

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

S.A. No. 39 (C) of 2015-16

(Arising out of the order of the learned JCST, Sundargarh Range,
Rourkela, in First Appeal Case No. AA 12 (RL-II-C) of 2014-15,
disposed of on dtd.18.05.2015)

P r e s e n t :

Shri A.K. Panda,
1st Judicial Member

M/s. Supreme Chemicals Pvt. Ltd.,
BN/5, Industrial Estate,
Kalunga, Rourkela,
Dist.- Sundargarh.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. S.C. Agarwal, Advocate
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 28.08.2018

Date of order: 29.08.2018

ORDER

The dealer-assessee is the appellant herein. It has preferred this appeal challenging the order of imposition of penalty amounting to Rs.21,566.00 upon it u/r.12(3)(g) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. The order under challenge dtd.18.05.2015 has been passed by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, the learned JCST) in First Appeal Case No. AA 12 (RL-II-C) of 2014-15, wherein and whereby he has allowed the first appeal in part by reducing the balance tax demand, interest and penalty to Rs.33,588.00 from Rs.1,09,315.00 raised by the learned Sales Tax Officer,

Rourkela II Circle, Panposh (hereinafter referred to as, the learned STO) in an assessment u/r.12(3) of the CST(O) Rules in respect of the dealer-assessee for the assessment period from 01.04.2011 to 31.03.2013.

3. The dealer-assessee is a manufacturer and seller of ferric alum and non-ferric alum. Similarly, it is also a seller of sulphuric acid, bleaching powder and chemicals etc. and during business transaction it used to sale the goods both in course of intrastate as well as interstate trader and commerce. Basing upon an Audit Visit Report (in short, the AVR), the learned STO initiated a proceeding against the dealer-assessee u/r.12(3) of the CST(O) Rules for its assessment for the assessment period from 01.04.2011 to 31.03.2013 and issued a notice to appear and to produce the books of account and in response to the notice, the authorized representative of the dealer-assessee appeared and produced the books of account which were duly been examined. On examination, the learned STO found out that, though the dealer-assessee is required to furnish the required 'C' declaration form against the entire claim of interstate sale, it has failed to furnish the same for certain amount and as such on consideration of all the transactions, he determined the GTO and NTO and levied tax thereon at the appropriate rates and finally the order of the learned STO resulted in a balance tax demand of Rs.35,494.34. Then, the learned STO also imposed a penalty of Rs.70,188.68, equal to twice of the balance tax demand u/r.12(3)(g) of the CST(O) Rules and an interest of Rs.4,032.00 u/r.8(1) of the said Rules and as such the tax demand, interest and penalty came to be Rs.1,09,315.00 in total, to be paid by the dealer-assessee.

4. After the assessment, being aggrieved with the order of the learned STO, the dealer-assessee preferred an appeal before the learned JCST bearing First Appeal Case No. AA 12 (RL-II-C) of 2014-15. At the first appeal stage, the dealer-assessee furnished the 'C' declaration forms for certain amount and as such on consideration of the same and the other materials on record, the learned JCST re-determined the tax liability, interest and the consequential penalty and as such the order passed by him resulted in reduction of the tax demand, interest and penalty to Rs.33,588.00 from

Rs.1,09,315.00 as raised earlier by the learned STO. But, thereafter, again being aggrieved with the order of the learned JCST relating to the imposition of penalty u/r.12(3)(g) of the CST(O) Rules, the dealer-assessee has preferred this second appeal.

5. Cross objection has been filed by the Revenue supporting the order of the learned JCST.

6. Heard both the sides. The learned Counsel appearing for the dealer-assessee challenging the levy of penalty upon the dealer-assessee u/r.12(3)(g) of the CST(O) Rules, submitted that, the same is improper and unjustified in the facts and circumstances of the present case and in view of the settled principles of law and hence, it is liable to be deleted. On the other hand, the learned Standing Counsel appearing for the respondent-Revenue supported the order of the learned JCST 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, due to non-submission of the required statutory 'C' declaration forms for certain amount, the learned forums below have determined the tax liability of the dealer-assessee on proper consideration of the materials available on record. Similarly, they have also levied due interest upon the dealer-assessee and neither the tax demand nor the levy of interest has been challenged by the dealer-assessee in the present appeal.

8. But, so far as the imposition of penalty relating to the non submission or delay submission of the statutory declaration forms is concerned, it is to be noted that, the Government of Orissa through Finance Department has issued a circular to the effect that non-filing of form 'C' and 'F' for bonafide transaction in terms of the provision of clause (a) of Rule 12(3) of the CST(O) Rules will not attract penalty under clause (g) of the said Rule in absence of any substantive provision for such imposition U/s.9(2) of the CST Act or CST (R&T) Rules. While issuing this circular the Government has considered various judgments of different High Courts relating to the matter. Out of those judgments one of the important judgment relates to the case of

Gujarat Ambuja Cement Ltd. and another v. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP, wherein the Hon'ble High Court of Himachal Pradesh has held that:

“Case laws are innumerable where the courts, including the Apex Court, have held that even at the appellate stage the assessee may be allowed to file C forms of file rectified and proper forms if those filed were found to be defective in any manner or for any reason. Further, Sri Shanti Bhusan, learned Senior Counsel is also right in contending that in a case where the availing of concession is dependent upon filing C form, the non filing of C form or filing of defective C forms may only render the assessee liable to pay at the full rate of taxation without the benefit of concessional rate in their favour, and the filing of C forms being optional and a mere condition to avail of the concessional rate contemplated in the statutory provision as such, the lapse, if any, cannot be considered to operate as a penal or forfeiture of clause. Being an optional benefit available, non availing of the same or non compliance of such provision, in any event, cannot be held to be non compliance with the provisions of the Act. Rules and notifications, envisaged in the notification dated January, 1996. Placing such interpretation would amount to being not merely perfidious, but vitiated by perversity of approach also.”

9. The same view has also been expressed by the Hon'ble High Court of Karnataka in the case of **Fosroc Chemicals (India) Pvt. Ltd. v. State of Karnataka in STRP Nos. 130, 136 – 168 and 169 – 170 of 2014** and also by this Tribunal in several cases.

10. On perusal of the materials on record, a conclusion cannot be arrived that the dealer-assessee has not submitted the required statutory declaration forms for certain amount deliberately. Similarly, a conclusion also cannot be arrived that it has submitted the same for certain amount with some delay deliberately or with an ulterior motive. Thus, as the submission of the statutory declaration forms is an optional one only to get certain concession by a dealer, the non-submission of the same by the dealer-assessee cannot attract levy of penalty by the assessing authorities.

11. In the result, the appeal is allowed. The cross objection is disposed of accordingly. The penalty imposed upon the dealer-assessee amounting to Rs.21,566.00 u/r.12(3)(g) of the CST(O) Rules is hereby deleted. However, the rest of the order passed by the learned JCST is confirmed.

Dictated & corrected by me,

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

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