

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 54(C)/2015-16**

(From the order of the Id.JCST, Sundargarh Range, Rourkela,
in Appeal Case No. AA.13 (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 : 01.04.2006 to 31.03.2007)

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.13(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 01.04.2006 to 31.03.2007 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. It effected sale of those goods both in course of intra-state, inter-state trade and commerce as well as export sale. Basing upon a tax evasion report submitted by the DCCT, Enforcement Range, Sambalpur, the AA found the dealer had effected total sale of goods for the tax period 2006-07 to the tune of Rs.2,37,687/- at concessional rate against non-submission of declaration in Form 'C' on which CST @8% became calculated at Rs.19,015/- that ultimately became the tax due on the dealer. Besides tax due, the dealer was imposed with penalty twice of it to the tune of Rs.38,030/- u/r.12(4)(c) of the CST(O) Rules. Thus, total tax due along with penalty became calculated at Rs.57,045/-, which the dealer found liable to pay at the assessment stage as per the assessment order.

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, enhanced the order of assessment from Rs.57,045/- to Rs.65,227/- (including interest and penal interest of Rs.46,212.

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 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 Good 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

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