

BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 37 (C) of 2010-11

(Arising out of order of the learned JCST, Koraput Range,
Jeypore, in First Appeal Case No. AAC(KOR)21/09-10
disposed of on dated 15.04.2010)

Present: Shri R.K. Pattanaik, Chairman,
Shri A. K. Dalbehera, 1st Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

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

... Appellant

-Versus-

M/s.Lingaraj Cashew Industries,
Majurmjunda, PO:Ambaguda,
Dist:Koraput

... Respondent

For the Appellant : Sri M.S. Raman, Additional Standing Counsel (CT)
For the Respondent : Sri N. Ananda Rao, Authorised Representative

Date of hearing: 25.11.2020

Date of order: 27.01.2021

ORDER

Present appeal under Section 78(1) of the Odisha Value Added Tax Act ,2004 (hereinafter referred to as 'the Act') read with Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') is at the instance of the State challenging the impugned order dated 15.04.2010 promulgated in Appeal Case No. AAC-(KOR) 21/2009-10 by the learned Joint Commissioner of Sales Tax, Koraput Range, Jeypore (in short, 'FAA'), who partly allowed the claims of the respondent

dealer assessee and reduced the demand to the extent indicated vis-a-vis the order of assessment dated 04.05.2009 for the period 01.07.2006 to 16.10.2008 passed under Rule 12(4) of the Rules by the learned Sales Tax Officer, Koraput Circle, Jeypore (in short, 'AA') on the ground that the 'C' forms could not have been accepted at the appeal stage in breach of the statutory requirement envisaged in Rule 22 (7) of the Central Sales Tax (Registration & Turnover) Rules, 1957 without there being any proper explanation being offered as to why the declarations were not furnished within three months after the end of the period to which the declarations or the certificate relate and hence, it is liable to be set aside on the above grounds.

2. The respondent dealer assessee questioned the order of assessment dated 04.05.2009, whereby, additional tax including penalty to the tune of ₹12,79,662.00 was demanded by the AA. In appeal, the FAA reduced the balance amount to ₹55,510.00 on account of production of declarations in Form 'C' covering an amount of ₹48,53,721.00. Such acceptance of 'C' forms submitted by the respondent dealer assessee is the crux of dispute on the stated grounds discussed hereinabove.

3. The AA raised the additional demand of ₹4,26,554.00 and levied penalty twice the amount assessed and directed the respondent dealer assessee to pay ₹12,79,662.00 as per the terms and conditions of the demand notice. Admittedly, the respondent dealer assessee, who while claiming the assessment by

AA to have been proceeded without providing it reasonable opportunity, furnished the required declarations in Form 'C' for an amount of ₹48,53,721.00 at the appellate stage. Now, the point for consideration is, if at all, the FAA was right and justified in accepting 'C' forms said not to have been furnished within three months after the end of the period to which the declarations or certificates relate as is stipulated in Rule 12(7) of the Central Sales Tax (Registration & Turnover) Rules, 1957.

4. The learned Additional Standing Counsel contended that not only the FAA fell into serious error in accepting the declaration 'C' forms but also received it without any proper explanation being obtained from the respondent dealer assessee which is in utter disregard to Rule 12(7) of the Central Sales Tax (Registration & Turnover) Rules, 1957. The learned Counsel for the respondent dealer assessee on the contrary claimed that no wrong was committed by the FAA in accepting the declarations in Form 'C', moreover when, the assessment before the AA was carried out without reasonable opportunity being provided. Furthermore, in course of argument, the respondent dealer assessee, justified the acceptance of 'C' forms by the FAA and deletion of penalty levied under Rule 12(4)(c) of the Rules to the tune of ₹8,53,108.00, as was directed by the AA.

5. The learned Counsel for the respondent dealer assessee during and in course of argument by referring to a circular of Commissioner of Commercial Taxes, Odisha, Cuttack dated 20.04.2015 and an earlier order of the Tribunal (FB) in

S.A. No. 106(C) of 2012-13 decided on 23.08.2018 contended that late submission of declaration forms shall not invite any penalty. It is also contended that penalty is not to be levied and that apart, delay in furnishing declaration forms and its acceptance at appeal stage is not prohibited and in the case at hand, the FAA rightly accepted the 'C' forms being an extended forum of assessment. There is no quarrel to the proposition of law as is enunciated in catena of decisions including the one in Gujarat Ambuja Cement Ltd. and Another Vrs. Assessing Authority-cum-Assistant Excise and Taxation Commissioner and Others reported in (2000) 118 STC 315 (HP) which has in fact been referred to in the order of the Tribunal (supra) to the effect that in case of failure to submit declaration forms, no penalty shall be imposed. In any case, the FAA deleted the penalty, since the respondent dealer assessee submitted 'C' forms at the appellate stage. If the 'C' forms so furnished are held not to have been accepted by the FAA, then also, the position of law is well settled that inability or failure to submit the same cannot be a ground to levy penalty. Then, the question which falls for consideration is, whether, the FAA committed any error or illegality in accepting the 'C' forms at the appeal stage, when time is stipulated in Rule 12(7) of the Central Sales Tax (Registration & Turnover) Rules, 1957. In the considered view of the Tribunal, no doubt, as per the above Rule, the declaration forms shall have to be furnished to the prescribed authority within three months after the end of the period to which the declarations or the certificates relate and for any sufficient cause or reason in case the declarations or certificates are unable to be

furnished, the authorities concerned may extend time as per its proviso but that does not mean and to convey that it cannot be accepted at a later point of time. A declaration in 'C' form is furnished to avail a benefit and in case the same is not produced, the dealer assessee shall have to pay regular tax and when, it is furnished, even though at the appellate stage, in humble opinion of the Tribunal, it cannot be discarded by taking a stand that within the stipulated period of three months, it was not furnished as is required under law, inasmuch as, when the appellate authority is an extended forum of assessment. In such view of the matter, the Tribunal, thus, reaches at a final conclusion that the impugned order dated 15.04.2010 in accepting the declaration 'C' forms and consequential deletion of penalty suffers from no legal infirmity.

6. Hence, it is ordered.

7. In the result, the appeal stands dismissed. As a necessary corollary, the impugned order dated 15.04.2010 passed in Appeal Case No. AAC(KOR) 21/2009-10 is hereby confirmed.

Dictated & Corrected by me

(R.K. Pattanaik)
Chairman

I agree,

I agree,

(R.K. Pattanaik)
Chairman

(Shri A.K. Dalbehera)
1st Judicial Member

(P.C. Pathy)
Accounts Member-I

