AFR

ORISSA HIGH COURT : CUTTACK

STREV No.27 of 2022

In the matter of an Application under Section 24 of the Odisha Sales Tax Act, 1947

* * *

M/s. N.R. International Ltd.,
(A company registered under
the Companies Act, 1956)
Represented by its
Director Srimati Sangita Modi,
Aged about 56 years,
Wife of Late Nirmal Modi,
At: 301, Nilakantha Apartment
College Square, Cuttack
District: Cuttack, Odisha. ... Petitioner

-*VERSUS*-

State of Odisha
represented through
Commissioner of Commercial Taxes, Odisha
At: Banijyakar Bhavan,
Old Secretariat Campus,
Cantonment Road,
Cuttack. ... Opposite party

Counsel appeared for the parties:

For the Petitioner : Mr. Jagabandhu Sahoo,
Senior Advocate
Assisted by
Ms. Kajal Sahoo, Advocate

For the Opposite party : Mr. Sunil Mishra,
Standing Counsel
(Commercial Tax &
Goods and Services Tax
Organisation)

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 05.05.2026	**:: Date of Judgment :05.05.2026**

JUDGMENT

MURAHARI SRI RAMAN, J.—

This Sales Tax Revision filed under Section 9(2) of the Central Sales Tax Act, 1956 (for short, "the CST Act") read with Section 24 of the Odisha Sales Tax Act, 1947 (for short, "the OST Act") is directed against the order dated 14.07.2022 passed by the learned Odisha Sales Tax Tribunal (Full Bench), Cuttack in S.A No.9(C) of 2004-05 (arising out of order dated 27.12.2003 passed by the Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack in Appeal Case No.AA-60 (CU-II-C) of 2002-03 pertaining to assessment framed *vide* order dated 04.09.2002 under Rule 12(4) of the Central Sales Tax (Odisha) Rules, 1957 (for short, "the CST(O) Rules") by the Sales Tax Officer, Cuttack-II Circle, Cuttack for the assessment year, 1999-2000).

Question of law for adjudication:

2. This Court *vide* order dated 05.01.2023 admitted this Sales Tax Revision and framed following question of law:

> *"2. Admit. The following question of law is framed for consideration:*
>
> *"Was the Tribunal justified in holding that production of 'F' form as proof of inter-branch transfer was mandatory notwithstanding the decision of this Court in State of Orissa Vrs. Orissa Small Industries Corporation (1987) 67 STC 262 (Orissa)?*
>
> *3. List for final hearing on 27th April, 2003. In the meanwhile, no coercive action will be taken pursuant to the order under Annexure-4."*

Facts:

3. The petitioner-assessee, in pursuance of notice participated in the assessment proceeding initiated under Rule 12(4) of the CST(O) Rules read with Section 9 of the CST Act and furnished books of account along with necessary documents. Apart from other issues, in absence of production of declaration in Form F prescribed under Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (for short, "the CST (R&T) Rules") to demonstrate the inter-State movement of goods to its Ranchi Branch to claim exemption from payment of tax with respect to transactions effected otherwise than by way of sale under Section 6A of the CST Act, the assessment was concluded by raising a demand to the tune of Rs.7,09,022/- for the assessment year 1999-2000 *vide* order dated 04.09.2002 by the Sales Tax Officer, Cuttack-II Circle, Cuttack.

3.1. Aggrieved thereby, the petitioner preferred statutory appeal under Section 9(2) of the CST Act read with Section 23(1) of the OST Act, which came to be disposed of *vide* order dated 27.12.2003 by the Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack ("Appellate Authority", for short) with the following observations and finding of fact:

*"*** I have carefully gone through the order of assessement passed by the learned Assessing Officer vis-à-vis the grounds of appeal. The averments of the learned advocate is also taken into consideration at the hearing stage, the learned advocate has also produced an affidavit of admitting the fact that* ***the actually he has despatched the goods as mentioned above on the basis of branch transfer to its own branch located at Ranchi****.* ***The documents produced before this forum to establish that the goods despatched to its any branch located at Ranchi is minutely verified. The individual consignment of chalan has been duly examined and it is detected that each consignment chalan is properly checked and stamped at the border checkgate before crossing the border of the State. The transfer invoices are also duly checked at the***

border checkgate and accordingly stamped. The transport receipt and the related way bills have been submitted before the concerned authorities. The transferee has incorporated the goods in their books of accounts and paid the legitimate tax to the concerned Government to fulfill all the conditions of branch transfer. *Now the only thing required is submission of declaration form and the only deficiency to avail branch transfer is submission of F declaration forms. But otherwise it is proved that the transaction and by way of branch transfer. Now the pertinent question arises whether submission of F form is mandatory is course of branch transfer or not. ***"*

3.2. The Appellate Authority appreciating the evidence of transfer of goods occasioned by reason of otherwise than by way of sale from State of Odisha to the branch of the petitioner-company located at Ranchi in other State [1]

---

[1] The following observation in *Sahney Steel and Press Works Ltd. Vrs. CTO, (1985) 4 SCC 173* may be relevant:
"In English Electric Company of India Ltd. Vrs. Deputy Commercial Tax Officer, (1976) 4 SCC 460 = AIR 1977 SC 19 = (1977) 1 SCR 631 this Court held that ***when the movement of the goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale, and it does not matter which is the State in which property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. It was also pointed out that the branches had no independent and separate entity, that they were merely different agencies, and even where a branch office sold the goods to the buyer it was a sale between the Company and the buyer.*** *It is true that in that case the goods, on manufacture at the Madras branch factory, were directly despatched to the Bombay buyer at his risk and all prices were shown F.O.R. Madras, and the goods were delivered to the Bombay buyer at Bhandup through clearing agents. In the instant case, the goods were despatched by the branch office situated outside the State of Andhra Pradesh to the buyer and not by the registered office at Hyderabad. In our opinion, that makes no difference at all. The manufacture of the goods at the Hyderabad factory and their movement thereafter from Hyderabad to the branch office outside the State was an incident of the contract entered into with the buyer, for it was intended that the same goods should be delivered by the branch office to the buyer. There was no break in the movement of the goods.* ***The branch office merely acted as a conduit through which the goods passed on their way to the buyer.*** *It would have been a different matter if the particular*

relying on a judgment of this Court in the case of *State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262 (Ori),* concluded as follows:

> *"**In this case the appellant has produced conclusive evidences that he has not sold such goods to its branch located at Ranchi. The production of individual consignment chalan duly stamped in the border check-gates exhibiting no collection of Central Sales Tax is a concrete evidence of branch transfer. The transfer invoices, transport, receipts etc. are going to prove that the consignment is not as a result of sale but it is branch transfer to its own branch located at Ranchi.** Therefore, the stand taken by the learned advocate that F form is not mandatory when the branch transfer is otherwise proved found to be correct. Therefore, the claim of branch transfer for both the years 1999-2000 and 2000-01 are allowed."*

3.3. The State of Odisha represented by the Commissioner of Sales Tax carried the matter in appeal before the learned Odisha Sales Tax Tribunal, Cuttack ("Tribunal", for brevity) under Section 9(2) of the CST Act read with Section 23(3) of the OST Act *inter alia* on the following ground:

