

**BEFORE THE SINGLE BENCH : ODISHA SALES TAX  
TRIBUNAL: CUTTACK.**

**S.A.No.56(C)/2018**

(Arising out of the order of the learned JCST, Sundargarh Range, Rourkela in First Appeal Case No.AA.94 (RL-I-C) of 2017-18, disposed of on dt.22.12.2017)

**Present: Smt. Sweta Mishra  
Judicial Member-II.**

M/s. Anil & Sons Solutions,  
Qtr.No.KB-02, Kalinga Vihar,  
Chhenda, Rourkela. ... Appellant.

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

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

For the Appellant ... Mr. D. Pati, Advocate.  
For the Respondent ... Mr.M.L. Agarwal, S.C. (C.T).

**Period of Assessment:** 01.04.2015 to 31.03.2016

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Date of hearing: 06.08.2021      Date of Order: 10.08.2021  
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**ORDER**

The facts and circumstances of this case and the two orders of the learned lower fora below culminated to this second appeal.

2. The facts of this case can be briefly stated thus :

The dealer-appellant in the instant case deals in Aluminium plates, sheets, strips and channels, furniture and article made of artificial wood, wood

(logs) other than fire wood and sandal wood and wood sawn etc. in course of intra-state and inter-state trade and commerce. The appellant has amended its name and style from M/s. Anil & Sons Furniture to M/s. Anil and Sons Solutions w.e.f. 28.09.2015. The ld.STO in course of scrutiny of returns for the period from 01.04.2015 to 31.03.2016 found that, the appellant failed to produce declarations Form 'C' with reference to its claim of sale of goods at the concessional rate within the stipulated time period. The ld.STO therefore initiated proceeding u/r.12(1) of the CST(O) Rules and issued statutory notice to the appellant for production of books of account and declaration forms. But, the appellant failed to produce such declaration forms 'C' for Rs.6,60,949/- against total claim of Rs.20,71,101/-. The ld.AO therefore disallowed the claim of concessional rate of the appellant to the extent of Rs.6,60,949/- and taxed the same at the appropriate rate of 13.5%. The 'C' Forms furnished for an amount of Rs.14,10,152/- by the appellant at the stage of assessment has been taxed at the concessional rate of 2%. In this process, the ld.AO calculated the total tax payable at Rs.1,17,431/- against which the appellant having paid Rs.35,653/- along with returns and having adjusted Rs.10,469/- against VAT ITC, the balance tax payable was computed to Rs.71,309/-. Further,

the Id.AO has charged interest of Rs.10,696/-. Thus, tax together with interest was calculated to Rs.82,005/- at the stage of assessment.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned first appellate authority/JCST, Sundargarh Range, Rourkela, who in turn, dismissed the appeal and confirmed the order passed by the learned assessing officer for which the demand in dispute remained as it is.

4. Being further aggrieved with the order of the learned first appellate authority, the dealer knocked the door of this Tribunal by way of filing of second appeal with the contention that the order passed by the learned first appellate authority/JCST is illegal, arbitrary and in contravention of the provisions of law and hence needs to be quashed.

5. State respondent has filed cross objection in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned first appellate authority. He has vehemently argued that, in the present case, the passing of the order ex-parte itself speaks much underneath the passing of order without allowing sufficient time which is bad in law and against the principles of natural justice. The dealer-appellant had been noticed for the first date on 06.11.2017 and the next

date to 23.11.2017 and the final date to 21.12.2017 in a nut shell within a month and half speaks of the swiftness and the hurried manner in which the appeal has been disposed. The dealer-appellant met with an accident while on work on 09.11.2017 and till the date of filing of this appeal he is under convalescence and that it is very unfortunate and a tryst of bad luck that the wanting 'C' form was received on 05.01.2018 and that the appeal order was received on 12.01.2018. Thus, the dealer-appellant has been deprived of production of the said wanting declaration Form 'C' and to that end he may be allowed to submit before this Tribunal and the demand be vacated. Learned Advocate for the dealer has filed one petition for additional evidence. Copy of the petition was served to State-respondent. The petition was heard and allowed. Learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during course of hearing the learned Standing Counsel, Mr. M.L. Agarwal for the State argued that, the grounds raised in the appeal petition are mis-conceived and liable to be dismissed in toto. The grounds and averments of the dealer-appellant regarding non-allowance of time for production of statutory 'C' forms and allow the same at the present forum is not supported with the statutory provisions. The dealer-appellant has been

given sufficient time. Therefore, the ld.STO/FAA has statutorily imposed the tax and interest thereon. Further, the learned Standing Counsel submitted a copy of order dt.23.05.2018 in S.A.No.4(C)/2017-18 passed by this Tribunal in case of **Gupta Trading Co. Vrs. The State of Odisha** wherein it is envisaged that, payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form. Further, the Hon'ble Apex Court in the case of **Royal Boott House Vrs. State of Jammu & Kashmir** reported in **(1984) 56 STC 2012 (SC)** also held that, where the tax payable on the basis of a quarterly return is not paid before the expiry of the last date for filing such return, it is not necessary to issue any notice on demand but on the default being committed, the dealer becomes liable to pay tax u/s.8(2) of the Act on the amount of such tax from the last date for filing quarterly return prescribed under the Act. So he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate Mr. D. Pati appearing on behalf of the dealer and learned Standing Counsel Mr. M.L. Agrawal on behalf of the State. Gone through the grounds of appeal and cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both sides at the time of hearing. In

view of the facts and circumstances of the case and after analysing the points raised in this appeal I am of the considered opinion that the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case where the matter should be remanded back to learned assessing officer to check the genuineness of the documents and to re-compute the tax liability of the dealer as per provision of law. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of learned first appellate authority is hereby set aside. The matter is remanded back to the learned assessing officer and he is to consider the additional evidence filed by the dealer after verifying the genuineness of the documents thoroughly and accordingly re-compute the tax liability of the dealer as per provision of law after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. Cross objection filed by the State-respondent is disposed of accordingly.

Dictated & Corrected by me,

Sd/-  
(Smt. Sweta Mishra)  
2<sup>nd</sup> Judicial Member

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