

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI  
Sh. Narinder Kumar, Member (Judicial)

Appeal No.: 1569/ATVAT/2011  
Date of Judgment: November 9<sup>th</sup>, 2023.

M/s Berger Paints India Ltd.,  
14/2, Okhla Industrial Area,  
New Delhi.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Atul Gupta through  
Sh. Karan Sachdev,  
Proxy Counsel.  
Counsel representing the Revenue : Sh. P. Tara.

**JUDGMENT**

1. This appeal pertains to tax period 1996-97. Initially, this appeal and another appeal No.1568/11 were disposed of by this Appellate Tribunal vide judgment dated 02/05/2022.
2. Feeling aggrieved by the judgment dated 02/05/2022 passed by this Appellate Tribunal, the dealer filed VAT Appeal No. 26/22.
3. Vide judgment dated 09/10/2023, Hon'ble High Court has partly dismissed the appeal as regards demand of local tax as levied u/s 3 read with section 23 of DST Act; also dismissed

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the appeal in so far as dismissal of application filed by the appellant u/s 73(8) of DVAT Act is concerned, and partly allowed the appeal, by setting aside demand of tax levied under CST Act, and remanded the matter to this Appellate Tribunal to decide the matter afresh with regard to assessment and levy of tax under CST Act, after according a fresh opportunity of hearing to the parties and granting liberty to the parties to file fresh documents, if any, in accordance with law.

4. Hence, the only appeal pertaining to demand under Central Sales Tax Act, stands restored to its original number. In the said assessment under CST Act, Assessing Authority observed:

“The above mentioned gate passes particulars revealed that the goods have been sent to branches in pursuance of the orders received from customers like Fedco, BGM and NTPC, etc. by the branches in their state. Its and thereafter the these outside branches placed order on Delhi Branch to sent the goods to them for onward transfer to those dealers. Therefore, such types of transfer cannot be deemed as a plain transfer but inter-state sale to such dealer whose names are mentioned in these gate passes. These are gate passes for month of Sept. only and similarly in other months of year for which gate passes were not available such sales cannot be ruled out. In view of the above it is clear that the dealer is making sales interstate but showing it mere transfer to the branches. Keeping in view these examples 10% of the transfer are taken as interstate sale and taxed @10% under the Central Sale Tax Act.”

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5. Arguments heard. File perused.
6. As per case of the dealer-appellant, while registered with Department of Trade and Taxes, it used to deal in sale of paint, etc.
7. On 03/10/1996, survey at the business premises of the dealer was conducted by the team of officers from Enforcement Branch. During survey, the team came across certain papers, registers and other documents. The dealer could not explain certain documents and as such, the same were seized, when surrendered.
8. Pre-assessment notices were issued to the dealer with the direction to produce the record mentioned therein. After hearing the representative and counsel for the dealer, assessments were framed.
9. Assessment framed under Central Sales Tax Act is to the following effect:

“The facts, as explained in the Local order shall prevail in the Central Act as well.

“ISS	437413139.00
STOCK TRANSFER	340431556.00
TTO 4%	54585039.00
TTO 10%	42396544.00
TAX PAYABLE	6423056.00
TAX DEPOSITED	2579925.00
PENALTY	2000000.00
TOTAL TAX PAYABLE	5843131.00

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The dealer is directed to pay a sum of Rs.58,43,131/- in terms of the demand notice enclosed.”

10. When the assessments were challenged before the First Appellate Authority, vide impugned order dated 22/12/2011, First Appellate Authority disposed of the appeal while observing in the manner as :-

“I have heard the arguments put forth by the representative of the appellant and gone through the records in detail.

I am of the view that return of goods pertain to 1995-96 and has been time barred as per rule as such, AO has not allowed credit and the Assessment Order of the AA is upheld on this count.

The Gate passes were important in view of stock transfers to other branches and on the bases of the same the A.A had rejected. These were the secondary documents on which AA wanted to assess the inter-state sales as books in the circumstances could not be relied upon. The dealer could not produce gate passes as such the AA took 10% stock transfer as inter-state sales. And the decision of the AA in the circumstances is justified.”

