sale order No. SM-07Y-00030.

(d) It has mention of Agent's name as RAVI (BROKER) with code ERA01.

(e) It has also mention "Freight basis" as "TO BE BILLED"

(f) It has full description of goods, order quantity, unit, rate and material value with specific mention of basic amount and excise duty and cess.

(g) The subject matter of the SOA has been descried as "We accept your valued order as mentioned above for items mentioned below as per terms and conditions enclosed. If there is any objection to the terms and conditions mentioned, please inform so as to reach us within 10 days from the date of this sale order. In absence of which we will treat this Sale Order as Final Contract of SALE."

(h) This has been prepared by one RAMENDRA KU. RAI and approved by SHRI BHARAT RAINA, both happened to be H.O. personnel of VIRAJ STEEL ENERGY LIMITED.

(i) Copies of the said SOA have been communicated to the Customer and the Agent.

The above features of the Sale Order Acceptance form make it clear that it is a confirmation of acceptance of a pre-existing contract of sale with the buyers outside the

State. The Assessing Authority is right in observing that on the basis of Sale Order Acceptance form the appellant had dispatched goods to the buyers place of business either out of the available stock or subsequently manufactured stock in connivance with the agent and the broker. The buyer is pre-identified. There is a visible link between the movement of goods from the place of production to the place of the ultimate buyer and there is existence of a contract of sale prior to dispatch of goods. The transactions have all the attributes of inter-State sale. There is no doubt that movement of goods from one State to another has occasioned pursuant to a pre-existing contract and documents are created to project the inter-State sales as stock transfer.

Relying on Ashok Leyland-II, it was contended by the Counsel for the appellant that assessment could not have been reopened after finalization of audit assessment. Counsel submitted that in Ashok Leyland-II, the Supreme Court has laid down that reopening of assessment is permissible only on limited grounds i.e. fraud, collusion, misrepresentation or suppression of relevant facts which is not the case here. It is not possible to accept this submission. From the TECR received from the Vigilance Wing Sambalpur it becomes apparent that the appellant had suppressed material facts and projected inter-State sales as stock transfers to evade tax. The Assessing Authority has, after verification of documents, independently drawn the conclusion that the appellant has suppressed material facts and the Tribunal has concurred with the same. I have no reason to defer

from the view taken by the Assessing Authority and the Tribunal because it is based on proper analysis of the documents and other evidence. Pertinently the most vital documents i.e. the Sale Order Acceptances were not produced by the appellant before the audit team at the time of tax audit. They were not produced at the time of regular assessment for verification. This is, therefore, a case of suppression of material facts. There is undoubtedly misrepresentation of relevant facts. Reopening of the assessment therefore cannot be faulted. Moreover, Rule 12(4) of the Rules also permits the Assessing Authority to reopen the assessment in such circumstances. It must be remembered that the case of the Revenue does not rest on any solitary circumstance. Several telltale circumstances establish that the transactions in question are inter-State sales. At the cost of repetition, it is necessary to re-state those circumstances. They are-

(a) Sale Order Acceptance forms contain Customer references which represent the name of the buyer who has placed purchase order. Thus the buyer is identified.

(b) The goods are manufactured as per the requirement specified in the purchase order.

(c) There is, therefore, a visible contract between the appellant and the ultimate buyer.

(d) The appellant has despatched goods directly from the factory to the ultimate buyer without unloading them at the agents premises.

(e) The goods have been despatched to the ultimate buyer in the same lot and in the same vehicle.

Counsel for the appellant has referred to several judgments but none of the judgments deal with the case like the present one where there are several circumstances pointing to the fact that the transactions in question are inter-State sales. It is not, therefore, necessary to refer to the judgments cited by Counsel for the appellant. Besides, there are no hard and fast rules which can guide the Assessing Authority while deciding whether the transaction is inter-State sale or stock transfer. The conclusion to be drawn by the Assessing Authority will depend on peculiar facts and circumstances of each case. When several circumstances together indicate that a dealer has projected inter-State sale transactions as stock transfers there can be no debate over the said issue.

Counsel for the appellant has submitted that in this case the appellant has filed Form-F declarations which raise a presumption that the movement of goods from one State to another has 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 its agents as the case may be. Counsel submitted that Ashok Leyland-II further states that when the

dealer furnishes Form F declaration an enquiry is required to be held by the Assessing Authority himself. He must pass an order on such declaration in terms of sub-section(2) of Section 6A of the CST Act and once that order is passed then the transaction goes out of the purview of the CST Act. Counsel submitted that in this case the Assessing Authority has not conducted any enquiry himself nor has he passed any order, hence the presumption is unrebutted.