---

*goods had been despatched by the registered office at Hyderabad to the branch office outside the State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. **It is a sale where the goods moved merely from the branch office to the buyer. The movement of the goods from the registered office at Hyderabad to the branch office outside the State cannot be regarded as an incident of the sale made to the buyer.**"*

> *"4. That the learned Assistant Commissioner of Sales Tax was satisfied that the goods were despatched to outside the State branches by the dealer appellant and has allowed as branch transfer without obtaining declaration Form 'F'. The learned Assistant Commissioner of Sales Tax has not ascertained the reasons of non-submission of declaration forms 'F' while the goods have been mentioned being transported to registered branches. Acceptance of branch transfer in absence of detailed documents and F forms has been proved arbitrary and bad in law."*

3.4. The Full Bench of the Odisha Sales Tax Tribunal reversing the view expressed by the Appellate Authority, allowed the second appeal *vide* order dated 14.07.2022 with the following observation:

> *"8. Heard the contentions and submission of both the parties in this regard. Perused the grounds of appeal vis-à-vis the materials available on record including contentions and submission of the dealer assesse.*
>
> *The sole question in the instant case to be adjudicated upon is whether the First Appellate Authority was correct in its approach to allow the claim of branch transfer to the tune of Rs.37,42,696.53 when the dealer failed to furnish statutory declaration in Form 'F'?*
>
> *To substantiate such claim, the dealer assesse has emphasized that it (dealer assesse) had submitted the consignment challan, transport LR, statutory way bills duly checked and stamped at the border check gate before crossing the border which were verified by the learned Assessing Officer.* ***Further***

contention of the dealer is that those documents clearly reveal that both the consignee and the consignor has been shown as same for which one cannot sale to self. So in absence of any clear finding of 'sale', levy of tax on the goods is not proper. Another contention of the dealer is that in view of the verdict of the Hon'ble Odisha High Court decided in the case of State of Odisha Vrs. Odisha Small Industries Corporation reported in 67 STC 262 furnishing of declaration in Form 'F' is not mandatory but directory. Of course, it is true. But fact remains that had it (declaration 'F' Form) been filed by the dealer, onus would have been shifted to the revenue to have an enquiry to ascertain its genuineness with regard to branch transfer of goods. *So, in absence of such, there was no occasion at all to make any enquiry by the revenue. If 'F' Form could have been produced, matter would have been otherwise. Moreover, for the sake of argument assuming that 'F' Form is not produced, the same being directory, but what prevented the dealer not to rely a single document stating the name of specific branch where the goods were transported.* ***So in absence of declaration of 'F' form and document naming the specific branch where the goods were transported, no inference can be drawn to the effect that there was branch transfer simply relying on a gate pass and way bill.*** *So, from the above analysis, it can certainly be told that it was not branch transfer nor goods were transported out of State. If that is so, to our view; the adjudication of learned First Appellate Authority is not based on the material on record. Therefore, the impugned order of the First Appellate Authority is not sustainable."*

3.5. Assailing the observation of the learned Odisha Sales Tax Tribunal is contrary and runs counter to explicit ratio laid down in *State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262 (Ori),* the instant Sales Tax Revision has been filed invoking provisions under Section 24 of the OST Act by the petitioner-dealer.

Arguments:

4. Sri Jagabandhu Sahoo, learned Senior Advocate appearing along with Ms. Kajal Sahoo, learned counsel for the petitioner submitted that the learned Odisha Sales Tax Tribunal without having regard to the finding of fact recorded by the Appellate Authority proceeded as if non-production of declaration in Form F disentitles the dealer to prove the inter-State transactions being made otherwise than by way of sale. He asserts that as the dealer could be able to demonstrate that the goods in fact moved to its branch at Ranchi, *i.e.,* from this State to another State. The documents produced before the Authority were verified by the Appellate Authority meticulously to come to conclusion that the transactions fell well within the requirement under Section 6A to claim exemption from payment of tax inasmuch as the stamping at the border check gate proves the factum of movement of goods from this State to another State. Upon examining way bills and invoices (stock transfer note) as the Appellate Authority held that goods having moved to

Ranchi *via* border check gate, there is no occasion for the Tribunal to doubt the transactions in absence of any material produced by the Revenue in its second appeal to say that the goods were not "transported out of State". Had it been so, the learned Tribunal could have sought for production of registration certificate by the appellant (State of Odisha) before it to verify the details of the branch. That the particulars of branch at Ranchi were never questioned by the Appellate Authority nor was it emanated from the grounds taken by the Revenue.

4.1. The learned Senior Advocate arduously submitted that the Tribunal fell in grave error of law by placing *onus* on the petitioner-dealer to discharge the burden by placing declaration in Form F, as if production of such declaration is the only mode to claim branch transfer falling under Section 6A of the CST Act. The observations of the Tribunal in this respect lead to conceive that non-production of declaration Form F did not occasion the Revenue to enquire whether the goods claimed to have moved from this State to the branch of the petitioner located outside the State of Odisha by reason of otherwise than by way of sale.

4.2. Elaborating further he submitted that such observation of the Tribunal runs counter to what has been laid down in *State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262 (Ori).* Drawing attention of this Court to the reverse burden to prove being cast upon the dealer as introduced in Section 6A of the CST Act by virtue of the Finance Act, 2002, he submitted that said provision operates prospectively and cannot be made applicable for the assessment year 1999-2000.

4.3. Winding up his argument, Sri Jagabandhu Sahoo, learned Senior Advocate vehemently contended that the approach of the Tribunal is not beyond reproach for the decision rendered by it seems to nullify the effect of *Orissa Small Industries Corporation (supra)*. This apart, if the observation with respect to shifting the burden to prove the branch transfer in absence of declaration in Form F is taken as correct, then there was no necessity for the Parliament to amend Section 6A. Therefore, he submitted that the question of law as framed by this Court is required to be answered in the negative, *i.e.*, in favour of the petitioner-dealer and against the Revenue.

5. Strongly supporting the observations made by the learned Odisha Sales Tax Tribunal, Cuttack, Sri Sunil Mishra, learned Standing Counsel *per contra* advanced his arguments that in order to claim exemption from payment of tax with respect to the transactions in question the petitioner was required to follow the mandate and manner to prove contained in Section 6A of the CST Act read with Rule 12(5) of the CST (R&T) Rules. Production of declaration in Form F is necessary in order to conduct enquiry regarding veracity of the claim for exemption from payment of Central sales tax with respect to fact that transfer of goods occasioned otherwise than by way of sale. Unless declaration in Form F is submitted, there was no occasion for the Revenue to enquire into the matter whether the goods, in fact, moved out of the State or were sold within the State of Odisha.

5.1. Expanding his argument further, he contended that the petitioner was obligated to furnish not only declaration in Form F to claim that the transactions are exempted from payment of sales tax as there can be no sale to self on account of stock transfer to other State, but also to support such claim it was the necessity for the dealer to adduce evidence by clearly showing that the goods having moved to its branch at Ranchi, the same were sold thereat as local sales.

