

dealer failed to furnish declaration form and against the transaction for which the dealer submitted defective declaration form as mentioned above. The tax due and penalty against the dealer was assessed at Rs.1,11,29,417.00 by the assessing authority, whereas the first appellate authority after acceptance of some forms produced before him re-determined the tax and penalty liability calculated to Rs.92,45,217.00.

3. The present appeal is at the instance of the dealer with the contentions like, sufficient opportunity was not provided to procure and furnish the declaration form and one declaration form was illegally rejected as defective.

4. The appeal is heard with Cross Objection. Revenue in its fair and lengthy cross objection has supported the findings of the first appellate authority and submitted for imposition of penalty and interest as well.

5. It is pertinent to mention here that, in the hearing the dealer has furnished a statement of purchase details which is a part of the declaration form issued by M/s. Gangotri Electrocasting Ltd., Patna to remove the defect which was pointed out by the first appellate authority in the impugned order. The document is accepted. As it prima facie indicates, the declaration form which was rejected by the first appellate authority, became complete on furnish of the aforesaid statement. However, the genuineness of the documents needs further scrutiny by the taxing authority. Law is no more res integra in view of the ratio laid down by the Apex Court in **Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP** and in view of the Circular issued by Commissioner of Commercial Tax vide **“Circular No.42/CT/No.III(I) 38/09 dtd.20.04.2015 of the Commissioner of Commercial Tax, Odisha, Cuttack.”** that, in the event of failure to procure and furnish the declaration Form ‘C’ for no fault of the selling dealer, the selling dealer is liable to pay tax without concession in rate of tax, but no penalty can be imposed. The circular or the order of the Hon’ble Apex Court is silent on the question of imposition of interest. The dealer cannot be held liable to

pay penalty for non-furnishing of declaration form, where the dealer is found to be bonafide and he is unable to furnish declaration form for non-cooperation by the interstate purchasing dealer.

6. Thus, here in this case on application of the principle above, it is held that, the dealer is not liable to pay penalty for non-furnishing of declaration form 'C', whereas the dealer is liable to pay tax without concession in rate of tax as rightly held by both the fora below to the extent of sale for which no declaration form is furnished. The matter need to be remitted back to the assessing authority for acceptance of the verification of the genuineness of the particular declaration form No.GOB/C-373472 dtd.12.09.2008 issued by M/s. Gangotri Electrocasting Ltd., Patna with a further direction to re-calculate the tax liability payable by the dealer. The dealer is directed to appear and produce the document before the assessing authority within a period of one month without waiting for any notice from the assessing authority. In that event the learned Assessing Authority will do well to dispose of the remand assessment within a period of three months thereafter.

Accordingly, it is ordered.

The appeal is allowed accordingly on contest. The impugned order is set aside.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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