

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

S.A.No.56(C) of 2017-18

(Arising out of the order of the learned JCST, Sambalpur Range, Sambalpur, in First Appeal Case No.AA-160(C)/DCST(Asst)/JSG/2014-15, disposed of on 29.05.2017)

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. Ultratech Cement Ltd.,
At: Dhutra, Po-Arda, Jharsuguda .

... Respondent.

For the Appellant : Mr. S.K. Pradhan, 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 29.05.2017 of the learned Joint Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as 'Ld. FAA') in First Appeal Case No. AA-160(C)/DCST(Asst)/JSG/2014-15 reducing the demand to ₹2,41,680.00 as against the demand raised by the Sales Tax Officer, 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 Ultratech cement Ltd., Jharsuguda is engaged in manufacture and sale of cement using raw materials like clinker, fly ash and gypsum. The purchases of raw materials and sale of finished products i.e. cement are virtually undertaken both in inside and outside the state of Odisha and export sale is also effected. The dealer-assessee was assessed under Rule 12(3) of the CST(O) Rules for the tax period 01.04.2011 to 31.03.2013 basing on the findings contained in the Audit Visit Report. The dealer-assessee having been failed to furnish required declaration in Form 'C' for ₹41,17,672.94 and declaration in Form 'F' for ₹15,65,81,424.00 in audit assessment, the ld. Assessing Authority levying CST as applicable on NTO, held the dealer-assessee liable to pay CST for ₹2,16,12,025.00 after allowing deduction of CST already paid earlier. The ld. STO imposed penalty of ₹4,32,24,050.00 under Rule 12(3)(g) of the CST(O) Rules. The amount of tax payable with tax and penalty put together stood at ₹6,48,36,075.00. The dealer-assessee preferred first appeal against the order of the assessment. In first appeal, the dealer could furnish Form 'C' and Form 'F' to the tune of ₹35,08,294.00 and ₹15,49,01,937.00 respectively. In result, there were still wanting declarations of ₹6,09,379.00 in respect of interstate sale against

Form 'C' and ₹16,79,487.00 in respect of branch transfer against Form 'F'. Out of the wanting declaration in Form 'C' worth ₹6,09,379.00, an amount of ₹5,80,320.00 having been related to sale of scraps, the same @ 4% of tax calculated to ₹23,212.80. The balance amount of ₹29,059.00 for which no 'C' Form could be furnished, the ld.FAA taxed @13.5% thereon which arrived at ₹3,922.97. The ld.FAA levied tax @13.5% on ₹16,79,487.00 for want of declaration in Form 'F', the CST of which, arrived at ₹2,26,730.75. The ld.FAA accepted the levy of 4% on 8,715.00 and 2% on 21,61,12,008.00 determined in assessment by the ld. Assessing Authority. In total, the amount of tax due arrived at ₹45,77,326.67 in first appeal, against which, the dealer-assessee having paid ₹43,35,647.00 at the time of filing of returns, the dealer-assessee was held liable to pay the balance amount of ₹2,41,680.00. The ld.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 Revenue assails the order of the ld.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 ld.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 no furnishing of declaration in Form 'C' and Form 'F', 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' and 'F' 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 Id. 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 Id. FAA is set-aside to the extent of imposing 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