5.2. *Quoad ultra* the contention of the learned Senior Advocate, the learned Standing Counsel would submit that even at belated stage, there was scope for the petitioner to submit necessary declaration in Form F supported by stock transfer notes/invoices depicting the goods were transferred to its branch at Ranchi and such goods were sold thereat. The final fact-finding authority, namely, the Odisha Sales Tax Tribunal having returned that "in absence of declaration of F Form and document naming the specific branch where the goods were transported, no inference can be drawn to the effect that there was branch transfer simply relying on a gate pass and way bill", the conclusion arrived at by it cannot be said to be tainted or perverse. Hence, to close his argument, he submitted that this Court has little scope to interfere with the facts while answering the question of law arising out of the order of the learned Odisha Sales Tax Tribunal, as it is the final fact-finding authority. He would, thus, submit that absence of declaration in Form F entails rejection of claim for exemption from payment of tax in terms of Section 6A of the CST Act, which has rightly been done by the learned Tribunal.

Hearing:

6. Heard Sri Jagabandhu Sahoo, learned Senior Advocate appearing for the petitioner and Sri Sunil Mishra, learned Standing Counsel appearing for the Commercial Tax & Goods and Services Tax Organization.

Analysis and discussions:

7. On perusal of assessment order, it is revealed that the petitioner-dealer claimed to have transferred 3881.98 Metric Tonne of Coal to its branch at Ranchi during the year 1999-2000 for a gross of value of Rs.87,89,085.64P. In additions to other claims, the dealer claimed such transactions out of the purview of levy of Central sales tax inasmuch as sale at the branch in other State being construed to be sale of the company as local sale in that State. Though no dispute seems to have arisen from the observation of the Assessing Authority with respect to transfer of goods from this State to the other State, only dispute arose with respect to failure to furnish declaration in Form F as required under Rule 12(5) of the CST (R&T) Rules in order to claim benefit provided under Section 6A of the CST Act would disenable such exemption from payment of tax. As a consequence thereof, the value of such goods so transferred to the branch of the petitioner-dealer, *i.e.,* Ranchi, was subjected to levy of Central sales tax at the rate of 8% in absence of such declaration forms in terms of Section 8 of the CST Act.

7.1. Nonetheless, the order of the Appellate Authority manifestly demonstrates that having examined the documents produced before the said Authority, the petitioner could be able to establish that the goods despatched to the branch located at Ranchi were transfer of goods occasioned otherwise than by way of sale. Stemming on *Orissa Small Industries Corporation (supra)* the Appellate Authority considered that the petitioner having furnished invoices, transport receipts, way bills with seal of the border check gate, *etc.* could be able to demonstrate that the goods, in fact, moved out of this State to enter into the other State where its branch was located. Upon examination of such documents, having found that the transactions were recorded in the books of account of the branch and taxes were paid thereat, the Appellate Authority came to reasonable conclusion that the consignment sent outside the State was not as a result of sale, but as a consequence of branch transfer (stock transfer) to Ranchi.

7.2. Cursory glance at the impugned order, it transpired that the Tribunal has not called for records from the authorities below nor is there any indication that the Revenue (being appellant before it) produced any records of the authorities below to verify the veracity of the finding of fact returned by the Appellate Authority.

7.3. In *Kalinga Footwear Vrs. State of Orissa, (2016) 92 VST 58 = 2016 (I) ILR-CUT 314* this Court, interfering with the decision of the learned Tribunal disposing of second appeal without having reference to material available on record of the authorities below, observed as follows:

> *"10. It is revealed from the impugned order preferred against the order of the first appellate authority, that the learned Tribunal has observed that no notice under Section 42 of the OVAT Act was issued before taking up the assessment.* ***At the same time it has been observed in the impugned order that the First Appellate Authority has verified the books of account and he found the impugned order is not a speaking order. It is true that a proceeding before the First Appellate Authority***

is a continuation of the original proceeding, but the order of the first appellate authority shows that he has gone through the materials available on record. *Moreover, the observation of the learned Second Appellate Authority that 'L. C. R. is not available' in the case records is clearly surprising.* ***If the L. C. R. was not available though called for it was not proper on the part of learned Second Appellate Authority to proceed with the second appeal.*** *It would have been appropriate for the learned Tribunal to insist upon the production of the L. C. R. and then proceed to dispose of the case on merit after going through the L.C. R. In such circumstances the order of remand is not sustainable.*

11. *The first appellate authority and the assessing officers are officers of the Finance Department, who are also quasi-judicial authority. When the second appeal provision was added to the statute to prefer appeal against the first appeal, such Tribunal being the second appellate authority was constituted under Section 3 of the Orissa Sales Tax Act having Revenue Officers and judicial officers together to decide the second appeal. The very purpose of constitution of the Tribunal having judicial officer as Chairperson and Member, is to uphold the sanctity of the Tribunal with judicial flavour, so that right of the parties can be well adjudicated. On the other hand, the constitution of Tribunal having Judicial Member requires judicial propriety is to be maintained. The second appellate forum being the final court of facts ought to call for the lower court records and dispose of the matter, so that justice is not only done but also appears to be done. It should not be forgotten that the Sales Tax Tribunal*

being the apex body on the commercial tax matter and manned with equal number of Judicial Member, one will expect that the procedure of law as prevalent in judicial course is maintained to the extent possible, even if it is a quasi-judicial Tribunal. No appellate court ought to dispose the appeal without going through the L. C. R. So the Tribunal ought not to proceed to dispose without L. C. R. being available before it. So in the instant case we are constrained to observe that disposal of the second appeal without perusing LCR is not only vulnerable, but also affects the rights of the parties."

7.4. In the present case, while overturning the finding of fact recorded by the Appellate Authority on examination of documents like entries in the books of account, stock transfer notes/invoices, way bills with seal, *etc.* the Tribunal has not discussed any material available in the assessment record nor the appeal record to contradict such findings of the Appellate Authority. The Tribunal appears to have swayed away by the language of Section 6A introduced by way of amendment.

8. With the above backdrop, this Court is taken to consider the purport of amendment brought into force by virtue of the Finance Act, 2002 in Section 6A of the CST Act by specifying legal fiction suggesting effect of non-furnishing of declaration in Form F.

8.1. For better comprehension of the concept of burden of proof with respect to transfer of goods claimed otherwise than by way of sale enshrined in the statute, the provisions of Section 6A of the CST Act is reproduced hereunder:

"6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.—

(1) Where any dealer claims that he is not liable to pay tax under this 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 shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, 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 [2][, and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale].

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by

---

2 Inserted by Finance Act, 2002 (No. 20 of 2002), assented to on 11.05.2002 (GoI, Ext., No. 23, dated 13.05.2002 & republished in OGE No. 948, dated 26.06.2002).

a dealer under sub-section (1) [3][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 this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3)], be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

[4][(3) *Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State.]"*

8.2. In *Ashok Leyland Ltd. Vrs. State of T.N., (2004) 3 SCC 1* the Hon'ble Supreme Court of India has discussed the purport of the amendment of Section 6A by virtue of the Finance Act, 2002 as follows:

"Interpretation of Section 6-A of the Central Act:

72. A statute, as is well known, must be interpreted having regard to the text and context thereof. Mischief rule may also be applied in a given case.

---

3 Substituted *"are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall"* by Finance Act, 2010 (No. 14 of 2010), assented to on 08.05.2010 (GoI, Ext., No. 18, dt. 10.05.2010).