11. Dealer is feeling aggrieved by order dated 22/12/2011 passed by learned Special Commissioner – III –First Appellate Authority, whereby the first appeal filed by the dealer challenging the assessment has been disposed of.

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Learned First Appellate Authority remanded the matter to the Assessing Authority to consider 2 'C' Forms and 1 'ST-35', which the dealer could not submit at the time of assessment.

**Whether a case of Stock transfer or Inter-state Sale?**

12. Learned Assessing Authority observed in the assessment orders that perusal of the gate-passes revealed that the goods had been sent to branches in pursuance of orders received by its branches, in other respective State from customers like Fedco, BGM and NTPC etc.

Assessing Authority came to the conclusion that the abovesaid branches had got orders from the dealer(s) mentioned in the gate passes, then the said outside branches placed order with Delhi Branch to send the goods to them for onward transfer to those dealers, and as such the said transfers were "inter-state sales" and not "branch transfers."

13. Counsel for the appellant has submitted that gate pass is an internal record of a company as to the stock which goes out of the company. He has contended that Assessing Authority could not treat "stock transfers" as "inter-state sales" on the basis of the 5 gate passes, when there is no material on record to suggest that any contract of sale was arrived at between the dealer-appellant and the buyer.

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Counsel for appellant has referred to the provisions of section 6A of CST Act and submitted that there being no material on record to suggest even movement of goods, simply on the basis of the 5 gate passes, it cannot be said that any interstate sale took place. In support of his contention, counsel has placed reliance on decision in **M/s Hyderabad Engineering Industries v. State of Andhra Pradesh**, MANU/SC/0172/2011.

On behalf of appellant, it has been submitted that it was for the department to prove that it was not a case of stock-transfers, but it failed to bring forth any evidence in this regard.

Significantly, in the alternative, counsel for the Dealer-Appellant has submitted that even if it is assumed for the sake of arguments that the above said transactions, to which the 5 gate-passes pertained, were inter-state sales, the Assessing Authority could make assessment only in respect of said transactions having regard only to the said five gate passes and the claim put forth by its representative, but the Assessing Authority could not treat any transaction of stock transfer in the other months i.e. from April 1996 to August 1996, as inter-State sales transaction, even if the dealer failed to produce gate passes for the said months.

14. Counsel for the Revenue has also referred to section 6A of CST Act and contended that in support of its claim that the



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dealer -appellant was not liable to pay tax under CST Act, in respect of any goods said to have moved from Delhi to the other States by way of stock transfers to its branch, and not by reason of sale, burden to prove that the movement of the goods occasioned by way of stock transfer, was on the dealer- assessee, but it failed to discharge said burden.

Counsel for the Revenue has further contended that in order to discharge the burden placed on the dealer-appellant u/s 6A of CST Act to prove the abovesaid fact i.e. that transfer of goods took place otherwise than by way of sale, the dealer was required to furnish to the Assessing Authority, Forms "F", but the dealer-appellant having failed to produce any Form "F" in respect of the goods to which five gate-passes pertained, the movement of said goods vide 5 gate-passes shall be deemed to have occasioned as a result of sale.

15. It may be mentioned here that in the course of arguments, counsel for the appellant has not disputed that the 5 gate-passes <sup>depicting particulars written therein</sup> were taken into possession by the Enforcement Team at the time of survey.

At this stage, as regards evidence in the form of the 5 gate passes, as discussed by the Assessing Authority – Taxation Officer, relevant portion of the assessment under CST Act needs to be reproduced. Same reads as under:

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"The officers from the Enforcement Branch visited dealer's premises on 03.10.1996 for survey etc. They found certain papers, registers and were surrendered to the visiting officers at its various places/additional places of business. The dealer was confronted with such material. He produced sales bill, Sales Tax Account Registers, Stock register and other excise record. Some papers were verified from such records.

One gate pass book containing gate passes No. 501 to 533 written (rest blank) was also surrendered and gate pass No. 502 dated 10.09.96 reads GZBD(NTPC) and it has a quantity 4000 pack.

The dealer explained that these goods were transferred to Gaziabad Branch and the bill was raised by the Gaziabad Branch in favour of NTPC. Similarly Gate No. 504 and 13.09.96 containing 4000 packs to Faridabad (Fedopnp). It was explained that these goods were sent to Faridabad Branch and bill was raised by them in favour of (Fedo PNP).

