

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A. No. 40(C) of 2018**

(Arising out of the order of the Id. JCST (Appeal), Bhubaneswar Range,  
Bhubaneswar, in First Appeal Case No. AA-107221722000119 (CST),  
disposed of on dtd.28.02.2018)

**P r e s e n t:** **Shri S. Mohanty,**  
**1<sup>st</sup> Judicial Member**

M/s. Diamond Engineering,  
Plot No.142, Cuttack Puri Road,  
Bhubaneswar. ... Appellant

**- V e r s u s -**

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

For the assessment period: 01.04.2013 to 31.03.2015

For the Appellant ... Mr. K.R. Mohapatra, Advocate  
For the Respondent ... Mr. M.L. Agarwal, S.C.

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Date of hearing: 27.08.2019 \*\*\*\*\* Date of order: 27.08.2019  
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**O R D E R**

A confirming order of CST assessment is under challenge  
is assailed by the dealer as appellant in this second appeal.

2. The dealer-appellant is a registered dealer faced  
assessment u/s.12(3) of the Central Sales Tax (Odisha) Rules, 1957  
(hereinafter referred to as, the CST(O) Rules). On the basis of Audit  
Visit Report (in short, the AVR), the claim of inter-State sale on  
concessional rate against declaration form 'C' was denied to the extent  
of Rs.5,34,976.00 for which the dealer could not furnish declaration  
form 'C' and the claim of the sale in transit attracting sec.3(b) of the  
CST Act read with sec.6(2) of the CST Act was denied to the extent of

Rs.1,35,30,551.00 for wanting declaration form 'C'/E-I & E-II. As a result, the appellant-dealer was denied concession/exemption in rate of tax to the extent of inter-State sale and transit sale for which he failed to produce the statutory declaration forms. The tax due was accordingly calculated at Rs.18,76,984.00, penalty u/s.12(3)(g) of the CST(O) Rules was levied at twice of the tax due for Rs.37,53,068.00, totaling the demand at Rs.56,30,952.00.

3. The matter was carried in appeal by the dealer before first appellate authority. Learned Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar as first appellate authority confirmed the order of assessing authority on the ground that, the dealer failed to furnish wanting declaration forms even before him.

When the matter stood thus, the dealer being aggrieved knocked the door of this Tribunal.

4. It is contended that, sufficient opportunity was not extended to the dealer to procure and furnish the declaration forms as against the claim of exemption under CST sale u/s.3(a) of the CST Act and transit sale u/s.3(b) read with sec.6(2) of the CST Act. It is also contended that, imposition of penalty on the tax due for non-furnishing of declaration form is not warranted, hence need to be deleted.

5. The appeal is heard with Cross Objection from the side of the Revenue. In the cross objection the Revenue has supported the findings of the impugned order as just and proper.

6. From the rival contentions, the questions framed for decision are,

- (i) whether the first appellate authority is wrong in confirming the order of assessing authority by denying the concession in rate of tax u/s.3(a) of the CST against interstate sale for non-production of declaration form 'C'?

- (ii) whether the first appellate authority is wrong in confirming the order of the assessing authority by not allowing concession in rate of tax against the claim of sale in transit u/s.3(b) read with sec.6(2) of the CST Act amounting to Rs.1,35,30,551.00?
- (iii) whether the first appellate authority is wrong in confirming the order of assessing authority by imposing penalty in the case in hand?

7. **Findings**

At the outset it is pertinent to mention here that, with the permission of the Bench the dealer furnished declaration forms as against the claim of sale u/s.3(b) read with sec.6(2) of the CST Act amounting to Rs.1,35,50,551.00, the documents are accepted as additional evidence since it is within the competency of the Tribunal as highest fact finding authority. In consideration of the documents/declaration forms filed, it is held that, the matter need to be remitted back to the assessing authority for verification of the genuineness of the declaration forms and contents therein and to re-determined the tax liability, if any of the dealer with regard to the claim of sale in transit as per sec.3(b) read with sec.6(2) of the CST Act to the tune of Rs.1,35,50,551.00.

8. So far as the denial of concession in rate of tax against CST sale covered u/s.3(a) of the CST Act amounting to Rs.5,34,976.00, the dealer has failed to procure and produce the required declaration forms. So, to that effect, the order of the first appellate authority is not interceptable, hence, confirmed.

9. Coming to the question of penalty, the law is no more *res integra* in view of the decision of the Hon'ble Court in **Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP** and the Circular issued by Commissioner of Commercial Tax

vide **“Circular No.42/CT/No.III(I) 38/09 dtd.20.04.2015 of the Commissioner of Commercial Tax, Odisha, Cuttack”**. The principle is well settled that, in the event of failure to procure and furnish the declaration form ‘C’ for no fault of the selling dealer, the selling dealer is liable to pay tax without concession in rate of tax, but no penalty can be imposed. For the reasons hereinabove, in the case in hand, when it is found that, the dealer could not furnish the declaration form even at the stage of the present second appeal the dealer is not entitled to get concession or exemption from paying tax at appropriate rate. But, however, the dealer being not at fault for non-furnishing declaration form, he is not liable for penalty. The impugned order and demand of tax need to be intercepted to the extent by deleting the penalty only.

Accordingly, it is ordered.

The appeal by the dealer is allowed in part. The dealer is not liable to pay penalty u/r.12(3)(g) of the CST(O) Rules as imposed. The matter is remitted back to the assessing authority for acceptance of declaration form furnished by the dealer and then calculation of tax liability and interest if any be made afresh and demand be raised accordingly.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member