

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

S.A. No. 15 (C) of 2014-15

(Arising out of order of the learned Addl. CST (North Zone),
in Appeal No. AA- 79/12-13 (under OVAT Act),
disposed of on 19.02.2014)

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

M/s. Aryan Ispat & Power Private Limited,
At- Bomaloi, PO- Rengali, Dist. Sambalpur ... Appellant

-Versus-

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

For the Appellant : Sri R.C. Poddar, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. S.C. (CT)

Date of hearing : 04.01.2024 *** Date of order : 18.01.2024

ORDER

Dealer is in appeal against the order dated 19.02.2014 of the Addl. Commissioner of Sales Tax (North Zone) (hereinafter called as 'First Appellate Authority') in F A No. AA- 79/12-13 (under OVAT Act) reducing the demand raised in assessment order of the Deputy Commissioner of Sales Tax, Sambalpur-I Circle, Sambalpur.

2. Briefly stated, the facts of the case are that –

M/s. Aryan Ispat & Power Private Limited is engaged in manufacturing of sponge iron and sells the same inside the State, inter-State trade and commerce and also in course of export. Assessment relates to the

period 01.07.2006 to 31.06.2010. The Assessing Authority raised tax demand of ₹1,35,63,367.00 u/r. 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the demand to ₹41,82,282.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection.

3. The learned Counsel for the Dealer submits that the State has not filed the cross-objection raising the issue of interest. The cross-objection was alleged to be filed by the State, but the record of the Tribunal does not reveal the same. So, he submits that the interest cannot be levied in absence of any plea advanced on behalf of the State. He further contends that the impugned order of the First Appellate Authority regarding imposition of penalty in absence of statutory form is otherwise bad in law and the same needs interference in appeal.

He relies on the decision of the Hon'ble Apex Court in case of *J.K. Synthetics Ltd. v. Commercial Taxes Officer*, reported in [1994] 94 STC 422 (SC) and decision of this Tribunal in S.A. No. 71 (C) of 2012-13 decided on 06.12.2017.

4. Per contra, the learned Addl. Standing Counsel (CT) for the State submits that the interest is compensatory in nature and thus, leviable. He further submits that word 'shall' finds place in Section 9(2B) of the CST Act is mandatory in nature. So, he submits that the Dealer is liable to pay interest. He further contends that the impugned order of the First Appellate Authority is a reasoned order and the same needs no interference in appeal.

He relies on the decision of the Hon'ble Apex Court in case of *Indodan Industries Ltd. v. State of U.P. and Others*, reported in [2010] 27 VST 1 (SC).

5. Heard the rival submissions of the parties, gone through the orders of the Assessing Authority and First Appellate Authority *vis-a-vis* the materials on record. The assessment order reveals that the Dealer fails to furnish some declarations in Form-C. So, the Assessing Authority computed the tax liability imposing penalty. The First Appellate Authority reduced the tax demand and proportionate penalty while accepting two 'C' forms for ₹1,91,41,785.00. The First Appellate Authority rejected 'C' form on the ground of overwriting without attestation.

Learned Addl. Standing Counsel (CT) for the State apprised this Tribunal that the Dealer is liable to pay interest in lieu of penalty for non-submission of 'C' form. Deletion of penalty is not objected by the State. So, the Dealer is not liable to pay penalty in absence of statutory declaration form.

6. As regards levy of interest, the Dealer objects such submission of the State on the ground that the State had not raised the issue by way of filing the cross-objection.

Perusal of record, it transpires that the State had filed cross-objection on 05.12.2015, but the Office had not placed the same in the record as misplaced. The cross-objection filed by the State is brought to record.

The assessment period relates to 01.07.2006 to 31.06.2010. The Dealer is required to file the return u/r. 7 of the CST (O) Rules and liable to pay interest. Amended Rule 7A of the CST (O) Rules came into force on 06.07.2006 and the Dealer is required to file declaration in Form-C and other documents which are necessary within a stipulated period. Rule 8A deals with penalty and interest if the Dealer defaults without sufficient cause

to pay the amount of tax due along with the interest thereon with the return or revised return, as the case may be, u/r. 7 of the CST (O) Rules.

Admittedly, the Dealer has not filed the required wanting Form-C even at this stage against the defective form. Section 9(2B) of the CST Act stipulates that the Dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.

On bare reading of Section 9(2B) of the CST Act, the words “shall be liable to pay interest for delayed payment of such tax,” is mandatory in nature. The liability to pay interest for non-submission of ‘C’ form is the statutory mandate of law and the same can be raised at any stage and even in absence of cross-objection by the State.

In the case of *Indodan Industries Ltd.* cited supra, the Hon’ble Apex Court were pleased to observe that 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 by section 120 of the Finance Act, 2000 retrospectively.

The Dealer relied on the decision of the Hon’ble Apex Court in case of *J.K. Synthetics Ltd.* cited supra. The decision relied on by the Dealer

is not applicable in the present facts and circumstances of the case. The decision relied on by the Dealer of this Tribunal in **S.A. No. 71 (C) of 2012-13** is also not applicable to the present facts and circumstances of the case as the Dealer is not liable to pay interest, if he is able to produce the declarations in Form 'C' & 'F'. In the instant case, the Dealer is unable to produce the required statutory form before this forum also and, therefore, it cannot escape from the interest liability as per Rule 8 of the CST (O) Rules in view of the ratio decided by the Hon'ble Apex Court in the *Indodan Industries Ltd.* cited supra. Hence, it is ordered.

7. Resultantly, the appeal stands allowed in part and the impugned order of the First Appellate Authority is hereby modified to the extent of deletion of penalty. Cross-objection is allowed to the extent of levy of interest. The Assessing Authority is required to recompute the tax liability as per law keeping in view the observations made supra within a period of three months from the date of receipt of this order.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-I**