

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A. No.32(C) of 2017-18**

(Arising out of the order of the learned Addl.CST, Odisha,  
Cuttack in first appeal case No. AA-CU II-258/2012-13  
dtd.05.04.2017)

**Present: Shri G. C. Behera, Chairman  
&  
Shri B. Bhoi, Accounts Member-I**

M/s. Dew Concrete Ties Pvt. Ltd.,  
At/Po- Nuagaon, Gurudijhatia,  
Dist-Cuttack.

..... Appellant.

**-Vrs. -**

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

..... Respondent.

For the Appellant : : Mr. K.R. Mohapatra, Advocate  
For the Respondent : : Mr. D. Behura, S.C.(C.T.)

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**Date of Hearing : 08.08.2023 \*\*\* Date of Order : 07.09.2023**  
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**O R D E R**

The dealer is in appeal against the order dated 05.04.2017 of the Additional Commissioner of Sales Tax, Odisha, Cuttack( in short, 'Id. FAA') passed in First Appeal Case No.AA-CUII-258-2012-13 in not allowing Photostat copy of a declaration in Form 'C' that resulted in demand of ₹5,03,129.00 pertaining to the assessment passed under Rule 12(3) of the CST(O) Rules by the Joint Commissioner of sales Tax, Cuttack-II Range, Cuttack (in short, 'Id. assessing authority').

2. The brief facts of the case are that M/s. Dew Concrete Ties Pvt. Ltd., Nuagaon, Gurudijhatia, Cuttack is engaged in

manufacturing of PSC Sleepers/Poles for the sale. It affects purchase of raw materials both from inside and outside the State of Odisha and the finished products thereof are sold in course of intrastate trade and interstate trade or commerce. The dealer-assessee was assessed under Rule 12(3) of the CST(O) Rules by the learned assessing authority for the tax period from 01.07.2006 to 31.12.2011 raising demand of ₹64,06,743.00 including penalty of ₹42,71,162.00 on the basis of Audit Visit Report(AVR). The Id. FAA is found to have allowed concessional rate of tax against 6 nos of 'C' Forms and disallowed the transactions covered under a Photostat copy of 'C' Form bearing No. J.G.C. 765280 issued by M/s. L & T Ltd., Jharkhand valuing ₹13,09,205.00 and taxed at ₹5,03,129.00. Hence, this second appeal.

3. Mr. K.R. Mohapatra, Id. Advocate representing the dealer-assessee contends that disallowance of the Photostat copy of 'C' Form that was accompanied with the original indemnity bond by the Id.FAA is not in accordance with the provisions of law. The State on the other hand, holds that disallowance of Photostat copy of 'C' Form by the Id. FAA is in the ratio of the decision of the Hon'ble Apex Court passed in case of Delhi Automobiles Pvt. Ltd. vs. CST, reported in 104 STC 75 (SC) (1997). Furnishing of Form 'C' in original is mandatory. The Id. FAA has rightly disallowed concessional rate on ₹12,83,534.00 as claimed for against Photostat copy of 'C'. He has also rightly pointed out that the taxable value mentioned in 'C' Form No.JGC-828126 is ₹18,42,000.00 instead ₹21,39,225.00. Accordingly, the turnover allowable to concessional rate of tax @2% stands at ₹10,85,70,142.00 instead of ₹10,88,26,222.00. The differential amount of ₹2,56,080.00 is required to be taxed @12.5%. The State suggests recomputation of tax on this account.

4. Gone through the rival contentions together with the materials available on record. The order of the Id.FAA is justified in disallowing the concessional rate claimed against Photostat copy of 'C' Form. Rule 6(d) of the CST (O) Rules provides that as under:-

“Every registered dealer to whom any declaration form is issued by a Sales Tax Officer or Assistant Commissioner, as the case may be, shall maintain in a register in Form No. V, a true and complete account of every such form received from the Sales Tax Officer or Deputy/Assistant Commissioner, as the case may be. If any such blank form before it is filled in, signed and dispatched to the selling dealer, is lost, destroyed or stolen, the dealer shall report the fact to the Sales Tax Officer or Deputy/Assistant Commissioner, as the case may be, immediately, shall make appropriate entries in the remarks column of the register, and take such other steps to issue public notice of the loss, destruction or theft as the Sales Tax Officer or Deputy/Assistant Commissioner, as the case may be, may direct and in respect of each such form shall furnish to as the case may be, an indemnity bond in Form XI against any possible loss to the Government.”

The provision of Rule 12(3) of the CST (R & T) Rules provides as under:-

“Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods may demand from the dealer who purchased the goods or, as the case may be, from the Government which purchased the goods, a duplicate of such form or certificate and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorized officer of the Government, as the case may be, on all the three portions of such form or certificate,-

“I hereby declare that this is the duplicate of the declaration form/ certificate No. \_\_\_\_\_ signed on \_\_\_\_\_ and issued to \_\_\_\_\_ who is a registered dealer of \_\_\_\_\_(State) and whose registration certificate number is \_\_\_\_\_.”

The Hon'ble Apex Court in case of Delhi Automobiles Pvt. Ltd. vs. CST, Delhi reported in 104 STC 75(SC) (1997), held that production of Photostat copies of counterfoils is not sufficient compliance & it is a necessity to produce duplicate forms with declaration of purchasing dealer.

Accordingly, in view of the above provisions of law, since the dealer assessee has not observed the above formalities, the order of the Id.FAA in disallowing the Photostat copy of 'C' form bearing No. JGC 765280 with an amount of ₹12,83,534.00 is affirmed. The contention of the Revenue towards commission of arithmetical mistake in computation of tax by the Id.FAA is acceptable as is apparent from the face of the record. The learned assessing authority is required to re-compute the tax liability as observed in the foregoing Para.

5. This is ordered as under:-

The appeal filed by the dealer assessee is dismissed. The order of the Id.FAA is confirmed to the extent of disallowance concessional rate against Photostat copy of Form 'C'. The case is remitted back to the learned assessing authority to re-compute tax as observed above and issue revised demand notice to the dealer. The above exercise is advised to be completed within three months from the date of receipt of this order. Cross objection is accordingly disposed of.

**Dictated and corrected by me.**

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

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

**I agree,**

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