

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

**S.A.No.62(C) of 15-16**

(Arising out of the order of the learned JCST, Sundargarh Range,  
Rourkela , in First Appeal Case No.AA 16(RL-II-C) of 2014-15,  
disposed of on 05.08.2015)

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

M/s. SMS Asia Pvt. Ltd.,  
Plot No-W-9, Civil Township,  
Rourkela.

... Appellant.

**-Versus -**

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

... Respondent.

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

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**Date of Hearing : 25.05.2023**      \*\*\* **Date of Order : 12.06.2023**  
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**ORDER**

This appeal is directed against the first appeal order dated 05.08.2015 passed by the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as Ld. FAA) in First Appeal Case No. AA 16(RL-II-C) of 2014-15 confirming the order of assessment passed by the Sales Tax Officer, Rourkela-II Circle, Panposh (hereinafter called the Ld. STO)

under Rule 12(3) of the CST(O) Rules in case of M/s SMS Pvt. Ltd., Plot No-W-9, Civil Township, Rourkela for the tax period 1.4.2008 to 31.3.2011.

2. The facts in brief are as follows:-

The dealer-appellant in the instant case carries on business in trading of Boric acid, TRL Cast, scecalberys calculmbum. It effects sale of the same in course of inter-state trade and commerce under Section 3(a) and 3(b) of the CST Act. The Ld. STO basing upon the Audit Visit Report initiated proceeding u/R. 12(3) of the CST (O) Rules and raised demand of ₹14,58,963.00 which includes penalty of ₹8,73,631.00 and interest of ₹1,48,517.00. In the first appeal, the Ld.FAA confirmed the order of assessment.

3. The dealer-assessee being not satisfied with the order of the ld.FAA preferred this appeal with the grounds of appeal that the first appeal order suffers from defects and thus, cannot be sustainable, as the ld. FAA, in absence of furnishing the balance 'C' declaration certificates and Certificates in Form 'E-I' has uphold penalty u/R.12(3)(g) of the CST (O) Rules amounting to ₹7,01,954.00 as well as charged interest of ₹1,48,517.00 disregarding the Commissioner's Circular No-42/CT/ No-III 38/09 dated 20.04.2015. Commissioner's circular is binding on

the officers of the Commercial Tax Department. It is also contended that the Hon'ble Full Bench of Odisha Sales Tax Tribunal in S.A. No.40(C) of 2015-16 dtd.17.01.2023 mentioned at page no-4 that- 'But 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 or deduction, such levy of penalty is not at all warranted'. The Hon'ble bench while rendering their judgment also referred to the decision of the Hon'ble High Court of Himachal Pradesh in the 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, where the Hon'ble Court held that a dealer is not liable to pay penalty if he fails to furnish the declaration form.

In view of the above judgments, as argued by the ld. Counsel of the dealer-assessee, the ld.FAA is not correct to impose penalty as well as interest for non-submission of declaration forms and certificates, which is not proper and justified.

4. The State has filed cross objection stating that the ld. assessing authority as well as the ld. FAA has rightly completed

assessment/ appeal basing on the statutory provisions under the Act and Rules to the extent the dealer has raised the objection.

5. Heard the rival submissions. Gone through the order of assessment, first appeal order, grounds of appeal and the materials available on record. It is perused from the order of first appeal that the dealer-assessee during the period under appeal had sold goods worth ₹7,61,946.00 to the dealers outside the state of Odisha at the concessional rate of tax on the strength of declaration Form in 'C'. The dealer-assessee could furnish the requisite declaration forms 'C' at assessments which were accepted. The dealer-assessee is found to have disclosed ₹9,95,46,086.00 as exempted sales under section 6(2) of the CST Act against which, 'C' Forms and 'E-II/E-II' certificates could be furnished for an amount of ₹8,86,25,679.00. Thus, an amount of ₹1,09,20,408.00 was rendered not supported with the required declarations. The declaration Forms 'C' and 'E-I/E-II' certificates furnished at the first appellate stage were not accepted due to the same being not related to the impugned transactions. The Ld. FAA confirmed the order of assessment involving demand of ₹14,58,963.00 including penalty of ₹8,73,631.00 and interest of ₹1,48,517.00. The learned Counsel of the dealer-assessee vehemently defends levy of penalty and interest holding that non

filing of Form 'C' or filing defective Form 'C' or Form 'E-I' may only render the assessee liable to pay at the full rate of taxation without the benefit of concessional rate or exemption, and the filing of Form 'C'/'E-I' being optional and mere condition to avail of the concessional rate/exemption contemplated in the statutory provision, initiation penal action is not warranted. 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 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, denial of imposition of penalty owing to non submission of declaration forms by the dealer as pleaded by the learned Counsel of the assessee is acceptable. Imposition of penalty in this case is not sustainable. Imposition of penalty of ₹.8,73,631.00 is therefore deleted.

6. As regards, levy of interest for ₹1,48,517.00 u/R. 8(1) of the CST (O) Rules, as the dealer-appellant has not paid the tax due in time and withheld payment of tax; it is liable to pay interest as observed in the first appeal order.

7. It is hereby ordered as under.

The appeal is allowed in part. The order of the ld. FAA is set aside to the extent of imposition of penalty and with regard to levy of interests the order of the ld.FAA is confirmed. Excess payment made, if any, by the appellant in the present case may be refunded as per the provisions of law. Cross objections are disposed of accordingly.

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)**  
**2nd Judicial Member**