

Rourkela-II Circle, Panposh (in short, 'Id. Assessing Authority') under Rule 12(3) of the Central Sales Tax (Orissa) Rules (in short, CST(O) Rules) for the tax period 01.04.2007 to 31.03.2010.

2. The facts in nutshell are that M/s. Khedaria Ispat Limited, Naikenbahal, Kuarmunda, Dist-Sundargarh is a limited company engaged in manufacturing of Sponge Iron utilizing Iron Ore, Coal and Dolomite as major raw materials. It effects sale of the same in course of intra-state, inter-state trade or commerce as well as in course of export. The Id. Assessing Authority assessed the dealer-Company under Rule 12(3) of the CST (O) Rules basing on the Audit Visit Report (AVR) submitted by the Sales Tax Officer (Audit). The Id. Assessing Authority determined the GTO at ₹12,31,56,887.00. The GTO as determined consists of ₹10,57,62,712.00 as inter-state trade under Section 3(a) of the CST Act, ₹1,12,26,260.00 as branch transfer under Section 3(b) of the CST Act and ₹31,01,275.00 as export sale under Section 5(3) of the CST Act. Against the interstate sale of ₹10,57,62,712.00, the dealer-Company could furnish 'C' Forms for an amount of ₹9,72,80,221.00 availing concessional rate of tax. In result, an amount of ₹84,82,491.00 was found not supported with Form 'C'. The learned assessing authority disallowed concessional rate and taxed it at appropriate rate of tax. The learned assessing authority could find that out of ₹9,72,80,221.00 for which 'C' Forms were furnished, a single 'C' Form worth ₹50,33,408.00 has been

furnished covering two consecutive quarters. This was disallowed at assessment and levied appropriate rate of tax. Further, an amount of ₹13,06,125.00 out of ₹37,01,275.00 claimed as exempted sale/export sales under Section 5(3) of the CST Act having not being supported with Form 'H' was taxed at appropriate rate of tax. The Id. Assessing Authority has thus computed tax to ₹29,01,267.00. After allowing adjustment of ITC for ₹10,99.00 and ₹24,66,640.00 towards sales tax collection, the amount of tax due arrived at ₹4,23,367.00. Penalty of ₹8,47,274.00 under Rule 12(3)(g) of CST (O) Rules and interest of ₹1,52,509.00 under Rule 8(1) of the CST (O) Rules has been levied which in total including tax calculated to ₹14,23,420.00 for payment by the dealer-Company. The Id. FAA confirmed the order of assessment of the Id. Assessing Authority in the first appeal as preferred by the dealer-Company.

3. Further being aggrieved against the first appeal order, the dealer-assessee preferred this second appeal before this Forum. Mr. S.C. Agarwal, Id. Advocate representing the dealer-Company contends that the Id. Assessing Authority has whimsically disallowed transactions under 'C' Form for an amount of ₹50,33,408.00 which was covered by a single 'C' Form without considering the factual position. It is submitted that the 2nd transaction was effected in the fag of the quarter which was received in the subsequent quarter. Accordingly, a single 'C' Form

for both the quarters was issued. The ld. Counsel of the dealer has placed the clarification on acceptance of 'C' and 'F' Forms covering more than one quarter or more than one month issued by the Commissioner of Commercial Taxes, Odisha in letter No.8445/CT dated 24.05.2014 wherein it is clarified that "once assessing authority is satisfied that the primary objective of 'C' Form i.e. "goods are dispatched to other States and the same are accounted for by the dealer of other States" is met, he may accept 'C' form as valid. Accordingly, it is also clarified that Form-C can be accepted as valid relating to goods delivered in quarter, based on the date of dispatch or date of receipt of goods in other State or date of invoice or combination of all the three. Similarly in case of F form, all goods calendar month either based on dispatch dates of goods or based on receipt date of goods in other State or combination of both". This apart, the learned Counsel has submitted one declaration in Form 'C' bearing No.0536248 issued by M/s Millennium Ingot & Steel Co. Pvt. Ltd., Dhamnatand, Hematpur, Gola, Dist-Ramgarh (Jharkhand) TIN-20791905187 for a transaction of ₹2,10,071.00 for the impugned tax period at this forum for consideration. Imposition of penalty for non-submission of declaration forms has protested by the ld. Counsel of the dealer-Company.

4. The State has filed cross objection supporting the orders of the forums below.

5. Gone through the rival submissions. The orders of the forums below coupled with the materials available on records are gone through. The substantial dispute in the instant case is with regard to disallowance of a Form 'C' worth ₹50,33,408.00 merely covering the Form 'C' for the transactions effected in two successive quarters. Secondly, imposition of penalty and interest due to non submission of statutory declaration in Form 'C' and 'H' is disputed. In this context, it is not out of place to state that the learned assessing authority is learnt to have verified all the 'C' Forms furnished by the dealer-company. But a 'C' Form which covers transactions of two quarters was not allowed despite the fact that the goods in dispute have been dispatched to the other state and the same have been accounted for by the dealer of the other state. The objective of issuance of 'C' form is thereby complied with. There is no disagreement on it by the learned assessing authority. The clarification issued by the Commissioner of Commercial taxes (supra) in this connection is self contained. In view of this, the learned assessing authority has erred in disallowance of concessional rate of tax on ₹50,33,408.00 which was covered by a single 'C' Form. The dealer-company is, therefore, entitled to avail concessional rate of tax on this score. Furthermore, a declaration in Form 'C' as discussed above involving ₹2,10,071.00 has been submitted at this forum claiming concessional rate of tax against ₹84,82,491.00 for which no

supportive 'C' Form could be furnished at the time of assessment. The learned assessing authority is advised to allow the 'C' form in question on examination of the original 'C' Form and the relevant books of accounts as may be produced by the dealer company.

6. Another dispute is on levy of penalty and interest in consequence of non submission of statutory declaration. In this context, it is felt pertinent to pursue the decision of this **Tribunal passed in S.A. No.40(C) of 2015-16 dated 17.01.2023** wherein it is held 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**. In view of the settled principles of law, imposition of penalty in the instant case due to non submission of declaration form 'C' and 'H' by the dealer-company is not sustainable in the eyes of law. Accordingly, the appeal filed by the dealer company on this score succeeds.

7. As regards levy of interest under Rule 8(1) of the CST (O) Rules, the decision of the Hon'ble Apex Court rendered in case of **Indodan Industries Limited Vs. State of U.P. reported in**

(2010) 27 VST 1(SC) is relied upon wherein the Hon'ble Court observes 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.”

8. A 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.’ Under this principle of law, the dealer company is liable to pay interest on the extra demand emanated on account of non submission of declaration

Forms. In view of this, the contention taken by the dealer company in this score fails.

9. It is hereby ordered as under:-

The appeal filed by the dealer company is allowed in part. The order of the ld. FAA is set aside with direction to the assessing authority to re-compute the tax liability of the dealer company in the light of the observations stated supra after affording reasonable opportunity of being heard to the dealer-assessee within a period of three months from the date receipt of this order. Cross objection is disposed of accordingly.

Dictated & corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

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