

**BEFORE THE DIVISION BENCH-II: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 63 (C) of 2014-15

(Arising out of the order of the learned JCST, Sundargarh Range,
Rourkela, in First Appeal Case No. AA 59 (RL-II-C) of 2013-2014,
disposed of on dtd.21.07.2014)

P r e s e n t : Shri A.K. Panda, & Shri R.K. Rout,
1st Judicial Member Accounts Member-II

M/s. Kuarmunda Ferro (P) Ltd.,
Hatibari Road, Kuarmunda, Rourkela,
Dist.- Sundargarh. ... Appellant

- V e r s u s -

State of Orissa, represented by the
Commissioner of Sales Tax, Orissa,
Cuttack. ... Respondent

For the Appellant ... Mr. P.S. Patra, Advocate.
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 13.07.2018 ***** Date of order: 17.07.2018

ORDER

This appeal is directed against the order dtd.21.07.2014 passed by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA 59 (RL-II-C) of 2013-2014, wherein and whereby, he has allowed the first appeal in part by reducing the balance tax demand and penalty to Rs.2,52,507.00 from Rs.3,88,824.00 raised by the learned Assessing Authority, Rourkela I Circle, Uditnagar (hereinafter referred to as, the learned Assessing Authority) in an assessment u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) in respect of the appellant-dealer for the assessment period from 01.04.2007 to 31.03.2012.

2. The appellant-dealer is a manufacturer of C.I. ingot, C.I. casting and C.I. pans and in course of business transaction it used to sale the goods both in course of intrastate as well as interstate trade and commerce. Basing upon an Audit Visit Report (in short, the AVR), the learned Assessing Authority initiated a proceeding u/r.12(3) of the CST(O) Rules against the appellant-dealer for its assessment for the assessment period from 01.04.2007 to 31.03.2012 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the appellant-dealer appeared and produced the books of account which were duly been examined in the light of the allegation of the AVR. On examination, the learned Assessing Authority found out that, out of the claim of CST sale amounting to Rs.2,42,49,891.00 against 'C' declaration form, the appellant-dealer has furnished the required statutory declaration form amounting to Rs.1,77,69,502.00 and has failed to furnish the same for the rest of the amount and as such on consideration of it, he determined the NTO accordingly and levied tax on different transactions at the appropriate rates and the same resulted in a balance tax demand of Rs.1,29,608.00. Then, he also a imposed a penalty of Rs.2,59,216.00, equal to twice of the balance tax demand u/r.12(3)(g) of the CST(O) Rules and as such both the balance tax demand and penalty came to be Rs.3,88,824.00 in total, to be paid by the appellant-dealer.

3. After the assessment, being aggrieved with the order of the learned Assessing Authority, the appellant-dealer preferred an appeal before the learned JCST bearing First Appeal Case No. AA 59 (RL-II-C) of 2013-2014. At the first appeal stage, the appellant-dealer further furnished the statutory 'C' declaration form amounting to Rs.55,74,815.00 and hence on consideration of the same, the learned JCST re-determined the GTO and NTO accordingly and also recomputed the tax liability of the appellant-dealer and the same resulted in reduction of the balance tax demand and penalty to Rs.2,52,507.00 from Rs.3,88,824.00 as raised earlier by the learned Assessing Authority. But, still being aggrieved with the order of the learned JCST, the appellant-dealer has preferred this second appeal.

4. Cross objection has been filed by the respondent-Revenue supporting the orders of the learned forums below.

5. Heard both the sides. Though the appellant-dealer has also taken some other grounds, the learned Counsel appearing on its behalf confined his argument to imposition of penalty u/r.12(3)(g) of the CST(O) Rules and submitted that the imposition of penalty in the present facts and circumstances is totally erroneous in view of the settled principle of law and hence the same is liable to be deleted. On the other hand, the learned Standing Counsel appearing for the respondent-Revenue supported the order of the learned forums below relating to the imposition of penalty and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, though the appellant-dealer has claimed interstate sale amounting to Rs.2,42,49,891.00, it has failed to furnish the required statutory declaration form 'C' for certain amount and as such both the learned forums below have computed its tax liability accordingly on consideration of the same. Not only that they have also imposed penalty upon the appellant-dealer at the rate of equal to twice of the tax demand u/r.12(3)(g) of the CST(O) Rules. The appellant-dealer has not challenged the finding and order of the learned forums below relating to the computation of its tax liability and has only confined its challenge to the imposition of penalty upon it.

7. As regard the imposition of penalty relating to the non submission or delay submission of the statutory declaration forms, it is to be noted that, the Government of Orissa through Finance Department has issued a circular to the effect that non-filing of form 'C' and 'F' for bonafide transaction in terms of the provision of clause (a) of Rule 12(3) of the CST(O) Rules will not attract penalty under clause (g) of the said Rule in absence of any substantive provision for such imposition U/s.9(2) of the CST Act or CST (R&T) Rules. While issuing this circular the Government has considered various judgments of different High Courts relating to the matter. Out of those judgments one of the important judgment relates to the case of **Gujarat Ambuja Cement Ltd. and another v. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP**, wherein the Hon'ble High Court of Himachal Pradesh has held that:

“Case laws are innumerable where the courts, including the Apex Court, have held that even at the appellate stage the assessee may be allowed to file C forms of file rectified and proper forms if those filed were found to be defective in any manner or for any reason. Further, Sri Shanti Bhusan, learned Senior Counsel is also right in contending that in a case where the availing of concession is dependent upon filing C form, the non filing of C form or filing of defective C forms may only render the assessee liable to pay at the full rate of taxation without the benefit of concessional rate in their favour, and the filing of C forms being optional and a mere condition to avail of the concessional rate contemplated in the statutory provision as such, the lapse, if any, cannot be considered to operate as a penal or forfeiture of clause. Being an optional benefit available, non availing of the same or non compliance of such provision, in any event, cannot be held to be non compliance with the provisions of the Act. Rules and notifications, envisaged in the notification dated January, 1996. Placing such interpretation would amount to being not merely perfidious, but vitiated by perversity of approach also.”

8. The same view has also been expressed by the Hon'ble High Court of Karnataka in the case of **Fosroc Chemicals (India) Pvt. Ltd. v. State of Karnataka in STRP Nos. 130, 136 – 168 and 169 – 170 of 2014** and also by this Tribunal in several cases.

9. On perusal of the materials on record, a conclusion cannot be drawn that the appellant-dealer has not submitted the required statutory declarations forms for certain amount deliberately. Similarly, a conclusion also cannot be drawn that it has submitted the same for certain amount with some delay deliberately or with an ulterior motive. Thus, as the submission of the statutory declaration forms is an optional one only to get certain concession by a dealer, the non-submission of the same by the respondent-dealer cannot attract levy of penalty by the assessing authorities. Therefore, on consideration of the entire facts and circumstances and on consideration of the settled principle of law, it can clearly be said that, the order passed by the learned forums below imposing penalty u/r.12(3)(g) of the CST(O) Rules is improper and unjustified and hence the same is hereby deleted.

10. In the result, the appeal is allowed in part. The penalty imposed u/r.12(3)(g) of the CST(O) Rules upon the appellant-dealer is hereby deleted.

However, the rest of the order is held to be confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal.

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal.

I agree,

Sd/-
Accounts Member-II,
Odisha Sales Tax Tribunal.