4 Inserted by Finance Act, 2010 (No. 14 of 2010), assented to on 08.05.2010 (GoI, Ext., No. 18, dt. 10.05.2010).

73. *While construing a statute, the object of the Act must be taken into consideration. (See Killick Nixon Ltd. Vrs. CIT, (2003) 1 SCC 145.)*

74. ***Section 6-A of the Act although provides for a burden of proof, the same has to be read in the context of Section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not fall within the definition of "sale" would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in sub-section (1) of Section 6-A the dealer had an option of filing a declaration in Form F; after such amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale.*** *It is to be noticed that for the aforementioned purpose also, Parliament advisedly used the expression "deemed". If the expression "deemed" is interpreted differently, an incongruity would ensue.*

75. *In absence of any indication that Parliament while enacting sub-section (2) of Section 6-A did not intend to make the deeming provisions to be a conclusive fact as regards occasion of the transaction having taken place otherwise than as a result of sale, it would have dealt with the matter differently.*

76. *Section 6-A(2) of the Act uses the following expressions which are important:*

(1) "thereupon";

(2) "for the purposes of this Act";

(3) "the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale".

77. *Each of them must be given its proper meaning.*

78. *A statute for the purpose of its interpretation must be read in its entirety. It is to be given a purposive construction.* ***Applying Heydon's rule, it must be held that the amendment was necessitated not only to make the dealer to file such a declaration imperatively but also to see that such movement of goods becomes inter-State sale by raising a legal fiction, as "having been occasioned in course of an inter-State sale".*** *In other words, if such a declaration is filed and on an inquiry made pursuant to or in furtherance of the particulars furnished is found to be correct by the assessing authority, the result thereof which is evidenced by the expression "thereupon" shall in view of the legal fiction created be a transaction otherwise than as a result of an inter-State sale.* ***Furthermore, once such a legal fiction is drawn, the same would continue to have its effect not only while making an order of assessment in terms of the State Act but also for the purpose of invoking the power of reopening of assessment contained in Section 9(2) of the Central Act as well as Section 16 of the State Act.*** *(See Indian Handicrafts Emporium Vrs. Union of India, (2003) 7 SCC 589 and Ameer Trading Corpn. Ltd. Vrs. Shapoorji Data Processing Ltd., (2004) 1 SCC 702)*

Our Analysis:

79. In the case at hand it has to be determined whether the sale in question is an inter-State one. If through the means of a legal fiction it is determined that this is not an inter-State sale, then it amounts to a transfer of stock. This finding is made by a statutory authority who has the jurisdiction to do so and there is no provision for appeal. Therefore, the order made by such authority is conclusive in that it cannot be reopened on the basis that there had been a mere error of judgment. It also cannot be reopened under another statute, for example, the Sales Tax Act of the State concerned, when the order had been made under the Central Act. Section 9(2) of the Act is subject to the other provisions of the Act which would include sub-section (2) of Section 6-A of the Act. "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes. It can only be reopened on a small set of grounds such as fraud, misrepresentation, collusion etc.

80. ***It is also to be borne in mind that no presumption when movement of goods has taken place in the course of inter-State sales may be raised in the case of standard goods but the same is not conclusive. It is only one of the factors which is required to be taken into consideration along with others. In a case, however, where the purchaser places order on the manufacturer for manufacturing goods which would be as per his specifications, a presumption that agreement to sell has been entered into may be raised.***

***

84. *Once the situs of sale either by way of legal fiction or otherwise is determined, the State Legislature will be denuded of its power to fix another situs having regard to the fact that Parliament alone has the exclusive jurisdiction therefor. A sale may have several elements and all of them need not necessarily take place in one State and in that view of the matter, a presumption had to be provided for by a deeming provision as a logical corollary of the principles laid down by a law of Parliament.*

***

101. *Once it is held that such determination of an issue having regard to legal fiction created in terms of sub-section (2) of Section 6-A is conclusive, it must a fortiori follow that the same is binding.*

***

108. *In Sahney Steel, (1985) 4 SCC 173 whereupon reliance has been placed by the assessing authority, a contention was raised that the registered office and the branch office were separately registered as dealers under the sales tax law and transaction effected by the branch office should not be identified with transactions effected by the registered office. Pathak, J., as the learned Chief Justice then was, observed: (SCC p. 177, para 8)*

'We are unable to agree. Even if, as in the present case, the buyer places an order with the branch office and the branch office communicates the terms and specifications of the orders to the registered office and the branch office itself is concerned with the sales despatching, billing and receiving of the sale price,

the conclusion must be that the order placed by the buyer is an order placed with the Company, and for the purpose of fulfilling that order the manufactured goods commence their journey from the registered office within the State of Andhra Pradesh to the branch office outside the State for delivery of the goods to the buyer.'

109. *The Court in the facts of that case held that the movement from the head office to the branch office was for the purpose of delivery to the branch office, thereafter to the buyer through the branch office. The branch office merely acted as a conduit through which the goods passed on their way to the buyer. It is, however, relevant to note that the Court noticed:*

'It would have been a different matter if the particular goods had been despatched by the registered office at Hyderabad to the branch office outside the State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. It is a sale where the goods moved merely from the branch office to the buyer.'

110. ***The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State.*** *The said decision therefore, does not run counter to our reading of the said provision. Furthermore, the*

question which has been raised before us had not been raised therein."

8.3. Such being conceptual understanding of branch transfer and exigibility to tax in the case of inter-State sale *simpliciter vis-a-vis* transfer of goods occasioned otherwise than by way of sale as enunciated by the Hon'ble Supreme Court of India, having noticed the amendment of Section 6A of the CST Act by virtue of the Finance Act, 2002, when the Appellate Authority had undertaken exhaustive examination of books of account supported by the evidence adduced by the petitioner, though there was non-production of declaration in Form F, without referring to such records of the authorities below the Tribunal had no scope to reverse or vary with the opinion of the Appellate Authority.

8.4. The finding of fact by the Appellate Authority being on the basis of statutory provision as was extant during 1999-2000 when the imputed transactions were effected no flaw in application of law can be attributed. The legal fiction being introduced by virtue of the Finance Act, 2002, to negate the claim of exemption from payment of Central sales tax under Section 6A on failure to furnish declaration in Form F, such burden of proof resting on the dealer could not be made applicable with respect to the transactions effected during the assessment year 1999-2000.

