

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 53(C)/2015-16**

(From the order of the Id.JCST, Sundargarh Range, Rourkela,
in Appeal Case No. AA.14 (RL-II-C) of 2014-2015,
dtd.21.07.2015 modifying the assessment order of the
Assessing Officer)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Khedaria Ispat Limited,
Naikenbahal, Kuarmunda,
Dist. Sundargarh. Appellant

-Versus-

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

For the Appellant : Mr. P.S. Patra, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2010 to 31.12.2010)

Date of Hearing: 31.07.2019 *** Date of Order: 31.07.2019

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/JCST) in First Appeal Case No.AA.14(RL-II-C) of 2014-2015, dtd.21.07.2015 in reducing the order of assessment passed by the Assessing Authority/Sales Tax Officer, Rourkela-II Circle, Panposh (in short, AA/STO) for the assessment period from 01.04.2010 to 31.12.2010 u/r.12(4) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The fact of the case leading to the present appeal in short is that:

The dealer-assessee in the instant case is a public limited company located at Naikenbahal, Kuarmunda in the district of Sundargarh in the name and style of M/s. Khedaria Ispat Ltd. and engaged in manufacturing and sale of sponge iron. For this purpose, it uses iron ore and dolomite as raw materials and machinery spares and effected purchases and sales both intra-state as well as inter-state trade and commerce. Basing upon a fraud case report submitted by the DCCT, Enforcement Range, Sambalpur, the dealer was found effected export sale of iron ore fines to the foreign buyers to the tune of Rs.40,65,471/-, but during verification the dealer failed to submit the supporting declaration against those sale in Form 'H' and other connected papers. Further, the dealer has effected total inter-state sale of Rs.1,92,92,124/- for the period from 2008 to 2011, but could not substantiate his claim in absence of production of declaration in Form 'C' in support of the those sale. Hence, the dealer was issued with statutory notice in Form IV-A to appear and produce his books of account and other relevant documents before the AA for necessary verification. Accordingly, the learned Advocate of the dealer appeared with the books of account and after verification of the same, on account of export sale to the tune of Rs.5,99,508/- for the year 2008-09, the dealer duly submitted declaration form 'H' in duplicates and took the plea that, at the time of audit assessment he had produced the original copies, but could not readily submit the same before the AA and hence those are accepted. Similarly, regarding export sale of Rs.23,95,150/-,

since the dealer had effected those sale during the year 2009-10, the AA did not feel it necessary to re-assess the dealer u/s.12(4) of the CST(O) Rules. However, for the year under assessment i.e. 2010-11 for export sale worth of Rs.40,65,471/-, the dealer Advocate duly submitted all relevant documents like declaration in Form 'H' along with bill of leading, purchase order, agreement with the foreign buyer, hence those are accepted. Regarding the assessment year in the present case, the dealer could not furnish declaration Form 'C' against transaction of Rs.19,89,238/-. Thus, the AA determined the GTO and TTO of the dealer at Rs.6,84,68,740/- and Rs.6,71,23,272/-. Tax on the entire TTO @4% on Rs.19,89,238/- (non-submission of Form 'C') and @2% on Rs.6,51,34,034/- (submission of Form 'C') together calculated at Rs.13,82,251/-. After adjusting CST with VAT ITC of Rs.1,00,000/- and Rs.12,47,468/- already paid by the dealer at the time of filing of return, the balance tax due became liable on the dealer stood at Rs.34,783/-. Besides penalty twice on it u/r.12(4)(c) of the CST(O) Rules is calculated at Rs.69,566/-. Thus, tax due along with penalty altogether stood at Rs.1,04,349/-, which the dealer is found ultimately liable to pay at the assessment stage.

3. Being aggrieved with the order of assessment passed by AA, the dealer preferred first appeal before the FAA as JCST, Sundargarh Range, Rourkela, who in turn, after reconsideration of the total tax due raised on the dealer, reduced the order of assessment to Rs.64,627/-.

4. Being further aggrieved with the order of FAA, the dealer-assessee knocked the door of this Tribunal by filing grounds of appeal along with a written notes with a prayer to

quash the entire demand as the orders of both the fora below as it is not based on law and on facts of the case.

5. Learned Advocate for the dealer has assailed the impugned order on the following grounds :

(i) Imposition of interest u/r.8(1) of the CST(O) Rules is illegal; and

(ii) Imposition of penalty u/r.8(A)(1) of the CST(O) Rules thereafter is also illegal and unjustified.

6. Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing for the Revenue in terms of cross objection filed, has supported the impugned order by submitting the imposition of interest and penalty is operation of law and hence, automatic.

7. At the outset, it is to be noted that learned First Appellate Authority while levying interest and penalty interest, has referred to Rule 8(1) and (2) of the CST(O) Rules. Be that as it may, Mr. Patra submits that, the dealer had filed returns and also paid the due and, therefore, Rule 8(1) has no application. I am not inclined to accept the above contention, because though the returns were filed in time and the tax was also paid by the dealer, yet the same cannot be treated as correct return or correct amount of tax. The dealer has claimed concession/exemption on account of inter-State/export sales, was obliged under law to produce the required statutory forms. Once such forms are not produced, then the transaction becomes exigible to tax at the appropriate rate and would, therefore, relate back to the date of filing of returns. Under such circumstances, imposition of interest becomes automatic. Law is also well settled in this regard. Reference may be had to the decisions of the Hon'ble Supreme Court of India in the

cases of **Royal Boot House Vrs. State of Jammu Kashmir** reported in [1984] 56 STC 212 (SC) and **Indodan Industries Ltd. Vrs. State of U.P.** reported in [2010] 27 VST 1 (SC).

8. It is further contended by the learned Advocate for the dealer Mr. Patra that, there was no justification much less legal necessity for the first appellate authority to impose penalty @2%. In this regard, he has submitted the judgment passed by the Single Bench of this learned Tribunal in S.A.No. 105(C) of 2016-17 in the matter of **Jay Jagannath Steel and Power Ltd. Vrs. State of Odisha**, wherein this Tribunal has already passed the order deleting the penalty u/r.8A(1) of the CST(O) Rules. Rule 8A relates to levy of penalty for default of payment of tax and interest payable, sub rule (3) whereof reads as under:

8A. Levy of penalty for default of payment of tax and interest payable.-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) Before imposition of penalty, the assessing authority shall serve on such defaulting dealer a notice in Form-II calling him to show cause, within a period of fourteen days from the date of receipt of the notice as to why a penalty shall not be levied on him and consider the explanation given by the dealer, if any”

In the instant case, the notice in Form-II as required u/r.8A(3) of the CST(O) Rules quoted above, does not appear to have been issued or served upon the dealer. Therefore, imposition of penalty @2% as has been done by learned First Appellate Authority, become vulnerable and hence, liable be quashed.

9. For the foregoing reasons, therefore, the impugned order deserves to be interfered with only to the extent indicated above before.

In the result, the appeal is allowed in part. The impugned order stands modified to the extent of deleting the levy of penalty u/r.8A(1) of the CST(O) Rules. Learned AA is directed to issue fresh demand notice to the dealer after deleting penalty levied u/r.8A(1).

Dictated and Corrected by me,

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

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