These submissions deserve to be rejected. The DCST had before him the TECR submitted by the Vigilance Wing Sambalpur. It appears from the TECR that after examining the documents gathered from the appellant's premises, the officers of Vigilance Wing detected the modus operandi adopted by the appellant. The said modus operandi is stated in the TECR and it is recorded that the appellant's transactions during the relevant period are inter-State sales though projected as stock transfers. It bears repetition to state that the DCST has not totally relied on the TECR. The DCST has examined all documents independently. He has verified them and observed that the appellant has misrepresented the facts and that there is suppression of vital facts. The DCST has recorded that the appellant has manipulated and fabricated the documents to give a camouflage look of consignment sales to otherwise CST sales to evade legitimate CST tax dues. The DCST has, on a proper analysis of all the documents and circumstances, observed that allegations made in the TECR submitted by the Vigilance Wing stand established. After

stating this, the DCST has recorded that accordingly statutory declaration F Forms submitted by the appellant to claim exemption under section 6A of the CST Act are rejected.

Against the backdrop of the above facts, it is not possible in this case to say that the Assessing Authority i.e. the DCST has not conducted any enquiry. Undoubtedly, the Assessing Authority has to conduct an enquiry. That is what has been laid down in Ashok Leyland-II. That is the mandate of law. It must be remembered, however, that no particular form of enquiry is prescribed. What should be the nature of enquiry is for the Assessing Authority to decide. After enquiry, he may pass an order on such declaration before the assessment or along with the assessment. In this connection, it is necessary to quote relevant observations of the Supreme Court in Ashok Leyland-II. They read as follows:

In Ashok Leyland-II -

> "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 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 has also quoted with approval following observations of the Kerala High Court in C.P.K. Trading Company vs. Additional Sales Tax officer And….[2]. The relevant extract is as follows-

"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 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

[2] 1990 76 STC 211 Ker.

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."

If the facts of the present case are examined in the light of the above observations of the Supreme Court, it can be concluded that the Assessing Authority has conducted an enquiry and recorded in the reassessment order that Form-F declarations deserve to be rejected. The Assessing Authority has followed the mandate of law.

Counsel for the appellant heavily relied on the order dated 15.03.2017 passed by the Tribunal in the appellant's own appeal being Appeal No. FA No. 6 (C) of 2011-12 for the subsequent period 01.10.2007 to 30.09.2009. Counsel pointed out that in this appeal the Tribunal has set aside similar order passed by the DCST in similar fact situation and upheld the appellant's claim of stock transfer. Counsel submitted that therefore the impugned order deserves to be set aside on the reasoning of the Tribunal recorded in order dated 15.03.2017. This submission will also have to be rejected. Admittedly, during the hearing of Appeal No. FA 2 (C) of 2011-12, the appellant did not draw the

Tribunal's attention to the impugned order. Had the impugned order been shown to the Tribunal, the Tribunal might have followed it. Unfortunately, even the Revenue did not draw the attention of the Tribunal to the impugned order. Conduct of both sides needs to be deprecated. The appellant has not drawn the attention of the Tribunal to the impugned order obviously because it was against it. More callous is the approach of the Revenue in not pointing out this order to the Tribunal when it was in its favour.

In Radhasoami Satsang, Saomi vs. Commissioner of Income Tax[3] while dealing with assessment under the Income-tax Act, the Supreme Court has observed that each assessment year being a unit what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. Though in tax matters what is decided in one year may not apply in the following year, the Tribunal might have followed the impugned order had it come to a conclusion that there was no material change justifying it to take a different view. That would have been in favour of the Revenue. It is therefore not understood how the appellant is trying to draw mileage out of this circumstance, particularly when the impugned order was not shown by the appellant to the Tribunal. In

[3] 1992 AIR 377

any case, it is not necessary for us to delve into this issue. We are only concerned with the validity of the reassessment order 24.01.2011 which is confirmed by the Tribunal by the impugned order. We find that the reassessment order dated 24.01.2011 is perfectly legal and it has been rightly confirmed by the Tribunal. The appellant has not made out any case for interference with the impugned order. In view of the conclusion reached by us submissions of the Counsel for the State of Maharashtra will have to be rejected and are accordingly rejected.

So far as the appellant's contention about reversal of ITC is concerned, there is substance in the submission of Mr. Pani, learned Counsel for the State of Odisha that it is raised for the first time in this appeal and therefore it is not possible at this stage to ascertain how far the said claim is true. No evidence is produced in this behalf. Since the stock transfer claim of the appellant is found to be not tenable and the transactions in question are found to be inter-State sales, the State of Maharashtra will have to be directed to pay to the State of Odisha an amount of Rs. 5,01,600/- collected from the appellant towards VAT. Since the appellant has deposited Rs. 3,76,238/- with the State of Odisha pursuant to this Authority's interim order dated 24.09.2015 taking that amount also into account, the appellant will have to be directed to pay a sum of Rs. 6,27,115/- to the State of Odisha.

In the circumstances, the appeal will have to be dismissed after giving following directions:-

a) The State of Maharashtra is directed to return an amount of Rs. 5,01,600/- collected by it towards VAT from the appellant to the State of Odisha.
b) The appellant is directed to pay an amount of Rs. 6,27,115/- to the State of Odisha in terms of the assessment order dated 24.01.2011 passed by the Deputy Commissioner of Sales Tax, Sambalpur Range, Sambalpur.

The appeal is dismissed with above directions.

Sd/-
(Justice Ranjana P. Desai)
Chairperson

Sd/-
(Ramayan Yadav)
Member (Law)