8.5. In *Commercial Motors Ltd. Vrs. CTT, (2015) 15 SCC 168 = (2015) 86 VST 1* it has been held that:

"21. In Thirumalai Chemicals Ltd. Vrs. Union of India, (2011) 6 SCC 739 it has been held thus:

'32. Limitation provisions therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts because rights can accrue to both the parties. In such a situation, test is to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. An accrued right to plead a time bar, which is acquired after the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. ***Therefore, unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective.****'*

22. Keeping in view the aforesaid enunciation of law, it is to be seen whether the amendment and introduction of the words "six years from the end of such year or 31.03.2002 whichever is later" either expressly or by necessary implication can be regarded as retrospective. ***The cardinal principle which is accepted is that law in force in the assessment year is to be applied unless there is an amendment which comes into force having***

retrospective operation. *In the instant case, the legislature has brought the amendment by reducing the period from eight years to six years. The language employed in the proviso has to be carefully scrutinised and appreciated."*

8.6. A reference to *Reliance Industries Ltd. Vrs. Commissioner of Sales Tax, Cuttack, (2020) 77 GSTR 225 (Ori) = 2019 SCC OnLine Ori 515 = AIR 2020 Ori 55* would suffice to indicate that the law as it existed during the period when the taxable event occurred would be determining factor. In the said reported judgment, the principle has been enunciated with the following opinion:

"10. But in our considered opinion, in a tax statute, the word "substitute" is to be interpreted strictly as per the legislative intention. ***It cannot be given the retrospective effect unless expressly provided or intention to that effect is manifest from a bare reading of the provision.*** *If an ordinary interpretation is made as per the case law relied by the petitioner, then if any tax is increased, it cannot be realised retrospectively, which can never be the intention of such "substitution". Therefore, amending provision will have prospective effect.*

11. In that view of the matter, ***every word in a tax statute should be interpreted strictly as it stood on the date the taxing event exists or it occurs.*** *Thus, the argument canvassed by the learned counsel for the petitioner is devoid of any merit, is required to be rejected and is rejected.'*

8.7. Observation of the Hon'ble Karnataka High Court rendered in *Harison & Co. Vrs. Additional Commissioner of Commercial Taxes, Belgaum, (2006) 146 STC 609 (Kar)* is felt pertinent to be quoted hereunder:

> *"15. In Government of Andhra Pradesh Vrs. Guntur Tobaccos Ltd., (1965) 16 STC 240 (SC), the Supreme Court has observed that normally under the sales tax laws, the onus of proving that a transaction is a sale, is on the taxing authorities and it is not incumbent on the assessee to prove to the contrary. This view is reiterated by the apex Court in the case of Commissioner of Sales Tax Vrs. Suresh Chand Jain (1988) 70 STC 45 (SC), wherein the Supreme Court has observed that the onus of proving the nature of sale whether it is inter-State or intra-State is on the Revenue. Section 6-A of the CST Act, 1956, reverses the principles and throws the burden on the assessee to prove that the transaction is not a sale prior to the date of coming into force of the amendment made to sub-section (1) of Section 6-A of the CST Act, 1956, that is prior to May 11, 2002.* ***The filing of form "F" by a dealer who sent the goods to another State on consignment or stock transfer was optional and he could prove his claim for non-levy of tax under the Act by producing alternative evidence such as correspondence, delivery challans, etc. Submission of "F" form declarations is not conclusive evidence that the movement of goods is a branch transfer/stock transfer and not a sale.*** *The sales tax authorities can investigate and make enquiries whether the declaration is genuine and true and reject the "F" forms, if the transaction is found to be not genuine. Section 6-A of the CST Act,*

1956 lays down a particular mode of proof and it is implied that the production of such proof will dispense with the necessity of adducing any other or further evidence and will suffice for the grant of the benefit. But Section 6-A(2) of the CST Act, 1956 goes a little further and provides for the possibility of an enquiry being conducted by the assessing authority. It is open to the Assessing Authority to make further enquiry to satisfy himself that the particulars contained in form "F" declarations are true. It is only then that the Assessing Authority is enjoined to pass an order in the matter. An order passed under Section 6-A(2) of the CST Act, 1956, is nothing but a step in aid or process, which leads only to the ultimate computation of assessment of tax liability. In other words, Section 6-A(2) of the CST Act, 1956, authorises the assessing officer to make enquiry that particulars contained in the declaration furnished by the dealer are true and for this purpose, other evidence produced by the dealer is also required to be considered. The assessing authority is also authorised under Section 6-A(2) of the CST Act, 1956, to call for other information to verify the correctness of the particulars contained in the "F" form declarations. It is for the dealer to prove that the details provided in form "F" are correct and true. The Madras High Court in the case of A. Dhandapani Vrs. State of Tamil Nadu, (1995) 96 STC 98 (Mad) while interpreting the provisions of Section 6-A(2) of the CST Act, 1956 has observed that even after submission of "F" forms, the authority can make further enquiry to satisfy himself that particulars contained in the declaration in "F" form are true and correct. If the dealer fails to satisfy the Assessing Authority about the genuineness and the correctness of the contents in "F" form *declarations, the transfer of goods can be taken as on account of inter-State sales. Sub-section (2) of Section 6-A of the CST Act, 1956 places a duty on the assessing authority to scrutinise the declarations furnished by the dealer and pass an order accepting the correctness thereof. On such an order being passed, the transfers made by the dealer to the out of State branches or agents will be deemed to have been made otherwise than as sales. The Assessing Authority has the power to make further enquiries to have an independent verification of the particulars furnished by the dealer in the declarations and other documents furnished by the dealer and in the course of enquiry, it is open to the assessing authority to call for any other information from the dealer in order to verify the truth or otherwise of the particulars contained in the declaration in "F" form and the other information maintained by the dealer in its regular course of business. This appears to be settled legal position in law. Therefore, reference to various decisions of this Court and other courts may not be necessary."*

8.8. Under such premise, it can safely be stated that in absence of furnishing declaration in Form F to claim exemption from payment of Central sales tax with respect to transactions effected otherwise than by way of sale during the assessment year 1999-2000, the dealer is at liberty to produce other evidences to demonstrate the goods, here "coal", moved from State of Odisha to its branch located at Ranchi in other State was occasioned by reason of transfer of such goods to another place of its business or agent or principal, as the case may be, and not by reason of sale.

8.9. The Tribunal without appreciating the legal perspective as available during the period of assessment year has shifted the burden on the assessee to prove that the transaction is an inter-State sale and not stock transfer, without realising that under Section 6-A of the CST Act, 1956, the burden to prove that the transaction is not a sale but stock transfer is on the assessee, which the petitioner did by furnishing other evidence.

9. Bare perusal of provisions of Section 6A of the CST Act as amended in 2002 would indicate that by virtue of introducing deeming fiction the burden is cast on the dealer that if he fails to furnish declaration in Form F to establish his claim that the goods moved from this State to the other State on account of branch transfer, but not by way of sale, then the movement of such goods shall be deemed to have been occasioned as a result of sale for all purposes of the CST Act.

9.1. In *Bhuwalka Steel Industries Ltd. Vrs. Union of India, (2017) 5 SCC 598 by referring St. Aubyn Vrs. Attorney General, 1952 AC 15 = (1951 2 All ER 473 (HL)* the Hon'ble Supreme Court of India made the following observations*:*

"The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes

of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

9.2. The word 'deemed' as per *Worcester Dictionary* is*:*

"The word 'deemed' is used in various senses. Sometimes it means 'generally regarded'. At other time it signifies 'taken conclusively to be'. Its various meanings are to been to be hold in belief, estimation, or opinion; to judge; adjudge; decide; consider to be; to have or to be of an opinion; to esteem; to suppose; to think, decide or believe on consideration; to account; to regard; to adjudge or decide; to conclude upon consideration."

In Words & Phrases, Permanent Edition, Vol. 11A, page 181, the word 'deemed' has been described to mean "regarded as being"; it is equivalent to "shall be taken to be".

