

**BEFORE THE JUDICIAL MEMBER: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A. No. 49 (C) of 2017-18**

(Arising out of the order of the learned Addl. CST (Appeal), Odisha,  
Cuttack, in Appeal Case No. AA/107101510000270/2015-16,  
disposed of on dtd.22.05.2017)

**P r e s e n t :** Shri A.K. Panda,  
1<sup>st</sup> Judicial Member

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

... Appellant

**- V e r s u s -**

M/s. Essel Mining & Industries Ltd.,  
At/P.O.- Barbil, Konjhar,  
Dist.- Keonjhar.

... Respondent

For the Appellant ... Mr. M.L. Agrawal, S.C.

For the Respondent ... Mr. P.K. Harichandan, Advocate

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Date of hearing: 21.05.2018

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Date of order: 23.05.2018  
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**ORDER**

This appeal is directed against the order dated 22.05.2017 passed by the learned Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack (hereinafter referred to as, the learned ACST) in Appeal Case No. AA/107101510000270/2015-16, wherein and whereby he has allowed the first appeal in part by reducing the balance tax demand to Rs.37,220.00 from Rs.27,02,320.00 raised by the learned Joint Commissioner of Sales Tax, Jajpur Range, Jajpur (hereinafter referred to as, the learned JCST) 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 respondent-dealer for the assessment period from 01.04.2012 to 31.03.2014.

2. The respondent-dealer M/s. Essel Mining & Industries Ltd. bearing TIN-21031400177 used to excavate iron ore from its own mines situated at Kasia, Jhiling and Koira circle and used to sale iron ore lumps, iron ore size and iron ore fines inside the State of Odisha, in course of interstate trade and commerce and also through export. In addition to that, the respondent-dealer also used to transfer its stock otherwise than by way of sale to its other branches situated at Vizag in the State of Andhra Pradesh and Haldia in the State of West Bengal. Basing upon an Audit Visit Report (in short, the AVR) submitted by the DCST, Barbil Circle, Barbil, the learned JCST initiated a proceeding u/r.12(3) of the CST(O) Rules against the respondent-dealer for its assessment for the assessment period from 01.04.2012 to 31.03.2014 and issued a notice to appear and to produce the books of account and in response to the notice the authorize representative of the respondent-dealer appeared and produced the books of account and the other relevant documents, which were duly been examined. On examination of the books of account and the other relevant documents, the learned JCST found out that, in addition to the other transactions, the respondent-dealer has failed to furnish the required declaration in form 'C' for an amount of Rs.2,92,66,603.00 and as such on consideration of all the transactions he determined the GTO and NTO at Rs.29,01,35,48,438.00 and Rs.25,45,41,08,095.00 respectively and levied tax thereon at the appropriate rates which finally resulted in a balance tax demand of Rs.9,00,773.27. Then, he also imposed a penalty of Rs.18,01,746.54 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.27,02,320.00 in total, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned JCST, the respondent-dealer preferred an appeal before the learned ACST bearing Appeal Case No. AA/107101510000270/2015-16. At the first appeal stage the respondent-dealer produced the required original 'C' declaration form

for an amount of Rs.2,80,25,903.00 and as such considering the same and also after considering the contention of the respondent-dealer relating to issuance of credit note amounting to Rs.11,38,810.00 in favour of the purchasing dealer M/s. Trimula Industries Limited, the learned ACST allowed the appeal in part by reducing the balance tax demand to Rs.37,220.00 from Rs.27,02,320.00 as raised earlier by the learned JCST. Thus, being aggrieved with the order of the learned ACST, the Revenue as appellant has preferred this second appeal.

4. In the grounds of appeal, the appellant-Revenue has taken the following grounds:-

- (i) That, the order of the 1<sup>st</sup> appellate authority appears to be unjust and improper.
- (ii) That, the interest has not been levied as the amount for which 'C' form could not be filed.
- (iii) That, the imposition of interest is mandatory in nature as per Rule 8(a)(2) of the CST(O) Rules, 1957. The 1<sup>st</sup> appellate authority has failed to impose the same without citing any reason thereof.
- (iv) That, there has been reduction of demand of Rs.44,22,675.00 without any valid reason.
- (v) That, any other point if any that will be urged at the time of hearing of appeal.