The gate pass No. 515 dated 24.09.96 reads Faridabad (BGM India) for 2000 pack, he explained that goods were sent to Faridabad Branch and the bill was raised by them in favour of BGM India.

Similarly Gate Pass no. 517 & 518 reads the same as gate pass no. 504. The gate passes mentioned above were entered in the record as transfer to the branches mentioned above. He was also asked to produce remaining gate pass



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books, but he informed that the old record was not available though he tried best to trace the same.

The above mentioned gate passes particulars revealed that the goods have been sent to branches in pursuance of the orders received from customers like Fedco, BGM and NTPC, etc. by the branches in their state. Its and thereafter the these outside branches placed order on Delhi Branch to sent the goods to them for onward transfer to those dealers. Therefore, such types of transfer cannot be deemed as a plain transfer but inter-state sale to such dealer whose names are mentioned in these gate passes.

These are gate passes for month of Sept. only and similarly in other months of year for which gate passes were not available such sales cannot be ruled out.

In view of the above it is clear that the dealer is making sales interstate but showing it mere transfer to the branches. Keeping in view these examples 10% of the transfer are taken as interstate sale and taxed @10% under the Central Sale Tax Act."

As noticed above, five gate passes bearing nos. 501, 502, 504, 517 and 518, were found to have been entered in the record as "transfers to the branches", i.e. Ghaziabad Branch and Faridabad Branch.

The Assessing Authority took up each transaction one by one while passing detailed assessment order. As regards gate pass No. 502, 504 and 515, the goods were said to have been



transferred to Ghaziabad Branch and bill was stated to have been issued by said branch in favour of NTPC; in respect of goods transferred to Faridabad Branch, bills were stated to have been issued by the said branch in favour of FEDCO PNP and BGM India. Assessing Authority observed that similarly, gate pass Nos. 517 and 518 had similar transactions.

16. Admittedly, requisite record was not made available, even subsequently, to the Assessing Authority and Learned OHA, despite reasonable opportunities granted to the dealer.

17. Section 6-A of CST Act/<sup>describing burden of proof</sup>reads as:

**“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 [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 a dealer under sub-section (1) [are true and that no inter-State sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under 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.

Explanation - In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

(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."

In view of the provisions of section 6 A of CST Act, had the dealer produced Forms "F" in respect of the 5 gate-passes, only then the Assessing Authority could satisfy himself about the correctness of such forms to arrive at the conclusion that no inter-state sale was effected. Fact remains that no 'F' Form has been proved on record.

In the course of arguments, counsel for the appellant has not submitted that any Form "F" was produced by the dealer before the Assessing Authority.

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Admittedly, even before the OHA, the dealer-Objector failed to produce any declaration -Form "F".

Furthermore, Hon'ble High Court, while remanding this appeal observed that the parties shall be at liberty to furnish fresh documents, if any, before this Appellate Tribunal.

It is significant to note that this Appellate Tribunal made a specific query from counsel for the parties if any fresh document is to be filed, but counsel for the parties stated at the Bar that no fresh document is to be produced before this Appellate Tribunal, and then counsel for the parties proceeded to advance arguments on merits.

So, even despite opportunity granted by the Hon'ble High Court, appellant has failed to produce any declaration or Form "F" in proof of claim of stock transfer.

Therefore, this is a case, where due to non discharge of burden of proof by the dealer as per provisions of section 6 A of CST Act and non production of any declaration "F", Assessing Authority had no opportunity to satisfy itself about the correctness of any such form to arrive at the conclusion that no inter-state sale was effected.

18. Rule 4D of Central Sales Tax (Delhi Rules 1957) provides as

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under:

**"4D Burden of proof, etc. in case of transfer of goods claimed otherwise than by way of sale and matters incidental thereto**

(1) Where any dealer transfers any goods from the Union Territory of Delhi to any other State and claims that he is not liable to pay tax under the Act in respect of such goods on any of the grounds mentioned in section 6A of the Act, such dealer (hereinafter referred to in this rule as the 'transferor') shall maintain in a Register in Form 7, a true and complete account thereof. He shall produce this Register for inspection before the Taxation Officer and shall furnish such other particulars as may be required by him. He shall also furnish copies of entries of this Register and such other particulars relating to the entries made therein as may be required by the Taxation Officer.