9.3. In *Rishabh Agro Industries Ltd Vrs. P.N.B. Capital Services Ltd, (2000) 5 SCC 515,* in the context of Section 441 of the Companies Act, 1956, the following meaning has been culled out:

"The word 'deemed' as used in Section 441 of the Act means 'supposed', 'considered', 'construed', 'thought', 'taken to be' or 'presumed'."

9.4. In *State of Karnataka Vrs. Shri Ranganatha Reddy, AIR 1978 SC 215,* it has been observed as follows*:*

"The use of word 'deemed' does not invariably and necessarily imply an introduction of a legal fixation but it has to be read and understood in the context of the whole statute."

9.5. *In Consolidated Coffee Ltd Vrs. Coffee Board, AIR 1980 SC 1468,* the observation of the Supreme Court runs as follows:

"A deemed provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail."

9.6. It is, thus, well-settled principle that legal fiction is created only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond their legitimate field. The legal fiction is of course to be carried to its logical conclusion but that must be within the framework of the purpose for which it is created.

9.7. In *Sundew Properties Limited Vrs. Telangana State Electricity Regulatory Commission, (2024) 5 SCR 739* it has been reiterated that:

"It would not be inapt to be reminded of what was stated by a Bench of two Hon'ble Judges of this Court in State of Bombay Vrs. Pandurang Vinayak Chaphalkar, (1953) 1 SCR 773 = (1953) 1 SCC 425 nearly seventy years ago:

'11. [...] When a statute enacts that something shall be deemed to have been done, which in fact and truth

was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.""

9.8. The principle that a legal fiction must be limited to the purpose for which it is created is found in *Bengal Immunity Company Limited Vrs. State of Bihar, (1955) 2 SCR 603* wherein it has been observed that:

*"**A legal fiction presupposes the correctness of the state of facts on which it is based and all the consequences which flow from that state of facts have got to be worked out to their logical extent. But due regard must be had in this behalf to the purpose for which the legal fiction has been created.** If the purpose of this legal fiction contained in the Explanation to Article 286(1)(a) is solely for the purpose of sub-clause (a) as expressly stated it would not be legitimate to travel beyond the scope of that purpose and read into the provision any other purpose howsoever attractive it may be. The legal fiction which was created here was only for the purpose of determining whether a particular sale was an outside sale or one which could be deemed to have taken place inside the State and that was the only scope of the provision. **It would be an illegitimate extension of the purpose of the legal fiction to say that it was also created for the purpose of converting the inter-State character of the transaction into an intra-State one.** This type of conversion could have been in the contemplation of the Constitution makers and is contrary to the express purpose for which the legal fiction was created as set out in the Explanation to Article 286(1)(a)."*

9.9. With such understanding of fiction created in the statutory provision, examining the present case would indicate that prior to amendment of Section 6A, the burden of proof that the transfer of goods claimed otherwise than by way sale in absence of declaration in Form F could be established by adducing alternative evidences. This has been conspicuously observed in *State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262 (Ori).*

9.10. In *Orissa Small Industries Corporation (supra)* a Division Bench of this Court made the following observation:

"On an application made by the Revenue under Section 24(1) of the Orissa Sales Tax Act, the following questions were referred for opinion of this Court along with the statement of the case:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the burden was on the Revenue to prove the inter-State sale even if no evidence was adduced by the assessee in support of the claim of branch transfer?

(ii) If the answer of the Honourable Court is in the negative, whether claim of branch transfer could be proved by other evidence in lieu of Form F?

***

3. Inasmuch as the Central sales tax is not leviable in respect of transactions of transfer of goods from a head office or a principal to a branch or an agent or *vice versa as these do not amount to sales, dealers evaded tax by showing genuine sales to third parties as transactions of transfer. With a view to plugging this loophole, Section 6-A was incorporated into the Central Sales Tax Act, 1956 providing that the burden of proving that the transfer of goods in such cases was otherwise than by way of sale would lie on the dealer who claimed exemption from tax on the ground that there was in fact no sale. The notes on clauses accompanying the statement of objects and reasons for the incorporation of Section 6-A read as under:*

'This clause seeks to insert a new section 6-A in the principal Act for the purpose of providing that the burden of proving that any movement of goods from one State to another was occasioned otherwise than by way of sale shall be on the dealer making such claim. ***For the purpose of discharging this burden the dealer may produce a declaration in the prescribed form from the person in the other State to whom the goods have been sent along with evidence of such despatch of goods.****'*

***

On a reading of sub-section (1) of Section 6-A, there can be little doubt that the burden is on the dealer to prove that it is a mere branch transfer or transfer from the principal to the agent, and the movement of goods from one State to another was occasioned not by reason of sale. *The Tribunal, therefore, was not right in holding that the Revenue was to prove the inter-State sale even if no evidence was adduced by the assessee in support of the claim of branch transfer. As we have said, the burden is on the assessee. The* *section is in clear and categorical terms and having regard to the purpose of incorporation of Section 6-A, it does not admit of any controversy. Answer to question No. (i) is, therefore, in the negative.*

4. *Whether branch transfer can be proved by other evidence-even without filing the prescribed F forms?*

*Section 6-A(1) provides that where any dealer claims certain movement of goods from one State to another was not occasioned by reason of sale, for that purpose, **he may furnish to the assessing authority**, within the prescribed time or within such further time as that authority may permit, **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 and as provided in sub-section (2), if the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by the dealer are true, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed to have been occasioned otherwise than as a result of sale. **Mere filing of F forms is not conclusive. It is open to the assessing authority to make an enquiry at that stage. The dealer has to satisfy him that the movement of goods from one State to another was occasioned otherwise than as a result of sale.** Sub-section (1), therefore, categorically states that the dealer has to make an application in the prescribed form along with the* *evidence of despatch of such goods.* ***The provision contained in Section 6-A is, therefore, an enabling provision. But does it estop the dealer who has not submitted the declaration in form F from proving aliunde that the movement of goods from one State to another was occasioned by reason of transfer of such goods and not by reason of sale? In our opinion, there is nothing in Section 6-A to persuade us to hold that filing of declaration in form F is the only mode for discharging the burden. Filing of F form may be an easier and convenient mode. It does not prevent the dealer from discharging the burden by other relevant evidence. He is not estopped from proving by other evidence that he is not liable to pay tax.*** *It has been held in Commissioner of Sales Tax Vrs. Agra Food Product Private Ltd. (printed as appendix at page 266 infra), 1984 STJ 135 (All.)* [5] *and Commissioner of Sales Tax Vrs. Camphor and Allied Products 1984 STJ 312 (All) that the dealer can discharge the burden which lies upon him under sub-section (1) of Section 6-A by other modes as well, apart from submitting declaration in form F to the assessing authority. We, therefore, answer the second question in the affirmative."*

9.11. This Court noticing purport of sub-rule (5) and sub-rule (7) of Rule 12 of the CST (R&T) Rules in *State of Orissa Vrs. Ramnarayan Sitaram, (1988) 68 STC 153 (Ori)* observed as follows:

5 *(1987) 67 STC 266 (All) =1984 TaxLR 3014.*

"This is a reference under Section 24(1) of the Orissa Sales Tax Act, 1947 at the instance of the Revenue on the following questions of law arising out of the order:

(i) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal is legally right to hold that production of F form in support of commission sales is not mandatory?

