

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

S.A. No. 92(C) of 14-15

(Arising out of the order of the learned DCST,
(Appeal), Sambalpur Range, Sambalpur in first
appeal case No.AA54/SAII/CST/12-13 disposed of
on 10.11.2014)

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

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

..... Appellant.

-Vrs. -

M/s. Hindlco Industries Ltd.,
At/Po- Hirakud, Dist-Sambalpur
TIN-21601703134.

..... Respondent.

For the Appellant : : Mr. S.K. Pradhan, ld. A.S.C.(C.T.)
For the Respondent : : Mr. U. Behera, ld. Advocate

Date of Hearing : 05.07.2023 * Date of Order:17.07.2023**

O R D E R

The State is in appeal against the order dated
10.11.2014 of the Deputy Commissioner of Sales Tax(Appeal),
Sambalpur Range, Sambalpur (in short, 'ld. FAA') in First Appeal
Case No. AA54/SAII/CST/12-13 allowing the appeal in part and
reducing the demand raised at assessment to ₹13,516.00 as
against the demand of ₹1,02,01,427.00 raised by the Assistant

Commissioner of Sales Tax, Sambalpur-II Circle, Sambalpur (in short, assessing authority) under Rule 12(1)(b) of the Central Sales Tax (Orissa) Rules (in short, CST(O) Rules).

2. The facts in nutshell are that M/s. Hindalco Industries Ltd., At/Po- Hirakud, Dist- Sambalpur is engaged in manufacturing and sale of aluminum ingots as well as manufacturing of Carbon electrode Paste, aluminum sheets, etc. and also owns and operates a Captive Power Plant for purpose of manufacturing. Provisional assessment u/R.12(1)(b) of CST(O) Rules was resorted to by the ld. assessing authority for the quarter ending 01.10.2010 to 31.03.2011 on failure on the part of the dealer-assessee to furnish requisite declaration Forms against transactions effected under CST Act for the quarters preceding to the quarter for which the return is filed as per the provision prescribed under Rule 7 of the CST(O) Rules. The dealer-assessee was provisionally assessed to ₹1,02,17,026.00 considering furnishing of certain declaration in Form 'C' and 'F' by the dealer-assessee.

3. On being aggrieved against the order of provisional assessment, the dealer-respondent preferred first appeal. The dealer-respondent is learnt to have furnished all the required declarations in Form 'C' in support of sales effected in course of interstate trade or commerce and Form 1 covering all sales effected to SEZ but failed to furnish form 'F' for ₹3,37,901.26.

The ld. FAA taxed the same @4% which calculated to ₹13,516.00 and thus, the first appeal was allowed in part.

4. The State preferred second appeal before this forum holding that the ld. FAA has not imposed penalty and interest on the amount of tax assessed against the transaction of ₹3,37,901.00 not supported with Form 'F'. It is also contested that there has been no elaborate discussion with regard to sales to SEZ contained in the first appeal order.

5. The dealer-respondent represented by Mr. U. Behera, ld. Advocate filed cross objection and written submission arguing that the second appeal preferred by the State on a paltry disputed demand is not maintainable in view of the order of the Hon'ble High Court of Odisha passed vide STREV No.64 of 2012 dated 3.11.2015 and the clarification issued by the Commissioner of Sale Tax vide their Letter No.1963/CT dated 5.2.2019 restricting to prefer appeal by the State for the disputed amount below ₹25,000.00. It is also submitted that there has been no violation of Rule 12(7) of CST (R & T) Rules, as the proviso to the Rule permits the taxing authority to accept declaration forms on a later date on existence of sufficient reason. Therefore, acceptance of the 'F' Forms by the ld. FAA is beyond challenge of the appellant. Further, it is argued that the dealer-respondent is not liable for penalty and the ld. FAA is justified in not imposing any penalty as has been settled in

various cases earlier by the Odisha Sales Tax Tribunal. Levy of interest is also protested, since there is no provisions for levy of interest under the OVAT Act in case of provisional assessment under Rule 12(1) of the CST(O) Rules. The ld. Counsel appearing on behalf of the dealer-respondent pleads that the ld. FAA after being satisfied on verification of accounts relating to SEZ sales has allowed the same. The first appeal order in this regard is thus justified.

6. The order of provisional assessment, first appeal order, grounds of appeal filed by the State and the memorandum of cross objection filed by the dealer-respondent are gone through at length. On perusal of the first appeal order, it is ascertained that the dealer-respondent has submitted all the required 'C' Forms, Form 1 and Form 'F' excepting for ₹3,37,901.00 against branch transfer. The ld. FAA has rightly taxed the same @4% resulting in demand of ₹13,516.00. The ld. FAA has neither imposed penalty nor interest thereon.

7. That with regard to non maintainability the second appeal filed by the State on the pretext of paltry disputed tax demand as has been urged by the learned Counsel of the dealer-respondent, it is inferred that it is the State to decide as to whether they abstain from preferring appeal on cases involving small tax amount in dispute or not. The aforesaid decision of the Hon'ble High Court is in the nature of advisory

to the State. This Tribunal is not vested with any authority to disown any appeal so preferred under Section 78 of the OVAT Act.

8. The Id.FAA being an extended forum of assessment has verified the transactions under SEZ sales. Form 1 as furnished has been verified. We are not inclined to interfere in this issue. The argument made by the State in this issue is turned down.

9. The contention of the State with regard to imposition of penalty is looked into. The decision passed in this Tribunal in S.A. No.40(C) of 2015-16 dated 17.01.2023 in an identical case is perused which reads that 'Imposition of penalty for non-submission of 'C' Forms is not appropriate on the ground that without suppression of purchase of sale or both and erroneous claim of exemption of deduction, such levy of penalty is not at all warranted.' This decision of the Tribunal finds support in the judgment of the Hon'ble High Court of Himachal Pradesh in case of Gujurat Ambuja Cement Ltd. and Another Vrs. Assessing Authority cum Assistant Excise and Taxation Commissioner and Others reported in (2000) 118-STC-315. Accordingly, imposition of penalty owing to non submission of declaration form 'F' by the dealer-respondent is not sustainable in the eyes of law. Accordingly, the appeal filed by the State on this aspect is dismissed.

10. 7. As regards, levy of interest u/R. 8(1) of the CST (O) Rules, it is inferred that as the dealer-appellant has not paid the tax due in time and withheld payment of tax; it is liable to pay interest. The ground taken by the State in this regard is acceptable.

11. It is hereby ordered as under:-

The appeal filed by the State is allowed in part. The order of the ld. FAA is set aside with direction to the assessing authority to compute interest on the amount of tax as assessed after affording reasonable opportunity of being heard to the dealer-assessee within a period of three months from the date receipt of this order. Cross objection is disposed of accordingly.

Dictated & corrected by me.

Sd/-
Bibekananda Bhoi
Accounts Member-II

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

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