BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A.No. 17(C)/2017-18

(From the order of the ld.JCST (Appeal), Sundargarh Range, Rourkela, in Appeal No. AA.52 (RL-IIC) of 2008-09, dtd.28.02.2017, modifying the assessment order of the Assessing Officer)

Present: **Sri S. Mohanty**, **2nd Judicial Member** — **Sri P.C. Pathy**, **Accounts Member-I**

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

-Versus-

M/s. Vijay Steel Corporation, Rourkela. .... Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : None

(Assessment Period : 2004-05)

Date of Hearing: 05.04.2019 *** Date of Order: 05.04.2019

ORDER

This appeal is against the order of learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (in short, FAA/JCST) in an assessment u/r.12(4) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules). For the assessment period 2004-05, the assessee-dealer, M/s. Bijaya Steel Corporation was subjected to assessment u/s.12(4) of the CST(O) Rules. It was an ex-parte order of assessment, in which the Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AA/STO) determined the GTO at Rs.62,39,901.95 for the

period Quarter ending 6/04 to 12/04. The GTO was treated as TTO, as no deduction was found admissible to the dealer. As a result, it was taxed @8% calculated to Rs.4,99,192.16. The dealer having paid Nil, the entire amount was raised against him. As against the said order of assessment and demand, the dealer knocked the door of FAA. Before the FAA, the dealer produced declaration Form 'C' to the tune of Rs.51,11,324/-. On acceptance of six numbers of declaration forms, the FAA reduced the TTO to Rs.11,28,577.95. Taxing the said amount @8%, the tax liability was re-calculated at Rs.90,286/-.

2. When the matter stood thus, State being aggrieved preferred this appeal. It is contended by the State that, in the event of non-imposition of penalty, the FAA should have imposed interest as per Rule 8(1) and (2) of the CST (O) Rules and to that effect the order of the FAA should be modified.

3. The appeal is heard ex-parte in absence of the dealer. The dealer has not preferred to file any cross objection also.

4. The substantial question raised for decision in this appeal is:- Whether the FAA is wrong in not imposing interest in lieu of penalty in the assessment in question? The undisputed facts in this appeal are, the original assessment u/s.12(4) of the CST(O) Rules was an ex-parte. In absence of any proof of inter-state sale against declaration Form 'C', the AA hold entire GTO amount as TTO and imposed tax on it. The AA had not imposed penalty or interest. The FAA accepted the declaration Form produced before him. As a result, the TTO is reduced to Rs.11,28,577.95. Since the dealer failed to produce declaration Form 'C' against these amount of inter-state sale, the FAA

imposed tax on it without any exemption or concession in rate of tax and in the result, he calculated the tax liability of the dealer at Rs.90,286/-. Here, the FAA also neither imposed penalty nor imposed interest. As against the order of FAA, claim of the Revenue is, the FAA should have imposed interest if not penalty.

5. It is pertinent to mention here that, keeping view 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."** the principle is well settled 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. Interest is invariably levied whenever there is non-payment of tax or delay payment of tax. The payment of tax is a consequence for non-production of declaration Form 'C' in the case in hand. So, in that event, the taxing authority is not debarred to raise interest. But, in the peculiarity of the case, which is discussed below, whether it is within the competency of this Tribunal in this appeal in hand to award interest. The AA has not imposed penalty or interest. The FAA, which is an extended forum of assessment, has also not imposed penalty or interest. So far as the assessment is

concerned, both the AA and FAA both stand on a same platform. The order of the FAA is under challenge by the Revenue.

6. It is well settled that, a decree or order can be challenged in appeal by the party against whom the decree or order is passed or by the party, even though the order is passed in his favour, but the findings on any question or issue involve in this dispute is decided against him, or in the event, the order or decree passed in his favour, all the issues/questions are decided in his favour, but while deciding any question or issue, any question of fact has been wrongly decided against him, in that event also, the party has a right to prefer appeal.

Here, it is not understood how and in which way the impugned order can be subjected to appeal at the instance of the Revenue. The first appeal was preferred by the dealer questioning the imposition of tax. It was decided accordingly by the FAA giving relaxation in tax. It was not an issue before the AA or before the FAA that, the dealer is liable to pay interest or not? Once this issue is never raised or never decided, then the scope in the hands of the parties for appeal does not arise. If that be, it cannot be said that, the Revenue is left remediless. The Revenue can prefer revision or suo-motu revision is available in the hands of the learned Commissioner in the event of any order, which affects the interest of the Revenue. But so far as the purpose of appeal is concerned, I am of the considered view that, the impugned order is not vulnerable to attack in appeal at the instance of the Revenue. Thus, we are constrained to opine that, even though interest is leviable when there is delay in payment of tax, but this question neither can be raised nor decided in this

appeal at the instance of the Revenue. It is also made clear that, Revenue is not debarred from raising any demand, which is lawful against the dealer. Accordingly, it is ordered.

7. The appeal being not maintainable in its present form is dismissed.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I