*(ii) ****

*2. *** In the year 1974-75, it (assessee) despatched jute weighing Q. 2,782.59 kgs. outside the State which was sold through commission agent. Those sales were not supported by the declaration in form F. Accordingly, deduction was disallowed and tax was demanded on such sale. *** The assessing officer also demanded tax on the said sale. Assessment was confirmed in first appeal but in second appeal, the Tribunal held that* ***the proof of sale through commission agent in respect of inter-State trade and commerce can be proved otherwise than furnishing F form, since production of F form is not mandatory.*** *****

*3. The first question has been directly answered in favour of the assessee in a decision of this Court in (1978) TTJ 353 (T.M. Veener Industries Vrs. State of Orissa) and a decision of this Court in S.J.C. No. 99 of 1980 decided on 28th February, 1987 (State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262). ****

4. Mr. A.B. Misra, the learned Standing Counsel, submitted that in the aforesaid decision, Rule 12(5) and (7) of the Central Sales Tax (Registration and

Turnover) Rules have not been considered which would lead to the conclusion that the only mode of proof, that the goods were transferred from one State to the other otherwise than as a result of sale. They read as follows:

Rule 12:

*(1) to (4)****

(5) The declaration referred to in sub-section (1) of Section 6-A shall be in form F:

****

*(6) ****

(7) The declaration in form C or form F or the certificate in form E-I or form E-II shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority:

**** Apart from the difference in language of Section 6-A and Section 8(4) of the Act, in the latter situation, there is admitted liability on account of sale of goods and the dealer would get a benefit by producing the C or D form but* ***in the former case, there being no sale, the dealer is not liable. But to avoid an inference that there was a sale under the Act, the dealer has the option to prove the same by producing the F form. This is not a conclusive proof.*** *The assessing officer has to come to a definite conclusion that the transactions claimed to be transfers to another State are not otherwise than sale, but are sales in the course of inter-State trade and commerce and for that purpose has the jurisdiction to* *make further enquiry to find out whether the transaction covered under the F form is a sale in the course of inter-State trade and commerce or only a transfer as claimed by the dealer not amounting to such sale.* ***Moreover, the word 'shall' used in sub-rules (5) and (7) of Rule 12 being in a procedural statute cannot be held to be mandatory when non-compliance has not been provided with any adverse effect.*** *The decision in S.J.C. No. 99 of 1980 [State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262 (Orissa)] is not in any way affected by non-consideration of the provisions of the sub-rules.* ***The provisions in the Rules cannot override the provisions in the Act.*** *Accordingly, the question No.1 is answered against the Revenue and in favour of the assessee. The Tribunal is correct in its conclusion."*

9.12. In yet another case being *Indian Aluminium Company Limited Vrs. Sales Tax Officer, Original Jurisdiction Case No.2979 of 1986, Judgment dated 04.09.1987* this Court laid down as follows:

"14. So far as the second contention of Dr. Pal, the learned counsel for the petitioner is concerned, we also find sufficient force in the same. In the impugned order (Annexure-1) of the Sales Tax Officer, it has been held that a combined reading of Rule 12(5) of the Tunrover Rules and Rule 6(c) (1) of the Central Sales Tax (Orissa) Rules makes it abundantly clear that production of 'F' forms is mandatory. This conclusion of the Sales Tax Officer is obviously erroneous. ***Section 6-A of the Central Sales Tax Act provides that where a dealer claims that he is***

not liable to pay tax under the 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 and not by reason of sale, the burden of proving the same lies on the dealer. One mode of discharge of that burden has been provided for in the said section, namely by furnishing to the Assessing Authority a declaration duly filled in and signed by the principal officer of the place of business containing the prescribed particulars in the prescribed form obtained from the prescribed authority together with the evidence from the prescribed authority together with the evidence of despatch of such goods. *The word "prescribed" has been defined in Section 2(e) of the Act to mean, "prescribed by the Rules made under the Act". The Turnover Rules have been made by the Central Government in exercise of powers conferred under Section 13(1) of the Central Sales Tax Act. Section 13(1) authorises the Central Government to make rules providing for the form in which and the particulars to be contained in any declaration or certificate to be given under the Act.* ***Rule 12(5) provides that the declaration referred to in sub-section (1) of Section 6-A shall be in Form 'F' and, therefore, an assessee can discharge the burden which lay on him to prove that the movement of goods from one State to another was occasioned by reason of transfer of such goods to his other place of business and not by reason of sale, by furninshing the necessary particulars duly filled in Form 'F', but that does not debar an assessee to prove the factum of***

branch tranfer or that the movement of goods was not by way of sale, but by any other mode. It is an enabling provision which provides one method of discharge of the burden that lay on the assessee. In this view of the matter, it cannot be said that production of 'F' form is mandatory to discharge the burden of proving that the movement of goods was occasioned by reason of transfer and not by reason of sale. *In fact, a Bench decision of this Court in the case of State of Orissa Vrs. Orissa Small Industries Corporation in S.J.C. No. 99 of 1980, reported in (1987) 21 STL 209 (Ori), has already answered this point in the following manner: ****

It is too well settled that there can be no tax unless it is backed by a valid provision of law properly enacted. The Central Sales Tax Act imposes a tax on sales or purchases of goods made in the course of inter-State trade or commerce, in order that there may be a tax leviable under the said Act, there must have come into existence a 'sale' and that too in the course of inter-State trade or commerce, as defined in Section 3. ***A mere transfer of goods by the owner from one place to another whether in the same State or in another State cannot amount to a 'sale'. A person sought to be taxed on a transaction which is not a 'sale' is always at liberty to prove, by evidence if he can, that the transaction sought to be taxed is a mere transfer of his own goods and does not amount to a 'sale'. What is taxable is 'sale' and not a mere movement.*** *In fact, the Government of India issued a Memorandum dated 22nd of June, 1974 in this regard wherein it has been clearly indicated that* *the dealer will have the option to discharge the onus lay on him under Section 6-A of the Act to the satisfaction of the Sales Tax Authorities in any other manner including the manner provided in Section 6-A, namely by furnishing declaration in Form 'F'. When an Act lays down a particular mode of proof, it is implied that the production of such proof will dispense with the necessity of adducing any other or further evidence and will suffice for the grant of the benefit and, therefore, the production of the prescribed mode of evidence is adequate and sufficient to obtain the benefit in question. An Assessing Authority cannot throw the declarations and particulars furnished to him by production of 'F' forms and if he is satisfied as provided under Section 6-A(2), then he is bound to accept the transfer in question.* ***But that does not take away the rights of a dealer to prove the factum of tansfer by producing any other evidence.*** *Accordingly, we must hold that the Sales Tax Officer committed an error in holding that production of 'F' form is mandatory and the contention of Dr. Pal on this score must be sustained. The impugned order has, therefore, been vitiated on this score.*

15. ***Once it is held that the production of 'F' form is not mandatory and the assessee is entitled to discharge the burden of proving that the movement of goods from one State to the other was not by way of sale, by other evidence and in the present case, the assessee having produced materials before the Assessing Officer in that regard, as would appear from Annexure-11, non-consideration of those materials by the Assessing Officer amounts to ignoring***

admissible evidence from the purview of consideration and, therefore, constitutes an error of law apparent on the face of the order. *Consequently, the impugned order is vitiated on this score and is libale to be corrected by a writ of certiorari."*

