



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. Shyam Metalics and Energy Ltd., At-Pandli, Rengali, Sambalpur is engaged in manufacturing and sale of sponge iron, TMT rod and Billets etc.. Provisional assessment u/R.12(1)(b) of CST(O) Rules was resorted to by the ld. assessing authority for the tax periods from 01.04.2011 to 31.03.2012 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 ₹74,27,145.00 considering furnishing of certain declaration Forms 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 not furnished Form 'C' for an amount of ₹16,299.00 and Form 'H' for ₹10,59,729.00. The ld. FAA taxed @2% on ₹16,299.00 and @4% on ₹10,59,729.00 calculating to total tax of ₹42,723.00 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 transactions of ₹16,299.00 and ₹10,59,729.00 not supported with Form 'C' and Form 'H' in contravention of the provision of Rule 12(7) of the CST (R & T) Rules.

5. The dealer-respondent represented by Mr. U. Behera, ld. Advocate filed cross objection and written submission arguing 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 declaration 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 section 12(1) of the CST(O) Rules.

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, Form 'F' and Form 'H' excepting for ₹16,299.00 and ₹10,59,729.00 disclosed against interstate sale and export sale. The ld. FAA has rightly taxed the above transaction @2% and @4% resulting in reduction of demand to ₹42,723.00. The ld. FAA has neither imposed penalty nor interest thereon.

7. 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 Gujarat 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.

8. 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.

9. 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)**  
**2<sup>nd</sup> Judicial Member**