(2) The transferor shall furnish to the Taxation Officer the portion marked "Original" of the declaration in Form 'F' referred to in sub-rule (5) of rule 12 of the Central Rules and shall also produce for inspection the portion marked "Duplicate" if so required by the Taxation Officer.

(3) The transferor shall furnish such other particulars and produce such other accounts, documents and evidence as the Taxation Officer may consider necessary for his satisfaction about the genuineness of the claim. In case of the transfer of goods made by the transferor to his agent in another State, the Taxation Officer may require him to produce and supply copies of any or all of the following particulars namely: -

(i) name and full address of the agent to whom goods were transferred;



(ii) written contract, if any, entered into between him and his agent;

(iii) copies of the bills issued by the agent to the purchaser in other State;

(iv) account rendered by the agent to him from time to time showing the gross amount of the sale, deduction on account of commission by such agent; and

(v) ledger extract of the agent maintained for the principal duly signed by such agent; and

(vi) date and mode of remittance of the amount to him.”

19. Sub-rule (5) of Rule 12 of Central Sales Tax (Registration and turnover) Rules, (hereinafter referred to as Rules, 1957), provides that the declaration referred to in sub-section (1) of Section 6-A shall be in Form ‘F’.

As per first proviso to this sub-rule, a single declaration may cover transfer of goods, by a dealer, to any other place of business or to his agent or principal, as the case may be affected during the period of one calendar month.

As per second proviso of the sub-rule, if the space provided in Form ‘F’ is not sufficient for making the entries, the particulars specified in Form ‘F’ may be given in separate annexure attached to that form so long as it was indicated in the form that the annexures form part thereof and every such

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annexure was also signed by the person signing the declaration in Form 'F'.

20. As per sub-rule (7) of Rule 12 of the rules, Form 'F' was required to be furnished to the prescribed authority up to the time of assessment by the first Assessing Authority.
21. Sub-rule (2) of Rule 4C of Central Sales Tax (Delhi), Rules 1957 (hereinafter referred to as CST Delhi Rules) provides that the counterfoil of the declaration Form 'F' shall be preserved for a period of five years or such further period as may be prescribed by the Commissioner.
22. Sub-rule (4) of Central Sales Tax (Delhi) Rules provides that every registered dealer to whom any declaration form is to be issued by the Taxation Officer shall maintain in a register in Form 5, a true and complete account of every such form received from the Taxation Officer.

Counsel for the respondent has submitted that no document/material like Form 'F' was produced by the dealer-appellant, and as such adverse inference be drawn against the dealer-appellant due to non production of said record.

### Show Cause Notices

23. Admittedly, the dealer was also served with 2 notices i.e. one u/s. 9 of CST Act, 1956 read with Section 23 of DST Act, 1975 and the other u/s. 23 of DST Act, 1975.

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By way of these notices, dealer was directed to appear before the STO-Enforcement on 18<sup>th</sup> of November, 1999. Copies of the notices are available on record. These pertain to assessment year 1996-97.

Vide notice in Form ST 13, the Assessing Authority apprised the dealer that he proposed to make assessment for the abovesaid period under section 23 of DST Act, 1975, and that the dealer was to produce or cause to be produced all evidence on which the dealer relied in support of its return(s) and all its account (including record of purchases and sales).

Vide other notice under section 9 of CST Act read with section 23 of DST Act, the Assessing Authority apprised the dealer that he proposed to assess the amount due by way of tax under the above provisions of law, and thereby called upon the dealer to appear and produce further evidence.

The dealer was specifically asked to produce or cause to be produced all evidence including declarations in form "C" and "F" certificates in form 'D', E-1 and E-2 referred to in the Central Sales Tax (Registration and Turnover) Rules 1957 on which the dealer relied in support of its return (s) and all accounts including record of purchase and sales.

It was in response to the said notices that Shri Sunil Kumar Sharma, Accounts Officer of the dealer accompanied by Shri Sushil Kumar Verma, Advocate and other staff of the dealer

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appeared before learned Assessing Authority from time to time.