9.13. The production of declaration in Form F prescribed under Rule 12(5) of the CST (R&T) Rules is not mandatory in order to claim exemption from payment of tax with respect to the inter-State transactions occasioned by reason otherwise by way of sale, but not sale, and the petitioner-assessee is entitled to discharge the burden of proving that the movement of goods from one State to the other was not by way of sale by leading other evidences[6]. In other words, the fact of transfer of goods occasioning otherwise than by way of sale being a matter within the special knowledge of the dealer, Section 6A attaches the responsibility of proving such fact to him, but it is not correct to say that the burden can be discharged only by filing declaration in Form F. The provision is similar to that of Section 106 of the Indian Evidence Act, 1872,

---

[6] In *Associates Cement Companies Ltd. Vrs. State of Odisha, (2008) 13 VST 90 (Ori)* it has been observed that:
"This Section [Section 6A] provides 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 movement of such goods from one State to another was occasioned by reason of transfer of such goods to another place of its business or 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 shall be on that dealer. For this purpose, the dealer may furnish Form F as prescribed under Rule 12(5) of the CST (R&T) Rules. Section 6A(2) provides that if the Assessing Officer is satisfied after making such enquiry as he may deem necessary that the particulars contained in Form F are true, he may make an order to that effect."

under which any fact which is specifically within the knowledge of a person, is required to be proved by him. Thus, Section 6A of the CST Act as it stood prior to amendment by virtue of the Finance Act, 2002 is at best a statutory provision of an alternative mode to discharge the burden of establishing the claim of exemption on account of branch transfers.

9.14. It is, hence, open to the assessee, even without filing declaration in Form F, to establish otherwise that in fact the coal/goods moved to Ranchi otherwise by way of sale and, thereby branch transfers took place. It may for the purpose produce other relevant evidence, including its books of accounts, to establish the fact. In the present case, as it emanates from the grounds of second appeal [Ground No.4 as extracted hereinbefore] of the Revenue is non-ascertainment of reason for failure to furnish declaration in Form F by the Appellate Authority would overturn his finding of fact on the basis of analysis of evidence adduced by the petitioner-dealer. On careful reading of Appellate Order it is revealed that the Appellate Authority as a matter of fact recorded that the goods were destined to Ranchi, branch of the petitioner. It is candidly reflected in the Appellate Order that the Appellate Authority had examined entries reflected in the books of account with reference to way bills and consignment challans, which were duly verified by the authorities at border check gate evincing the fact that the goods have moved to other State crossing Odisha State border. Transfer invoices (Stock Transfer Notes) were checked by the check gate authorities. It is also ascertained by the Appellate Authority by examining the documents furnished before him that the transferee (branch at Ranchi) had entered the transactions in question in its books of account and paid the legitimate tax to the concerned Government, which fulfils conditions of branch transfer.

9.15. On perusal of the impugned Second Appellate Order, it does not percolate any sense in mind that the Tribunal has applied its mind to the germane factors. There is neither any indication that the records of the authorities below were verified to test the veracity of finding rendered by the Appellate Authority nor is there any material being produced by the Appellant-State of Odisha (opposite party here) for examination to arrive at a conclusion that the finding recorded in the Appellate Order suffers from perversity. The first appeal being continuation of the assessment[7] the learned Tribunal without having regard

---

[7] *Vide, Santoshi Tel Utpadak Kendra Vrs. Dy. CST, (1981) 3 SCC 466*, it is laid down as follows:
"Now the sub-section speaks of an "Appellate Authority both in the first appeal and the second appeal". It is quite clear, therefore, that the appellate powers detailed in clause (a) have the same amplitude in a second appeal as in a first appeal. An Appellate Authority disposing of a first appeal has power to enhance the assessment. So has an Appellate Authority in a second appeal. We may also point out that when an Appellate Authority is considering a second appeal against a "first appellate" order, it is examining an order which can be broadly described as

to the law enunciated by the Court in proper perspective simply proceeded by resting on the dealer burden to prove by way of furnishing declaration in Form F in order to establish claim for exemption. The tenor of order of the Tribunal is apparently based on the fact that the petitioner is disenabled to claim benefit under Section 6A of the CST Act, as he failed to furnish declaration in Form F, as if it were mandatory requirement to discharge the *onus* to prove that the transfer of goods occasioned otherwise than by way of sale.

9.16. The Tribunal has misread the provisions of Section 6A of the CST Act read with sub-rules (5) and (7) of Rule 12 of the CST (R&T) Rules and failed to keep in view the decisions rendered in the context as discussed and referred to above while holding that the petitioner was required to discharge the burden by furnishing declaration in Form F. Holding so in the considered opinion of this Court is contrary to law prevalent at the relevant point of time. The approach of the Tribunal that the Appellate Authority could not have concluded that the transactions in question were not by way of sale, but otherwise than by way of sale without ascertaining the reason that prevented the petitioner from submitting declaration in Form F does not stand to reason. The order

an order of assessment. It is a final order disposing of an appeal which, in a sense, is a continuation of the assessment. A second appeal against such an order is an appeal against an order of assessment."

of the learned Tribunal, being erroneous and faulted with, cannot be countenanced.

Conclusion:

10. With the factual narration in the foregoing paragraphs with legal perspective as discussed, this Court is of the view that during the relevant assessment year, *i.e.,* 1999-2000, the amendment of Section 6A of the CST Act by virtue of the Finance Act, 2002 is not applicable and therefore, it was not mandatory for the petitioner to furnish declaration in Form F prescribed in sub-rule (5) read with sub-rule (7) of Rule 12 of the CST (R&T) Rules in order to claim exemption from payment of Central sales tax under Section 6A of the CST Act with respect to inter-State transactions effected otherwise than by way of sale during said assessment year. The Appellate Authority having examined each invoice with other material produced and being satisfied held that the petitioner could discharge its burden of proving the transactions being occasioned otherwise than by way of sale and, thereby it is eligible for exemption from payment of Central sales tax under Section 6A. The Sales Tax Revision is, thus, bound to succeed.

10.1. Consequently, the question of law as formulated by this Court is answered in the negative, *i.e.,* in favour of the dealer and against the opposite party by stating that the

Odisha Sales Tax Tribunal was not justified to hold that production of declaration in Form F as proof of inter-branch transfer was mandatory notwithstanding the decision of this Court in *State of Orissa Vrs. Orissa Small Industries Corporation, (1987) 67 STC 262 (Orissa).*

10.2. As a sequel to aforesaid observation, this Court has no hesitation to set aside the order dated 14.07.2022 passed by the Odisha Sales Tax Tribunal in S.A. No.9(C) of 2004-05 and restore the order dated 27.12.2003 passed in First Appeal Case No.AA 60-CU-II-C of 2002-03 by the Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack. The interim order passed by this Court in the present case is made absolute.

11. The Sales Tax Revision along with pending Interlocutory Application(s), if any, stands disposed of, but in the circumstances, there shall be no order as to costs.

I agree

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 5th May, 2026//Aswini/Laxmikant