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

S.A. No.102(C) of 2015-16

(Arising out of the order of the learned JCST, Jajpur Range, Jajpur Road in First Appeal No. AA-77 KJB (C) 12-13 disposed of on 31.08.2015)

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

M/s. Guru Nanak Engineering Works,
At/Po-Barbil, Dist-Keonjhar.
TIN -21061400888. ... Appellant

- V e r s u s –

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

For the Appellant : : Mr. B. R. Panda, ld. Advocate
For the Respondent: : Mr. S.K. Pradhan, ld. ASC(C.T)

Date of Hearing :15.03.2024 * Date of Order:12.04.2024**

O R D E R

This appeal is directed against the order dated 31.08.2015 of the Joint Commissioner of Sales Tax, Jajpur Range, Jajpur Road passed in First Appeal Case No.AA-77 KJB (C) 12-13 allowing the appeal partly on reduction of demand to ₹3,50,650.00 as against the demand of ₹3,86,472.00 raised in audit assessment passed under Rule 12(3) of the CST(O) Rules by the

Sales Tax Officer, Barbil Circle, Barbil (hereinafter referred to as 'ld. STO') pertaining to the tax period 01.04.2006 to 31.03.2011.

2. It is worthy to provide a brief account of the facts leading to filing of this appeal by the dealer-assessee. M/s. Gurunanak Engineering Works, Barbil is a lathe unit engaged in manufacture of various machineries and vehicle parts and sell thereof both inside and outside the state of Odisha. Primarily, the consumables for the lathe unit include angles, channels, steel materials, wielding rods, lubricant etc. As recommended in the Audit Visit Report, the ld. STO took up audit assessment under Rule 12(3) of the CST(O) Rules for the tax period 01.4.2006 to 31.03.2011. The total interstate sale during the period under assessment has been disclosed at ₹95,80,423.50 availing concessional rate of tax against declaration in Form 'C' against which, Form 'C' for an amount of ₹85,37,794.00 could be furnished in audit assessment. On verification, the ld. STO could find two 'C' Forms worth ₹58,383.00 as defective and thus, disallowed the benefit of concessional rate. The tax liability of the dealer-assessee has been determined at ₹1,28,824.00 by the ld. STO. The ld. STO imposed penalty of ₹2,57,648.00 under Rule 12(3)(g) of the CST(O) Rule. Thus, the total CST payable as determined in assessment stood at ₹3,86,472.00. The dealer-assessee having furnished only one 'C' Form valuing ₹1,16,382.00 before the first appellate authority in

first appeal, the amount of CST payable got re-determined at ₹3,50,650.00 which includes penalty of ₹2,33,767.00 charged under Rule 12(3)(g) of the CST(O) Rule.

3. The dealer-assessee being aggrieved with the order of the ld.FAA preferred second appeal before this forum contending that imposition of penalty under Rule 12(3)(g) of the CST(O) Rules by the authorities below is illegal in terms of the Circular dated 20.04.2015 issued by the Commissioner of Sales Tax, Odisha, Cuttack. The State in filing cross objection holds that apart from levy of penalty as justifiably imposed by the ld.FAA, charging of interest as contemplated under Rule 8(1) of the CST (O) Rules is mandatory as per the ratio of the decision of the Hon'ble Apex Court imparted *in* ***Indodan Industries Ltd Vs, State of UP,(2010) 27 VST 1(SC).***

4. Having gone through the rival submissions and the orders of the forums below, it is noted for certain that under the facts and circumstances of the present case, there would be no penalty imposed on failure on the part of the dealer to furnish declaration in Form 'C' in respect of the interstate sales disclosed seeking concessional rate of tax and the delayed payment of admitted tax is sought to be visited with interest as envisaged under Rule 8(1) of the CST(O) Rules. In this context, it is felt pertinent to lay down the legal recourse set forth in the legal forums both on imposition

of penalty and interest in so far the mandate provided under the CST Act. The decision of this Tribunal in **S.A. No.40(C) of 2015-16 dated 17.01.2023** is squarely applicable in the instant case. It is observed therein that *"imposition of penalty for non-submission of 'C' Forms is not appropriate on the ground that without suppression of purchase and sale or both and erroneous claim of exemption of deduction, such levy of penalty is not at all warranted"*. This decision of this forum finds support in the judgment of the Hon'ble High Court of Himachal Pradesh in case of **Gujurat Ambuja Cement Ltd. and Another V₹ Assessing Authority cum Assistant Excise and Taxation Commissioner and Others reported in (2000) 118-STC-315**. In view of the settled principles of law, imposition of penalty in the instant case due to non submission of declaration in form 'C' by the dealer-assessee is not sustainable in the eyes of law. Accordingly, the contention taken by the dealer-assessee on this score befits consideration and thus the penalty imposed for ₹2,33,767.00 is deleted.

5. As regards levy of interest under Rule 8(1) of the CST(O) Rules as asserted by the State, the decision of the Hon'ble Apex Court rendered in case of **Indodan Industries Limited Vs. State of U.P. reported in (2010) 27 VST 1(SC)** is relied upon wherein the Hon'ble Court have observed as under:-

"The levy of interest for delayed payment of tax is given the status of 'tax due'. The 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 under the statute."

The decision of the Hon'ble High Court of Kerala reported in (2008) 16 VST 294 in case of ***Chandramani Traders Vs. State of Kerala*** is sought to rely on wherein it is observed that 'if the assessee fails to produce the declaration Forms for part of the turnover declared in the returns filed, the assessing authority while quantifying the tax liability is required to levy higher rate of tax as provided in the schedule besides levying interest on the ground that the assessee has failed to remit tax due under the Act in the manner prescribed under the Act.'

Under this principle of law, the dealer-assessee is liable to pay interest on the extra demand emanated on account of non submission of declaration Forms. In view of this, the contention taken by the State on this score solicits interference.

6. It is hereby ordered as under:-

The appeal filed by the dealer-assessee is allowed. The order of the ld. FAA is set aside with. The case is remitted back to

the ld. STO to assess the dealer-assessee afresh in the light of the above observation within three months from the date of receipt of this order. The cross objection is accordingly disposed of.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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