

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

**S.A.No.97(C) of 2016-17**

(Arising out of the order of the learned ACST(Appeal), Central Zone, Odisha, Cuttack, in First Appeal Case No.AA/299/JCST/BA-2011-12, disposed of on 30.11.2016)

**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.

**-Versus -**

M/s. B & A Packaging Ltd.,  
Balgopalpur Industrial Area  
Po- Rasulpur, Via-Mitrapur, Balasore.

... Respondent.

For the Appellant:                   :       Mr. M.L. Agarwal, S.C. (CT).  
For the Respondent                   :       Mr. B.K. Senapati, Ld. Advocate

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**Date of Hearing: 09.03.2023       \*\*\*       Date of Order: 14.03.2023**  
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**ORDER**

This appeal is directed against the first appeal order dated 30.11.2016 passed by the Additional Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (hereinafter called as Ld. FAA) in First Appeal Case No. AA/299/JCST/BA-2011-12 for having not levied interest against the tax withheld by the dealer-assessee either by the Joint Commissioner of Sales

Tax, Balasore Range, Balasore (hereinafter called learned assessing authority) at assessment or by the ld. FAA at first appellate stage.

2. The facts in brief are as follows:-

B & A Packaging Ltd., Balgopalpur, Industrial Area Po- Rasulpur, Via-Mitrapur carries on business in manufacturing and sale of paper sacks (bags) of different sizes to outside the state by utilizing raw materials such as craft paper, foil laminated paper, aluminum foils etc. The dealer-assessee was assessed U/r. 12(3) of the CST(O) Rules for the tax period from 01.07.2008 to 31.03.2010 raising a demand of Rs.17,47,350.00 including penalty of Rs.11,64,900.00. In the first appeal as preferred by the dealer-assessee, the demand was reduced to Rs.2,28,643.00 and there was no penalty imposed U/r. 12(3)(g) of the CST(O) Rules.

3. The appellant-State being not satisfied with the order of the ld.FAA preferred this appeal urging that although penalty is not imposable in terms of circular No.43 dated 20.04.2015 issued by the Commissioner of Sales Tax, levy of interest is mandatory as per the verdicts pronounced by the Hon'ble High Court ***in Duro Pipes Pvt Ltd v. State of Odisha, STREV 36 of 2017 order dtd.14.12.2022; P.K. Ores Pvt Ltd., v.***

***Commissioner of Sales Tax, (2023) 108 GSTR 457 (Ori.)***

Accordingly, Mr. M.L. Agarawal, Id. Advocate on behalf of the State pleads for levy of interest U/s.9(2B) of the CST Act.

4. Cross objection has been filed by the dealer-respondent rebutting the contention taken on the grounds of appeal filed by the State. It is submitted by the Id. Advocate on behalf of the dealer that levy of interest can be invoked when there is default in payment of tax. In the present case, the dealer-respondent has not defaulted in payment of tax. It has rather paid tax in advance voluntarily at the time of filing returns and as such, there shall be no interest leviable.

5. Heard the viral submissions. The order of assessment, first appeal order, grounds of appeal, the cross objection of the dealer-assessee and the materials on record are gone through minutely. It is observed that the learned assessing authority while completing assessment u/r 12(3) of the CST (O) Rules has taxed 4% of CST on turnover of sales such as Rs.34,48,871.00, Rs.1,29,38,165.00 and Rs.83,44,485.00 respectively against which no declaration in Form 'C' and 'H' could be furnished by dealer-assessee. Upon computation of tax, the learned assessing authority determined the amount of tax due at Rs.5,82,450.00. Penalty twice the amount of tax due being Rs.11,64,900.00 was

charged which, in total, worked out to Rs.17,47,350.00. On the other hand, in the first appeal as preferred by the dealer-assessee, the Ld.FAA on considering acceptance of 'C' Forms worth Rs.99,00,390.00 and 'H' Forms worth Rs.38,94,983.00 over and above that determined at assessment, the GTO stood determined at Rs.38,65,66,752.18. After effecting allowable deductions and requisite adjustments of tax as detailed in the first appeal order, the balance tax due calculated to Rs.2,28,643.00. There was no penalty imposed pursuant to CCT's Circular No.42 dated 20.04.2015. The State represented by Mr. M.L. Agarawal, learned Counsel accedes to the facts that non furnishing of statutory declarations in Form 'C', 'H' or 'F' shall result in disallowance of claims either concessional rate of tax or exemptions of tax or branch transfer as the case may be, but it cannot be treated as a violation as to attract any penal liability. Therefore, the Ld. FAA is right in the impugned case in not imposing penalty.

As regards levy of interest, as provided under Rule 8 of the CST (O) Rules, if a registered dealer fails, without sufficient cause, to pay the amount of tax due as per the return furnished under Rule 7 or fails to furnish a return under these rules, such dealer shall be liable to pay interest in respect of the tax, which

he fails to pay according to the return or the tax payable for the period for which he failed to furnish return, at the rate of one per centum per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier. In the present case, the tax due disclosed by the dealer-assessee in its return was incorrect in as much as it was not supported by the required statutory declarations. Therefore, what was ultimately assessed becomes the tax due. The dealer-assessee failed to support its claim of concessional tax and the levy of interest is automatic. This view finds support from the decision of the Hon'ble Apex Court in case of **Commissioner of Sales Tax, Delhi, and Others V. Shri Krishna Engg. Co. And Others reported in (2005) 139 STC 457(SC)** wherein the Hon'ble Apex Court have been pleased to observe as follows:

*“Exemption from including in the total turnover of the selling dealer is possible only when the requisite form ST-1 is produced. The embargo on charging tax under the Act is only in those instances where the purchasing dealer contemporaneously offers form ST-1 to the selling dealer. The sales tax department is neither privy to nor concerned with*

*any assurances that might have been exchanged inter se these parties.*

*Even if the purchasing dealer has applied for ST-1 forms but has not received them for any reason, the selling dealer is not automatically exonerated from liability. It is his statutory duty to collect the tax, since the ST-1 form is not forthcoming. Likewise, there is no reason for the State to lose its revenue merely because the purchasing dealer is unable to obtain such forms because of his falling in arrears. It is the dealer, because of his own omission, who has broken the chain whereby it is arranged and devised by the department to be collected at a single point only.”*

6. From the above discussions, we are constraint to opine that the forums below have erred in not levying interest on the tax assessed that arose on failure to submit the statutory declarations. We are not tempted to interfere on the order of the learned first appellate authority except on non-levy of interest therein. The learned assessing authority is therefore required to compute interest ensuring recalculation of tax as per the provision of law enshrined under Rule 8 of the CST O) Rules.

7. In the result, the appeal preferred by the State is allowed in part. The order of the ld. FAA is hereby set aside and

the case is remanded to the learned assessing authority to compute interest on the tax payable causing reassessment of the dealer-assessee in the light of the observations stated supra. The said exercise is to be done within three months of the receipt of this order after giving the dealer-assessee an opportunity of being heard. The cross objections are accordingly disposed.

Dictated and corrected by me.

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

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

**I agree,**

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

**I agree,**

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