

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No.110(C) of 2012-13**

(Arising out of the order of the learned Addl.CST, (North Zone) in  
Appeal No AA-76/12-13(CST), disposed of on 24.12.2012)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2nd Judicial Member &**  
**Shri B. Bhoi, Accounts Member-II**

M/s. Bonai Industrial Co. Ltd.,  
Barbil, Keonjhar, Odisha,  
TIN-21412000398. .... Appellant.

**-Versus-**

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

For the dealer: : Mr. K. Kurmy, Id. Advocate.  
For the State: : Mr. D. Behura, Id. S.C.(CT).

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Date of Hearing : 20.07.2023 \*\*\* Date of Order:19.08.2023  
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**ORDER**

This appeal is directed against the first appeal order dated 24.12.2012 passed by the Additional Commissioner of Sales Tax, (North Zone) (hereinafter called as Ld. FAA) in First Appeal Case No. AA-76/12-13(CST) confirming the order of assessment passed by the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called the Id. assessing authority) under Rule 12(3) of the CST(O) Rules.

2. The facts in brief are as follows:-

The dealer-assessee under the name style of M/s. Bonai Industrial Co. Ltd., Barbil, Keonjhar registered under the Company Act is engaged in raising and processing of iron ore into different sizes and fines for sale in the market. Apart from raising iron ore from its own mines, it also purchases iron ore for processing for sale. The dealer-Company was assessed under Rule 12(3) of the CST (O) Rules by the learned assessing authority resulting in demand of ₹12,00,918.00. Consequent upon confirmation of the order of the Id.FAA in the first appeal as appealed for by the dealer-Company, it approached this forum for relief endorsing grounds of appeal. The State has also filed cross objection.

3. The substance of this second appeal filed by the dealer-Company hinges on levy of interest of ₹3,40,904.00 and imposition of penalty of ₹1,57,716.00. For better appreciation, it is apt to mention here that as a result of assessment under Rule 12(3) of the CST(O) Rules, the dealer-Company was assessed to ₹12,00,918.00 which consists of extra tax demand of ₹5,48,124.00 for non-submission of Form 'C', ₹4,98,620.00 towards penalty imposed under 12(3) (g) of the CST (O) Rules. The dealer-Company did not dispute on tax demand of ₹5,48,124.00 and thus, has paid the

same along with interest to the tune of ₹1,57,716.00 (out of interest demand of ₹4,98,620.00) culminating thereby to ₹7,05,840.00.

4. Mr. K. Kurmy, Id. Counsel representing the dealer-Company vehemently defends levy of interest of ₹3,40,904.00 at assessment holding that there is no provision for levy of interest as per assessment order. The provisions are limited to payment of interest on tax due as per return. It is submitted that interest of ₹1,57,716.00 relating to late payment of interest has already been paid. The Id. Counsel relies on a decision rendered by the Hon'ble Apex Court in case of ***Birla Cement Works Vs. State of Rajasthan*** reported in (1994) 94 STC 422 (SC) which provides that levy of interest is limited to tax due on the basis of turnover disclosed in the return which does not include tax determined in final assessment. Accordingly, levy of interest of ₹3,40,904.00 is protested.

5. The State represented by Mr. S.K. Pradhan, Id. Addl. Standing Counsel (C.T.) argues stating that liability to pay interest is automatic and arises by operation of law from the date on which tax is required to be paid. Mr. Pradhan besides harping reliance on various case laws on this issue has emphatically relied on a decision made by the Apex Court in case of ***Indodan Industries***

**Ltd. Vs. State of UP** reported in (2010) 27 VST 1 (SC). The Hon'ble Court observes as under:-

“The levy of interest for delayed payment of tax is given the status of ‘tax due’. The interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the department has lost the revenue during the interregnum period (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that the interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated under the statute.”

6. The Id.FAA has rightly upheld the order of the assessing authority in visiting with levy of interest on amount of extra tax emanated in consequence of non-submission of declaration Forms in ‘C’. A decision of the Hon'ble High Court of Kerala reported in (2008) 16 VST 294 in case of **Chandramani Traders Vs. State of Kerala** is sought to rely on wherein it is observed that if the assessee fails to produce the declaration Forms for part of the turnover declared in the returns filed, the assessing authority while quantifying the tax liability is required to levy higher rate of tax as provided in the schedule besides levying interest on the ground that

the assessee has failed to remit tax due under the Act in the manner prescribed under the Act. In the present case, the dealer-Company was demanded extra tax demand of ₹27,72,502.00 on account of non submission of declaration Forms. As per the aforesaid settled principle of law, levy of interest on the extra demand is warranted. Thus, levy of interest of ₹3,40,904.00 as agreed to by the Id.FAA as assessed at assessment is confirmed. The contention taken by the learned Counsel of the dealer in this score fails.

7. The Id. Counsel of the dealer-Company assails imposition of penalty of ₹1,54,174.00 holding the plea that ₹77,087.00 was paid in excess of the tax due for the quarter ending June, 2006. This was taken adjustment in the subsequent tax period. The Id. assessing Authority while at assessment of the quarter ending June, 2006 could find that the declaration Form 'C' submitted for the impugned tax period was short for tax liability of ₹ 77,087.00. The dealer-Company being virtually aware of the fact had made less payment of ₹77,087.00. As this amount is related to non-payment of admitted tax, levy of penalty twice the tax due of ₹77,087.00 which culminated to ₹1,54,174.00 is justified. In view of the above fact, we find no justification to interfere in this regard.

8. Resultantly, the appeal filed by the dealer-Company is dismissed being devoid of merits. The order of the ld. FAA is confirmed. Cross objection is disposed of accordingly.

Dictated and corrected by me.

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-II**

**Sd/-**  
**(Bibekananda Bhoi)**  
**Accounts Member-II**

**I agree,**

**Sd/-**  
**(G.C. Behera)**  
**Chairman**

**I agree,**

**Sd/-**  
**(S.K. Rout)**  
**2nd Judicial Member**