

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

**S.A.No.61(C) of 15-16**

(Arising out of the order of the learned JCST, Sundargarh Range,  
Rourkela , in First Appeal Case No.AA-21(RL-II-C) of 2014-15,  
disposed of on 09.07.2015)

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

M/s. J.S. Steel, AA-14  
Civil Township, Rourkela. ... Appellant.

**-Versus -**

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

For the Appellant: : Mr. S.K. Agarwal, Advocate.  
For the Respondent : Mr. D. Behura, S.C. (CT).

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Date of Hearing: 19.01.2023 \*\*\* Date of Order: 17.02.2023  
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**ORDER**

This appeal is directed against the first appeal order passed by the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as Ld. FAA) in First Appeal Case No. AA 21(RL II C) of 2014-15 confirming the order of assessment passed by the Sales Tax Officer, Rourkela-II Circle, Panposh (hereinafter called the Ld. STO) u/r 12(3) of the CST(O)

Rules in case of M/s J.S. Steel, AA/14,Civil Township, Rourkela for the tax period 1.4.2007 to 31.3.2011.

2. The facts in brief are as follows:-

The dealer-appellant in the instant case carries on business in Iron and Steel goods like M.S. Angels, M.S. Rods etc. effecting purchases and sales both in course of intra-state and inter-state trade and commerce. The Ld. STO basing upon the Audit Visit Report initiated proceeding u/r 12(3) of the CST (O) Rules and raised demand of Rs.68,612.00 which includes penalty of Rs.41,332.00 and interest of Rs.6,613.00. In the first appeal the Ld.FAA confirmed the order of assessment.

3. The appellant being not satisfied with the order of the ld.FAA preferred this appeal submitting the grounds of appeal. The learned Counsel has also submitted the additional grounds of appeal at the time of hearing.

4. It is submitted by the learned Counsel of the dealer-appellant that the Ld.FAA has erred in confirming the order of assessment passed by the learned STO arbitrarily without allowing reasonable opportunity to the appellant to furnish relevant 'C' forms. The learned Counsel of the dealer besides citing the provisions of section 8(4) of the CST Act submits that availing of concession is dependent upon filing of Form 'C'. Non

filing of Form 'C' or filing defective Form 'C' may only render the assessee liable to pay at the full rate of taxation without the benefit of concessional rate, and the filing of Form 'C' being optional and mere condition to avail of the concessional rate contemplated in the statutory provision as such, the lapse, if any, cannot be considered to operate as a penal or forfeiture clause. Being an optional benefit available, non filing of the same or non-compliance of such provision, in any event, cannot be held to be non-compliance with the provisions of the Act, Rules and Notifications-Gujarat Ambuja Cement Ltd Vs. Assessing Authority (2000) 118 STC 315 (HP). The learned Counsel therefore pleads that no penalty can be levied on the selling dealer for mere non submission of requisite statutory forms.

5. In the instant case, it is further submitted that the dealer-appellant has collected CST @ 2% instead of @ 3% on interstate sales due to change in tax rate w.e.f. 01.04.2008. There was no suppression of either purchases or sales detected in Tax Audit and assessment u/r 12(3) of the CST (O) Rules. Imposition of penalty is therefore illegal.

6. It is further admitted by the learned Counsel in the additional grounds of appeal that since the appellant has

collected less than due and has not paid the same in due time, he is liable to pay interest.

7. Mr. M.L. Agrawal, learned Advocate representing the State submits that the rate of tax u/s.8 of the CST Act was 4% up to 31.3.2007. It was reduced to 3% w.e.f. 1.4.2007. It was further reduced to 2% w.e.f. 01.06.2008. As the transactions took place in April, 2008, the appellant is liable to pay tax @ 3%, which has been rightly assessed by the learned assessing officer and consequential interest thereon for withholding of tax has rightly been charged u/r.8(1) of the CST (O) Rules read with section.9 of the CST Act. Therefore, the order of the fora below is correct in this aspect.

8. The learned Counsel of the State has further held that imposition of penalty in the instant case has to be waived in view of the Circular No.43 dated 20.04.2015 issued by the CCT, Odisha.

9. Heard the rival submissions and considering the materials on record, it is brought to fore that both the Counsels representing the State as well as the dealer-appellant are consciously of the views that since the dealer-appellant has collected 2% of CST on interstate sales worth Rs.20,65,325.00 effected in the month of April, 2008 against declaration in Form

'F', the tax rate of which, was enhanced to 3% from 01.06.2008, the appellant is liable to pay tax @ 3% on such sales. Both the Counsels have opined for deletion of penalty in this case, as the sales were on the strength of Form 'F' and the dealer-appellant bears no malafide intention. Charging of interest for withholding of tax as observed in the first appeal order is suggested to be justified. On going through the averments of both the Counsels vis-à-vis the materials on record, it is of the considered views that, as it appears, a dealer is required to submit Form 'C' on quarterly basis. It might be the facts that the dealer-appellant in the instant case was required to file Form 'C' for quarter ending 6/2008 i.e. from April to June, 2008. The CST was reduced to 2% from 3% w.e.f. 01.06.2008. The dealer-appellant might be on the surmise that the tax rate has been reduced to 2% and has accordingly paid tax. It appears, it has no malafide intention attached to it. Imposition of penalty in this case is sheer nullity. Imposition of penalty of Rs.41,332.00 is therefore deleted.

10. As regards, levy of penalty for Rs.6613.00 u/r 8(1) of the CTS (O) Rules, as the dealer-appellant has not paid the tax due in time and withheld payment of tax; it is liable to pay interest as observed in the first appeal order.

11. It is hereby ordered as under.

The appeal is allowed in part. The order of the ld. FAA is set aside to the extent of imposition of penalty and with regard to levy of interest, the order of the ld.FAA is confirmed. Excess payment made, if any, by the appellant in the present case may be refunded as per the provisions of law. Cross objections are disposed of accordingly.

Dictated and corrected by me.

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

**I agree,**

**I agree,**

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

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

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