

2. **S.A.No.49(C) of 2014-15**

In S.A. 49(C) of 2014-15 the dealer appellant has challenged the impugned order passed by the Learned Additional Commissioner of Sales Tax, (North Zone), (hereinafter referred to as Ld. First Appellate Authority/Ld. FAA) as arbitrary, unjust and violative of principle of natural justice.

3. **S.A.No.18(C) of 2015-16**

The State has preferred the appeal vide S.A.No.18(C) of 2015-16 challenging the order passed by the Ld. FAA in deleting the penalty imposed U/s.12(3)(g) of the CST(O) Rules, on the ground that the same being mandatory in nature cannot be deleted.

4. The brief fact of the case is that the dealer assessee which carries on business in manufacturing and sale of "Refractory Bricks" was subjected to Audit Assessment U/r.12(3) of the C.S.T.(O) Rules, for the period from 1.7.2006 to 31.12.2006 by the Learned Assessing Authority resulting in extra demand of Rs.11,84,22,678.00 which includes levy of interest and penalty of Rs.3,94,74,225.95 and Rs.7,89,48,451.00 respectively.

5. On being aggrieved, the dealer has preferred first appeal before the Ld. FAA, who vide his order passed on dated 26.7.2014 has reduced the impugned demand to Rs.84,10,385.00 which includes levy of interest of Rs.16,43,904.00. The Ld. FAA has deleted the penalty imposed U/r.12(3)(g) of the CST(O) Rules, by the Learned Assessing Authority on the ground that the same is improper as the demanded tax was purely on account of non-submission of declaration forms/certificates.

6. The dealer on being further aggrieved has preferred the present appeal on the ground that the order passed by the Learned First Appellate Authority is violative of the principle of natural justice as the dealer was not allowed further opportunity to submit certain declaration forms and not allowed to rectify the defective forms produced by him before the Ld. FAA. He has also taken the ground

that levy of interest for non-submission of declaration forms is unjust and improper.

7. While Cross-objection was filed by the State Respondent against Appeal No.49(C) of 2014-15, no cross objection was filed by the dealer against Appeal preferred by the State vide No.18(C) of 2015-16.

8. Heard the case from both the rival parties.

9. The Learned Counsel of the dealer has contended that the Ld. FAA should have allowed more time to the dealer appellant to collect and furnish all the declaration forms in support of his claim of concession/exemption. He has also averred that since the dealer has got a voluminous and wide range transaction throughout the country, it is in fact difficult to collect all the forms against the claim for which necessary correspondences were made with the respective parties. He has also filed an application before this forum as additional evidence urging acceptance of declaration forms in "C" worth Rs.5,54,46,513.00 purportedly collected after passing of the first appeal order.

10. In this context, he has argued that since sufficient cause was there with regard to non-submission of balance declaration form, the Ld. FAA should have allowed further time to furnish the same. In this context, he has also referred to Rule 12(7) of the CST (R & T) Rules 1957 which reads as follows:

The declaration in Form "C" or Form 'F' or the certificate in Form E-1 or Form E-II shall be furnished to the prescribed authority within three months after the end of the periods to which the declaration or the certificate relates.

Provided that *if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the*

aforsaid time, the authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

11. In this context, reliance is also placed on the decision of the Hon'ble High Court of Orissa in case of **Tata Refractories Ltd, Vrs. Commissioner of Sales Tax, Orissa and others (1994) 95 STC P-343** wherein it was hold that:-

“ It is trite law that when the assessee shows sufficient cause for non production of declaration forms at the stage of assessment, they can be accepted at the first appellate stage, and in a given case they may also be accepted as additional evidence by the Tribunal, The assessee does not gain by withholding the declaration forms in support of its claim of deduction. A liberal attitude should be taken because law permits in certain cases exemption/deduction/concession subject to filing of declaration forms. If declaration forms are produced it would be equitable and proper to accept the forms and grant concession/deduction/exemption.”

12. In view of the aforesaid decision of the Hon'ble High Court of Orissa, it is thus found that the Ld. FAA has committed an error in not allowing further time to the dealer to furnish wanting declaration forms, even though he was of the opinion that sufficient cause was there preventing the dealer to collect and to furnish the same.

13. Further it is found that the Ld. First Appellate Authority has unilaterally rejected one declaration form in “C” bearing No.95C845948 for Rs.7,90,436.27 as the same was found to be incomplete and not filled up properly. If it was so, the Ld. FAA should have extended opportunity to the dealer to rectify the same. As the dealer is found to have not been given such an opportunity, we found it to be contrary to the principle of natural justice.

14. With regard to the levy of interest the learned counsel of the dealer has contested that since the dealer has not defaulted in payment of admitted tax disclosed in the returns, the levy of interest is not warranted.

15. On the contrary the learned counsel of the State has referred to different citations claiming levy of interest is compensatory in nature against any delayed tax payment.

16. In case of **Indodane Industries Ltd, Vrs. State of U.P. (2010) 27 VST 1 (SC)**, the Hon'ble Supreme Court of India have been pleased to observe as follows:-

“One more aspect needs to be highlighted. In the present case, we are concerned with the levy of interest for delayed payment. Under sub-section (2B) to section 9, such interest for delayed payment is given the status of “tax due”. The said 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 by section 120 of the Finance Act 2000, retrospectively.”

17. In view of the above decision of the Hon'ble Supreme Court of India, we found that the dealer is liable to pay interest on such delayed payment on account of non-submission of declaration forms/certificates.

18. In so far as the appeal preferred by the State Vide No.18(C) of 2015-16, it has been urged that the deletion of penalty by the Ld. FAA is contrary to the mandatory provision U/r.12(3)(g) of the CST(O) Rules. But in the case in hand we found that the demand of tax has been raised purely on account of non-submission of declaration forms/certificates.

19.. In this context, reliance is placed on the judgement dated 8.12.2022 passed by the **Hon'ble High Court of Orissa, in STREV No.64 of 2017 in case of M/s. General Traders, Berhampur, Vrs. State of Orissa**, in which the Hon'ble High Court was pleased to delete the penalty for non-submission of statutory forms against bonafide transactions.

20. In view of the discussion made above, the appeal preferred by the dealer is allowed in part and that of the State is dismissed. The impugned order of the Ld. FAA stands set-aside with direction to the

Ld. AA for consideration of the declaration forms in "C" for Rs.5,54,46,513.00 to be furnished in original before him as per the provisions of law and to allow the dealer an opportunity to rectify the defects noticed in the Declaration Form in "C" bearing No.95C845948. The tax liability shall be computed afresh within 03 (three) months from the date of receipt of this order. Cross-Objection filed by the State is disposed of accordingly.

Dictated and corrected by me

Sd/-
(S.R.Mishra)
Accounts Member-II.

I agree,

Sd/-
(S.R.Mishra)
Accounts Member-II.

I agree

Sd/-
(G.C.Behera)
Chairman

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