As is available from the assessment order, Sh. Sunil Kumar Sharma, Accounts Officer-representative of the dealer was confronted with the material seized. At that time, Shri Sushil Kumar, Advocate, was also accompanying the said representative.

24. In Hyderabad Engineering Industries's case (supra), the assessee had its registered office at Hyderabad, and was a registered dealer under Andhra Pradesh General Taxes Act, 1957 as well as CST Act.

It was engaged in manufacturing and sale of electric press, sewing machines, fuel injections parts and accessories.

The assessee entered into an agreement with M/s. Usha Sales Limited (subsequently known as Usha International Limited), whereby the latter agreed to organize sale and distribution of the products of the assessee, as also to arrange for sale promotion measures of the products besides providing after sale services.

Therein, the assessee claimed exemption from being taxed in the course of inter-State trade, which was negated by the Assessing Authority holding that **there were monthly indents** showing supply of goods to UIL at its various branches all

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over the India but the sales had been camouflaged as branch transfer with a view to evade tax liability.

Hon'ble Apex Court held that with a view to find out whether particular transaction is an inter-State sale or not, it is essential to see whether there was movement of goods from one State to another as a result of prior contract of sale or purchase.

On a conjoint reading of Section 3 and Section 6A of the CST Act, the legal proposition was explained as under:

“18. What follows from a conjoint reading of these provisions is that every dealer is liable to pay tax under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce during the year of assessment. Where the department takes advantage of the presumption under Section 3(a) and/or to show that there has been a sale or purchase of goods in the course of inter-State trade or commerce and if the assessee disputes that there has been a sale or purchase of goods in the course of inter-State trade or commerce, then the assessee can rebut the presumption by filing declaration in form 'F' under Section 6A of the Central Act to prove that the movement of goods was occasioned not by reason of sale but otherwise than by way of sale. When the department does not take advantage of the presumption under Section 3(a) of the Central Act, but shows a positive case of inter-State sale in the course of inter-State trade or commerce to make it liable to tax under Section 6, the declaration in Form 'F' under section 6A would be of no avail.”

25. In the above cited case, case of the Revenue was not only based on the agreement of sale but also on the presumption u/s 3(a) of CST Act. The Assessing Authority and the Appellate

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Tribunal had recorded finding of fact that there were prior contracts between M/s. Usha Sales Ltd. and the assessee and in pursuance of those contracts the goods moved from the factory of the assessee at Hyderabad to its branch offices, to be delivered to M/s. Usha Sales Ltd. or its nominees.

26. In para No. 17 of the above said decision, Hon'ble Apex Court observed that to make a sale as the one in the course of inter-State trade or commerce, it is not necessary that in all cases, there must be pieces of direct evidence showing an obligation, whether of the seller or the buyer to transport the goods outside the State, in a written contract or oral agreement. Hon'ble Apex Court went on to highlight that *such obligations are inferable from circumstantial evidence.*

27. <sup>g.m</sup> The above-said decision, Hon'ble Apex Court clearly observed that in view of Section 6-A of CST Act, where any dealer claims exemption from Central Sales Tax in respect of any goods on the ground that movement of such goods was occasioned by reason of transfer of such goods to any other place of its business or to its agent or principals, and not by reason of sale, *then the burden of proving that the movement of goods was so occasioned shall be on the dealer.*

Here, the Dealer-appellant could easily produce the requisite record, including declaration Form 'F', but it failed to do so. Therefore, an adverse inference has to be drawn against the dealer-appellant that had the requisite record been produced

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by it, it would have not supported the claim of the dealer-appellant that it was a case of stock transfer.

Herein, when the specific claim of the dealer as regards the 5 gate passes was that on placing of the orders by the respective customer like Fedco, BGM and NTPC etc., goods moved from Delhi for onward transmission to the said customers, through its branches where the orders are stated to have been received, in view of the decision in Hyderabad Engineering Industries case (supra), and on account of failure on the part of the dealer to produce other relevant record in the shape of declaration Form-‘F’ and GRs etc., it can safely be said that the ingredients of inter-state sale stood established. As a result, the claim of the dealer that it was a case of stock transfer does not stand established. No fault can be found with the impugned assessment framed in this regard.

