

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

S.A. No.118(CST) of 2013-14

(Arising out of the order of the learned JCST, Jajpur
Range, Jajpur Road in First Appeal Case No. AA-63
KJ (C) 12-13, disposed of on 06.08.2013)

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

M/s. BRM Mines & Minerals,
At-Salarapenth, Po-Mahadeijoda,
Dist-Keonjhar, TIN-21071402580. Appellant.

-Versus -

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

For the Appellant : : Mr. R.K. Mishra, Advocate
For the Respondent : : Mr. S.K. Pradhan, Addl.S.C.(C.T.)

Date of Hearing :07.08.2023 *** Date of Order: 5.09.2023

O R D E R

The dealer-assessee is in appeal against the order dated
06.08.2013 of the Joint Commissioner of Sales Tax, Jajpur Range,
Jajpur Road (in short, 'Id. FAA') passed in First Appeal Case No.
AA-63 KJ (C) 12-13 confirming the order of assessment passed
under Rule 12(3) of the Central Sales Tax(Orissa) Rules (in short,

‘CST Rules’) by the Assistant Commissioner of Sales Tax, Keonjhar Circle, Keonjhar (in short, ‘ld. STO’) for the tax period 01.04.2006 to 31.03.2010.

2. The summary of the case is that M/s. BRM Mines and Minerals, a partnership carries on business in crushing of iron lumps procured inside the State of Odisha in size iron ore and iron ore fines and sell thereof inside and outside the State of Odisha besides exporting the same outside the territory of India. Assessment under Rule 12(3) of the CST (O) Rules for the tax period 01.04.2006 to 31.03.2010 was completed based on findings made available in the audit Visit report (AVR). The GTO was returned at ₹1,53,49,718.00 consisting of interstate sale of ₹79,44,041.00, export sale of ₹71,46,282.00 and sales tax collection of ₹2,59,395.00. The dealer assessee could only furnish Form ‘C’ for ₹9,59,744.00 and Form ‘H’ for ₹25,00,506.00. Upon computation of tax, the dealer assessee was held liable to pay tax of ₹10,52,931.00 which includes penalty of ₹7,01,954.00. The ld.FAA confirmed the order of assessment. The dispute of the present appeal is substantially on imposition of penalty made under Rule 12(3) (g) of the CST (O) Rules in the forums below.

3. The contention of the ld. Counsel representing the dealer-assessee with regard to rebuttal of imposition of penalty in the premises of non-filing of statutory declarations is considered in the affirmative. The averments extended by the learned Counsel are heard. 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 or 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 Vs. Assessing Authority cum Assistant Excise and Taxation Commissioner and Others reported in (2000) 118-STC-315. Accordingly, levy of penalty owing to non submission of declaration forms by the dealer-assessee is done away with and thus, is not sustainable in law. Accordingly, penalty of ₹7,01,954.00 is, therefore, deleted.

4. The State has filed cross objection as well as the additional cross objection. Mr. S.K. Pradhan, Id. Addl. SC. (C.T.) besides elaborating provisions of law under CST Act and Rules pleads for levy of interest on delayed payment of admitted tax. It is argued that liability to pay interest is automatic and arises by operation of law from the date on which tax is required to be paid. The decision of the Hon'ble Apex Court in case of **Indodan Industries Ltd. Vs. State of UP** reported in (2010) 27 VST 1 (SC) is relevant and quoted as under:-

“The levy of interest for delayed payment of tax is given the status of ‘tax due’. The 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 under the statute.”

In view of the above settled principle of law, it is averred that the dealer-assessee is sought to be visited with levy of interest on the amount of extra demand emanated from non-submission of declaration. The ld. assessing authority is, therefore, advised to levy interest as observed above.

5. With the above observations, we are inclined to order that the appeal filed by the dealer-assessee is partly allowed. The order of the ld. FAA is set-aside. The impugned case is hereby remitted back to the ld. assessing authority to compute the interest under Rule 8(1) of the CST(O) Rules within a period of three months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated and corrected by me.

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

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

I agree,

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

I agree,

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