5. Cross objection has been filed by the respondent-dealer supporting the order of the learned ACST.

6. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the respondent-dealer has failed to furnish the required statutory declaration form in due time and as such it is liable to pay interest as per Rule 8(a)(2) of the CST(O) Rules and hence the appeal preferred by the appellant-Revenue needs to be allowed to that extent. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned ACST and urged for dismissal of the appeal.

7. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, in addition to the other transactions, though the respondent-dealer has claimed sale in course of interstate of trade and commerce amounting to Rs.2,80,25,930.00, it failed to produce the required statutory declaration form 'C' before the learned JCST and furnish the same subsequently at the first appeal stage before the learned ACST and as such considering the same on proper verification, the learned ACST has reduced the tax demand accordingly from the tax demand as raised earlier by the learned JCST.

8. Under the provisions of the sales tax law, a registered dealer is entitled to get exemption or concession for payment of tax on the strength of certain statutory declaration forms. A dealer cannot be deprived of the said exemption or concession if for some good reasons the same could not be produced before the learned assessing authority and was produced subsequently at the first appeal stage or even before the Tribunal at the second appeal stage. Sub-rule (7) of Rule 12 of the Central Sales Tax (Registration & Turnover) Rules, 1957 which is relevant in this regard is extracted below:-

“The declaration in Form 'C' or Form 'F' or the certificate in Form 'E-I' or Form 'E-II' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates:

***Provided that*** if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.”

9. In the case of **Sahu Trading Co. v. State of Orissa; (1983) 54 STC 122**, the Hon'ble High Court of Orissa has held that-

“in the scheme of procedure of assessment under the Orissa Sales Tax Act, 1947, the declarations for claiming deductions on account of sales to registered dealers under Section 5(2)(A)(a)(ii) of the Act are bound to be produced before the assessment is completed in case the assessee is to be given the deductions he claimed. There is however, no provision in the Act or the Rules to the effect that

declarations not furnished at the original stage could not be produced later. There may be cases where for some good reasons deductions though claimed could not be supported by production of declarations at the assessment stage. In the absence of any prohibition, they can be certainly produced as evidence before the First Appellate Authority and such additional evidence could be received by the First Appellate Authority. In a suitable case, such declarations can even be produced as additional evidence before the Tribunal in second appeal after complying with the requirement of Rule 61 of the Orissa Sales Tax Rules, 1947. It is within the discretion of the appellate authority to accept the evidence produced in support of the claim in appeal. It may be that in view of Rule 27 of the Rules the assessee would not be entitled as of law to ask the declarations to be received and acted upon; but if the Assistant Commissioner in exercise of his discretion under Rule 50(2) accepts the declarations, the same cannot be refused for having been filed after the assessment was over.”

10. As the law permits a dealer to produce the statutory declaration forms at any stage of the proceeding showing sufficient cause, there is nothing unusual on the part of the learned ACST to accept the statutory declarations in form ‘C’ produced by the respondent-dealer on proper verification. Similarly, it is also not desirable to levy interest upon the respondent-dealer for delay filing of the same in absence of any clear statutory provision in that regard.

11. In its grounds of appeal, the appellant-Revenue has prayed to take note of Rule 8(1) of the CST(O) Rules, which speaks as follows:-

“(1) If a registered dealer fails, without sufficient cause, to pay the amount of tax due as per the return furnished under Rule 7 or fails to furnish a return under these rules, such dealer shall be liable to pay interest in respect of the tax, which he fails to pay according to the return, at the rate of one per centum per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier.”

12. On a bare reading of this sub-section, it is very much clear that, this provision relates to the liability of the dealer to pay interest in case of his failure to file return or in case of his failure to pay the amount of tax due as

per the furnished return and not in case of failure of payment of any disputed tax. In case of failure of a dealer to furnish the required declaration forms, though it can be said that, he is admitting the transactions or the turnover while filing the return, he is not admitting the rate of tax due in case of his failure to furnish the required declaration forms by then.

13. In view of the above discussion, judged from any angle, the appeal lacks merit and hence, the same is hereby dismissed.

Dictated & corrected by me,

Sd/-  
(A.K. Panda)  
1st Judicial Member

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(A.K. Panda)  
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