

Compendium of Circulars

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES: ODISHA, CUTTACK
No. 42 /CT
No.III (B) 38/09
Dated. 20/04/2015

CIRCULAR

Sub: **Non-levy of mandatory penalty on audit assessment under Central Sales Tax Act**

Madam/Sir,

It has come to my notice that in many case the assessing authorities are imposing penalty equal to twice the amount of tax assessed in the assessments due to non submission of declaration forms as per Rule 12(3) (g) of the CST (O) Rules, 1957. As per Rule 12(3)(a),(e) and (f) of the CST(O) Rules, 1957, the tax audit, if results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the Assessing Authority (AA) is required to do assessment of the dealer and impose penalty equal to twice the amount of tax assessed in such assessment as per Rule 12(3)(g) of the CST(O) Rules, 1957.

In cases of non-production of 'C' Forms, it has been noticed that there is no uniformity and consistency in the approach by the departmental officers as to whether penalty is leviable for non-production of 'C' Forms or not. It is seen that assessing officers and appellate officers are interpreting the provisions of the relevant statutes in a varying manner. This is leading to unnecessary litigation which is affecting the dealers adversely and also not bringing any revenues to the department when orders are set aside in the OSTT and in the higher judicial forums. In order to obviate such dissimilar approach by the different assessing authorities, in cases of non-production of 'C' Forms, there is a need to issue this circular based on the decisions of the Odisha Sales Tax Tribunal and the judiciary.

As the provision of the Central Sales Tax Act, 1957 stands, in cases relate to non-production of 'C' Forms , appropriate tax is to be levied by applying the higher rate of tax as prescribed under Section 8(2) of the CST Act. In this context, it is to be mentioned here that the imposition of penalty at the time of audit assessment for non submission of 'C' Forms may or may not be proper in all cases. The conditions precedents for imposition of penalty under Clause (g) of Rule 12(3) as provided in Clause (a) of the said Rule are

1. Suppression of purchase or sale or both;
2. Erroneous claim of exemption or deduction;

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3. Evasion of tax,
4. Contravention of any provision of the Act affecting the tax liability of the dealer.

It is required to determine whether failure to furnish declaration in Form 'C' against the bonafide claim of concessional rate of tax falls under the ambit of any of the offences stated above.

The Odisha Sales Tax Tribunal in the case of M/s Sri Lalbaba Roller Flour Mills, Nayabazar, Cuttack vrs State of Odisha in S.A No. 87 (C) of 2012-13 dated 03.04.2014 have observed that [to quote]

"The dealer respondent has been assessed u/r 12(3) of the CST (O) Rules, 1957 and the disputed amount of penalty has been imposed on the amount of the tax assessed on the turnover not supported with declarations due to failure on the part of the dealer to furnish the required declaration in Form "C" and "H". Since there was no allegation of Audit visit report and the dealer respondent has produced the required books of accounts excepting the declarations as already cited above, which are beyond his control and also the facts remains that the dealer has not concealed / suppressed any part of its turnover and has also been assessed appropriately on the turnover not supported with the declarations, for which the levy of penalty u/r 12(3)(g) of the CST (O) Rules by the learned STO is not justified and hence is liable to be deleted."

Similarly in another judgment in the case of M/s Gajalaxmi Iron Works, Industrial Estate, Kalunga, Rourkela vrs State of Odisha in S.A No. 53 of 2011-12 dated 18.12.2013, the Hon'ble Odisha Sales Tax Tribunal have given a clear finding along similar lines which reads as follows [to quote]

"On a careful reading of Rules 12(3) (g), I find that the imposition of penalty can be made in this provision only where there has been assessment under clause 'e' or 'f' of the said rules. On a reading of the aforesaid two rules, I find that non-submission of "C" forms is not covered for assessment under the same rules. Therefore, considering submissions from both sides I come to a positive finding that the filing of "C" form is an optional condition to avail of concessional rate of tax and non compliance of the same will only debar the dealer to get the exemption of tax benefit"

In the judgment of Gujarat Ambuja Cement Ltd. and Another Vrs. Assessing Authority-Cum-Assistant Excise and Taxation Commissioner and Others reported in [2000] 118 STC 315 HP, it has been observed by the Hon'ble High court of Himachal Pradesh that for the provisions of the CST Act and Rules made there under, the question

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of filing of Form 'C' is envisaged only in order to avail of concessional or reduced rate of taxation. Such Forms are permitted to be filed not only before the finalization of the assessment and even at the appellate and revisional stages. In cases where the availing of concession is dependent upon filing of 'C' Forms the non filing of 'C' Forms or the 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 clause. It will be appropriate to quote the relevant portion:

“Case law 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 or 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.”

Similarly the Hon'ble High court of Karnataka in case of Fosroc Chemicals (India) Pvt. Ltd. Vrs. the State of Karnataka in STRP Nos 130, 136 – 168 & 169 – 170 of 2014 is of opinion that on a representation made by the purchaser the dealer company has sold the goods claiming concessional rate of tax. When the purchaser is unable to produce the 'C' Forms for any reason whatsoever, then the liability is cast on the assessee to pay tax under the State VAT Act. The said tax ought to have been paid on the date of sale, if there is a delay in payment of the said tax then there is automatic and mandatory interest in terms of State VAT Law.

On a plain reading it emerges that mere non-submission of declaration in Form 'C' against a bonafide transaction does not constitute an offence under rule 12(3)(a) of the

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CST(O) Rules so as to attract liability to imposition of penalty under Clause (g) of the said Rule. The filing of 'C' Form being optional and a mere condition to avail concessional rate, the lapse, if any, cannot be considered to operate as a penal clause. Being an optional benefit available to the dealer, the non-availing of the same or non-compliance with such provision, in any event, cannot be held to be non-compliance with the provisions of the Act, Rules and notifications. It is not only that tax liability is affected but when tax liability is affected by contravention of any conditions mentioned in Rule 12(3)(a) of the CST(O) Rules, then only penalty can be imposed. On the other hand the submission of declaration forms is not strictly in the control of the assessee dealer, since it is to be obtained from the purchasing dealer and submit before the assessing authority to avail concessional rate of tax. **Non submission of Forms is not an incentive for the assessee as he has to pay higher rate of tax as prescribed under Section 8(2) of the CST Act. Hence, no intention can be attributed to the assessee for his failure to submit declaration in Form C.**

In view of the above facts it is required to impress upon all assessing/appeal authorities that non-filing of Form 'C' and 'F' Form for a bonafide transaction in terms of the provision of Clause (a) of the Rule 12(3) of the CST (O) Rules, will not attract penalty under Clause (g) of the said Rule in the absence of substantive provision for such imposition under the Section 9(2) of the CST Act or CST(R&T) Rules.


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