

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

S.A.No.29(C) of 2017-18

(Arising out of the order of the learned JCST, Sambalpur Range, Sambalpur, in First Appeal Case No.AA-280/JSG/CST/2014-15, disposed of on 27.03.2017)

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

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

-Versus -

M/s. Seven Stars Steels Ltd.,
Kelendamal, Gudigaon, Jharsuguda. ... Respondent.

For the Appellant : Mr. N.K. Rout, Addl.SC(C.T.)
For the Respondent : Mr. U. Behera, Advocate.

Date of Hearing : 05.01.2024 * Date of Order : 03.02.2024**

ORDER

The State is in appeal against the order dated 27.03.2017 of the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as 'Ld. FAA') in First Appeal Case No. AA-280/JSG/CST/2014-15 reducing the demand to ₹4,49,999.00 as against the demand raised by the Deputy Commissioner Sales Tax, Jharsuguda Circle, Jharsuguda (hereinafter called the 'Ld. Assessing Authority') under Rule 12(3) of the CST(O) Rules.

2. The facts in brief are as follows:-

The dealer-company under the name and style of M/s Seven Stars Steels Ltd., Kelendamal, Gudigaon, Jharsuguda is engaged in manufacture and sale of Sponge Iron utilizing raw materials like iron ore, iron ore fines, coal and dolomites purchasing both from inside and outside the state of Odisha. The finished products i.e. Sponge Iron are sold within the state of Odisha and under interstate sale and commerce. The dealer-assessee was assessed under Rule 12(3) of the CST(O) Rules for the tax period 01.04.2008 to 31.03.2012 basing on the findings contained in the Audit Visit Report. The dealer-assessee could furnish Declaration in Form 'C' for an amount of ₹224,21,77,889.43 as against the interstate sale of ₹227,20,28,478.28 rendering thereby non-submission of Declaration in Form 'C' for an amount of ₹2,98,50,558.00. The ld. Assessing Authority has taxed the same @4% culminating to tax of ₹11,94,023.55. In respect of interstate sale of ₹224,21,77,889.43 claiming concessional rate for which form 'C' were submitted, the ld. Assessing Authority levied CST @2% on ₹223,19,06,415.43 and @3% on ₹1,02,71,474.00 calculating to tax liability at ₹4,61,40,296.00 in total. The dealer-assessee having paid ₹2,156,92,367.00 at the time of filing of returns and adjustment of ITC of ₹2,39,51,802.00 under Rule 7(3)(C) of the CST (O) Rules, the

balance amount of tax of ₹5,96,127.00 along with penalty of ₹11,92,254.00 totaling to ₹17,88,381.00 has been assessed by the Id. Assessing Authority. The dealer-assessee preferred first appeal against the order of assessment. In first appeal, the dealer could furnish Form 'C' for an amount of ₹73,03,419.24 leaving thereby ₹2,25,44,169.61 not supported with Form 'C'. The Id.FAA levied tax @2% on ₹223,92,12,834.67, @3% on ₹1,02,71,474.00 and @4% on ₹25,44,169.61 calculating to a total tax of ₹4,59,94,167.70, against which, the dealer-assessee having paid ₹2,15,92,367.00 at the time of filing of returns and ITC adjusted for an amount of ₹2,39,51,802.00 under Rule 7(3)(C) of the CST (O) Rules, the dealer-assessee was held liable to pay the balance amount of ₹4,49,999.00. The Id.FAA did not consider imposition of penalty in terms of the Circular No.42/CT dated 20.04.2015 issued by the CCT (O), Cuttack.

3. The State assails the order of the Id.FAA as unjust and improper contending that imposition of penalty under Rule 12(3) (g) in respect of audit assessment framed under Rule 12(3) of the CST(O) Rules is mandatory. Furthermore, the Id.FAA has erred in not levying interest as per Rule 8(1) of the CST(O) Rules.

The dealer-assessee has filed cross objection arguing that the Id.FAA is justified in not either imposing penalty or interest under the present fact and circumstances of the case.

4. Heard the rival submissions. Gone through the order of assessment, first appeal order, grounds of appeal and the materials available on record. The dispute hinges on non-imposition of penalty by the Id.FAA and non-levy of interest. As to non imposition of penalty in consequence of non-furnishing of declaration in Form 'C', the decision of this Tribunal passed on dated 17.01.2023 is in **S.A. No.40 (C) of 2015-16** is relevant. It is observed therein 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 this 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**. In view of this settled principle of law, the contention of the State pleading for imposition of penalty in the instant case due to non submission of declaration in Form 'C' by the dealer-assessee is not sustainable in the eyes of law. Accordingly, the order of the Id.FAA

for having not imposed penalty is justified. Thus, the argument made by the Revenue on this score deserves no interference.

5. As regards levy of interest under Rule 8(1) of the CST(O) Rules, the decision of the Hon'ble Apex Court passed in case of ***Indodan Industries Ltd. Vs. State of UP*** reported in (2010) 27 VST 1 (SC) is relevant and 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.”

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. Accordingly, the contention taken by the State in this regard befits interference.

6. With the above observations, we are inclined to order that the appeal filed by the Revenue is partly allowed. The order of the ld. FAA is set-aside to the extent of non-levy of interest as per Rule 8(1) of the CST(O) Rules. The impugned case is hereby remitted back to

the ld. Assessing Authority to compute interest under Rule 8(1) of the CST(O) Rules in the light of the above observation 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