

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

(Arising out of the order of the learned Addl.CST,
(Appeal), South Zone, Berhampur in Appeal Case No.
AA(CST)26/2012-13 disposed of on 30.05.2014)

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

S.A. No. 46(C) of 14-15

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

-Vrs. -

M/s. Kalinga Commercial Corporation Ltd.,
C/112, Baramunda H.B. Colony,
Bhubaneswar. Dealer.

S.A. No. 50(C) of 14-15

M/s. Kalinga Commercial Corporation Ltd.,
C/112, Baramunda H.B. Colony,
Bhubaneswar. Dealer.

-Vrs. -

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

For the State : : Mr. N.K. Rout, Addl. S.C.(C.T.)
For the Dealer : : Mr. A.K. Mahapatra, Advocate

Date of Hearing : 31.08.2023 * Date of Order : 30.09.2023**

O R D E R

Both the State and the dealer-assessee are in appeals
challenging the order dated 30.05.2014 of the Additional
Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in

short, 'ld. FAA') passed in Appeal Case No. AA(CST)26/2012-13. The State while in its second appeal objects deletion of penalty, the dealer-assessee assails levy of interest by the ld.FAA. Since both the appeals arose out of the same first appeal order involving common question of facts and law, they are clubbed together for disposal in a composite order.

2. The facts in nutshell are that M/s. Kalinga Commercial Corporation Ltd., C/112, Baramunda H.B. Colony, Bhubaneswar is a Private Limited Company engaged in mining and trading of iron ores along with execution of works contract. It also exports iron ore outside the territory of India. The dealer-assessee was assessed under Rule 12(3) of the CST (O) Rules for the tax period 01.07.2006 to 31.12.2011 basing on the Audit Visit Report (AVR) raising demand of ₹48,00,000.00 which includes penalty of ₹32,00,000.00. The demand so raised was due to non-submission of Form 'H' against ₹4,00,00,000.00 claiming exemption of tax on export sale under Section 5(3) of the CST Act. The dealer-assessee could not even furnish the wanting 'H' Form at the first appellate stage. The ld. FAA while deleting penalty of ₹32,00,000.00 at first appeal levied interest of ₹7,84,000.00 culminating to tax and interest of ₹23,84,000.00.

3. The State being not satisfied with the order of the ld. FAA preferred second appeal before this forum holding that deletion of penalty by the ld.FAA is not as per provisions of 12(3)(g) of the CST(O) Rules. The dealer-assessee, on the other hand, has assailed levy of interest as not justified.

4. Heard both the rival contentions and the orders of the forums below. The argument advanced by the State in 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 relied on 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 **Gujurat Ambuja Cement Ltd. and Another Vrs. Assessing Authority cum Assistant Excise and Taxation Commissioner and Others reported in (2000) 118-STC-315.** Further, the decision dated 08.12.2022 of the Hon'ble High Court of Orissa passed in STREV No.64 of 2016 in case of **M/s General Traders, Berhampur Vs. State of Odisha** is note worthy. It speaks of the Circular No.42/CT dated 20.04.2015 of the Commissioner of Commercial Taxes, Odisha, Cuttack on "non levy of mandatory penalty on audit assessment under Central Sales Tax Act" as follows:-

"In view of the aforesaid Circular issued by the Commissioner of Commercial Taxes, instructing not to enforce penalty under Rule 12(3)(g) in the circumstances where there was non-filing of declaration forms in respect of *bona fide* transactions, particularly in absence of substantive provision for such imposition under Section 9(2) of the CST Act, this Court is of the considered opinion that the First Appellate Authority was justified in deleting penalty as imposed by the Assessing Authority while finalizing Audit Assessment"

In view of the aforesaid principle settled in regard to deletion of penalty, the order of the Id.FAA in deletion of penalty of ₹32,00,000.00 is affirmed. Accordingly, the contention of the State in this regard utterly fails.

5. The dealer-assessee rebuts levy of interest. In this context, it is opined that liability to pay interest is automatic and it 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 in this case and thus, is 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.”

The Id.FAA is justified in levy of interest on amount of extra tax emanated in consequence of non-submission of declaration Forms in ‘H’. The decision of the Hon'ble High Court of Kerala reported in (2008) 16 VST 294 in case of **Chandramani Traders Vs. State of Kerala** is sought to rely on wherein, it is observed that if the assessee fails to produce the declaration Forms for part of the turnover declared in the returns filed, the assessing authority while quantifying the tax liability is required to levy higher rate of tax as provided in the schedule besides levying interest on the ground that the assessee has failed to remit tax due under the Act in the manner prescribed under the Act. In the present case, the dealer-Company was demanded extra tax demand of ₹16,00,000.00 on account of non submission of declaration Form ‘H’. As per the aforesaid settled principle of law, levy of interest on the extra demand is warranted. Thus, levy of interest of ₹7,84,000.00 by the Id.FAA in this case is justified.

6. Hence, it is ordered.

The appeals filed by the State and the dealer-assessee are dismissed being devoid of merits. The order of the Id. FAA is confirmed. Cross objections are disposed of accordingly.

Dictated and corrected by me.

Sd/-
(Bibekananada Bhoi)
Accounts Member-I

I agree,

Sd/-
(Bibekanananda Bhoi)
Accounts Member-I

Sd/-
(G.C. Behera)
Chairman

I agree,

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