

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

S.A. No.74(C)/16-17

(Arising out of the order of the learned Addl.CST (Appeal), N.Z. Odisha,
Sambalpur in Revision Case No.AA67/13-14 dtd.27.08.2016)

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

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

..... Appellant.

-Vrs. -

M/s. Feegrade & Co.(P) Limited
At: Main Road, Barbil, P.O.-Barbil
Dist-Keonjhar.

..... Respondent.

For the Appellant : : Mr. D. Behura, S.C.(C.T.)
For the Respondent : : Mr. P.K. Behera, A.R.

Date of Hearing : 02.01.2023 * Date of Order : 10.01.2023**

O R D E R

This present appeal has been filed by the State against the order passed by the learned Additional Commissioner of Sales Tax (Appeal), N.Z. Odisha, Sambalpur (in short, 'FAA') in 1st appeal case No.AA67/13-14 dated 27.8.2016 allowing the appeal in full thereby reducing the demand of Rs.22,54,753.00 raised in assessment order passed by the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, LAO) under rule 12(3) of the Central Sales Tax (Orissa) Rules (in short, CST(O) Rules) relating to the tax periods from

1.4.2011 to 31.3.2013 in case of M/s Feegrade & Co.(P) Limited At: Main Road, Barbil, P.O.-Barbil, Dist-Keonjhar to returned figure.

2. The brief fact in the instant case is that the dealer-responder trades in mining/extraction of iron ore/iron ore fines etc. from the mines at Nadidihi, Koira obtained on lease basis and sales iron ore and iron ore fines in course of interstate trade, intra state trade & also effects export sales of iron ore fines u/s 5(1) and 5(3) of the CST Act. It was assessed u/r 12(3) of the CST (O) Rules by the LAO for the tax period from 1.4.2011 to 31.3.2013 on the basis of the audit report and a demand of Rs.22,54,753.00 including penalty & interest was raised against the dealer-responder on its failure to furnish declaration in Form-H against its export sale of Rs.1,42,94,917.00.00 made u/s 5(3) of the CST Act. The dealer-responder on being aggrieved against the demand raised by the LAO u/r 12(3) of the CST (O) Rules preferred appeal before the Ld. FAA. The Ld.FAA accepted the wanting H forms as adduced by the dealer-company on verification of the relevant documents and thus allowed the export sale of Rs.1,42,94,917.00 as genuine. Imposition of penalty was deleted by the forum below on the pretext that there was no evidence of either suppression or evasion of tax detected during the course of tax audit. Accordingly, the Ld.FAA allowed the appeal in full and assessment reduced to returned figure.

3. On being aggrieved against the aforesaid order of the Ld.FAA, the state preferred second appeal before this forum assailing the order of the Ld. FAA as unjust & improper on the grounds that

although penalty is not leviable as per the circular of the CCT(O) after the firm having furnished the required declaration forms, imposition of interest being mandatory in nature as per Rule 8(a)(2) of the CST(O) Rules has been overlooked by the Id. FAA while deleting the penalty without citing any reason thereof. Accordingly, the state has appealed for modification of the order of the Id. FAA.

4. The dealer company filed cross objection citing the grounds of appeal filed by the state as vague and unspecific. It is submitted that in the event of acceptance of the H forms against the export sales in question in the first appeal and there being Nil tax assessed, occasion of levy of penalty or interest does not arise.

5. Heard the averments put-forth by both the parties.

Gone through the contention made by the state in regard to modification of the 1st appeal order by imposing interest vis-a-vis the submission made by the dealer-company holding levy of interest as vague with the tax due being turned out to be Nil in the first appeal. Sub-Rule-1 of Rule 8 of the CST(O) Rules provides that if a registered dealer fails to pay, without sufficient cause, to pay the amount of tax due as per the return furnished under Rule 7 or fails to furnish a return under these rules, such dealer shall be liable to pay interest in respect of the tax, which he fails to pay according to the return or the tax payable for the period for which he failed to furnish the return, at the rate of one per centum per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier. In the instant case, the

dealer-respondent was unable to produce declaration in form-H at the time of assessment for reasons beyond its control and adduced the wanting statutory H form at the forum below which was accepted and the export sale of Rs.1,42,94,917.00 was allowed in the first appeal. The dealer-respondent had no deliberate intention or had withheld admitted tax at the time of filing return. Therefore, levy of interest with the tax due being assessed to Nil is not justified as provision of rule 8(1) of the CST (O) Rules as stated supra.

6. In the result, the appeal filed by the state resulted in no cost and the order of the 1st appellate authority rendering the assessment passed u/r 12(3) of the CST (O) Rules to returned figure is confirmed. Excess tax paid, if any, shall be refunded to the dealer respondent as per the provision of law. Cross objection filed by the dealer is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(G.C. Behera)
Chairman

I agree,

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