**As regards remaining gate-passes, which were not produced**

28. The 5 gate passes pertained only to September, 1996. Due to non-production of other gate pass books by the dealer, the Assessing Authority observed in the assessment order that possibility of such sales i.e. inter-state sales in other months of the year i.e. from April, 1996 to August, 1996 could not be ruled out.

Counsel for the appellant has contended that in absence of any material in the form of contract of sale or regarding any



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movement of goods or transfer of any goods by the appellant from Delhi to any buyer outside Delhi, Assessing Authority could not assume taking place of inter-state sales in the other months of the year i.e. from April, 1996 to August, 1996, simply placing reliance on the evidence as regards <sup>transactions which the</sup> 5 gate passes of the month of September 1996 <sup>revealed</sup> and <sup>in</sup> version of the dealer.

On the other hand, Counsel for the respondent has contended that despite ample opportunity, representative of the dealer failed to produce any remaining gate passes and the only ground put forth for non production thereof was that old record was not available.

Counsel has further submitted that the authorised representative of dealer failed to produce gate passes, even before the Assessing Authority, before Learned OHA and that even before this Appellate Tribunal, the dealer has failed to produce any such document to discharge burden of proof placed on the dealer by the provisions of section 6 A of CST Act, <sup>and rules framed thereunder</sup> and as such the assessment has been correctly and legally framed, and same has been rightly upheld.

Counsel for the appellant has contended that Assessing Authority never asked the dealer-appellant to produce any such document, and as such it did not produce the same.

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29. As noticed above, show cause notices were issued to the dealer for production of record mentioned therein. Therefore, there is no merit in the contention that the Assessing Authority did not ask the dealer to produce any such document.

However, I find that while conducting enquiry as regards the factum of inter-state sales in the months of April 1996 to August 1996, the Assessing Authority was empowered, as per sub-rule (3) of Rule 4D of Central Sales Tax Delhi Rules to require the dealer to produce and supply copies of any or all of the particulars mentioned therein, but, there is nothing on record to suggest that the Assessing Authority required the dealer to produce any such particular as mentioned in sub-rule (3) of Rule 4D of the said Rules. He proceeded to do guess <sup>in these five months</sup> work in respect of turnover of inter-state sales on the basis of the findings arrived at by him as regards transactions of inter-state sales as borne out from the five gate passes. Had the Assessing Authority proceeded further by directing the dealer and all concerned for production of the entire requisite record pertaining to stock transfers in the months of April 1996 to August 1996, he could draw adverse inference against the dealer on account of non-production of the said record, if so directed to be produced. Simply because remaining gate passes were not produced by the dealer in respect of the months of April 1996 to August 1996, and without conducting a thorough enquiry, the Assessing Authority could not draw



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presumption as regards the turnover of inter-state sales in respect of said months i.e. <sup>from</sup> April 1996 to August 1996. Therefore, the assessment made, while observing that the dealer was making sales inter-state even in the other months of the year i.e. from April 1996 to August 1996, deserves to be set aside. For the same reasons, the impugned order passed by learned OHA also deserves to be set aside.

30. No other argument has been advanced by counsel for the parties.

### Result

31. In view of the above findings, the assessment framed under CST Act, while considering 10% of the transfers as inter-state sales, as regards the months of April 1996 to August 1996, and the impugned order passed by OHA <sup>to this extent</sup> are set aside, and this appeal is partly allowed in this regard.

As regards the assessment framed under CST Act relating to the transactions of inter-state sales in the month of September 1996, the same is upheld. In view of above discussion and findings, the impugned order passed by OHA is upheld only to this extent. Accordingly, the appeal, as regards said portion of the assessment under CST Act, is dismissed.

32. It may be mentioned here that as finds mentioned above, the First Appellate Authority had already remanded the case to

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the Assessing Authority on one point i.e., to consider 2 'C' forms one and 'ST-35' which the dealer could not submit earlier at the time of framing of assessment. The Assessing Authority to do the needful accordingly.

33. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 09/11/2023

  
(Narinder Kumar)  
Member (Judicial)

