

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

S.A. No. 96(C) of 2016-17

(Arising out of the order of the learned Addl.CCT (Appeal),
South Zone, Berhampur, in First Appeal case No. AA(CST)18/2015-16
disposed of on 16.11.2016)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri B.Bhoi,
Chairman. Judicial Member-II Accounts Member-II.**

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

... Appellant.

- V e r s u s -

M/s.Tractors India Pvt. Ltd.,
Bhubaneswar.

... Respondent.

For the Appellant
For the Respondent

... Mr.D.Behura, SC.
... Mr.F.B.Mishra, A/R.

Date of hearing: **17.01.2023** * * * Date of Order: **31.01.2023**

ORDER

State prefers this appeal challenging the order dated 16.11.2016 passed by the learned Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, Addl.CST/FAA) in appeal case No.AA(CST) 18/2015-16, thereby allowing the appeal in part and reducing the demand to Rs.5,24,295.00 against the order of assessment passed by the learned Deputy Commissioner of Sales Tax, Bhubaneswar-I Circle, Bhubaneswar (in short, DCST/AO) under Rule 12(3) of the CST (O) Rules for the tax period from 01.04.2012 to 31.03.2014, raising demand of Rs.67,73,557.00 including penalty of Rs.45,15,705.00 imposed under Rule 12(3)(g) of the CST (O) Rules.

2. The case at hand is that the appellant M/s.Tractors India Pvt. Ltd. having TIN -21292600409 effects interstate sales of goods against 'C' form and stock transfer of goods to outside branches

of the state against 'F' form condition. Pursuant to receipt of audit visit report, the learned assessing officer initiated proceedings under Rule 12(3) of the CST (O) Rules as the dealer company failed to furnish declaration in Form-F and Form-C towards stock transfer of goods and interstate sales of goods at the time of audit. Pursuant to the notice, the authorised signatory of the dealer company appeared and produced the books of accounts which were verified by the learned assessing officer with reference to the observations of the AVR. On verification of books of accounts, the learned assessing officer found that the dealer company has not furnished original 'C' forms to the tune of Rs.18,65,148.00 and 'F' forms to the tune of Rs.1,51,35,996.00 against the transaction effected towards interstate sales and branch transfer of goods. Accordingly, the learned assessing officer completed the assessment levying appropriate rate of tax on the transactions without supported with declaration forms resulting demand of Rs.67,73,557.00 including penalty of Rs.45,15,705.00 imposed under Rule 12(3)(g) of the CST (O) Rules.

3. Against such tax demand, the dealer preferred first appeal before the learned Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur, who allowed the appeal in part and reduced the demand to Rs.5,24,295.00.

4. Being dis-satisfied with the order of the learned first appellate authority, State has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection is filed in this case by the dealer respondent.

6. During course of argument, learned Standing Counsel appearing for the revenue argued that the first appellate authority deleted the penalty under Rule 12(3)(g) of the CST (O) Rules which is mandatory in nature and the mandatory penalty is to be imposed without any discretion and that considering the circular of the CCT (O),

if at all the penalty is not leviable but imposition of interest is mandatory in nature as per Rule 8(a)(2) of the CST (O) Rules , 1957. The further contention on behalf of the revenue is that the first appellate authority failed to impose interest while deleting the penalty without citing any reason. So, the order of the first appellate authority may be modified with a direction for levy of interest due to non-submission of statutory declaration forms in due course.

7. Per contra, learned Counsel for the dealer assessee contended stating that the appeal filed by the appellant is without any merit and liable to be dismissed on the facts and circumstances of the case.

8. Heard the contentions and submissions of both the parties in this regard. Perused the orders of fora below and the materials available on record. The sole dispute in the instant case is whether interest should be levied on the dealer assessee due to failure of submission of declaration forms at the time of assessment and whether penalty should be imposed on the dealer assessee for such default. With regard to imposition of penalty of Rs.45,15,705.00 under rule 12(3)(g) of the CST (O) Rules, the same was deleted by the learned first appellate authority pursuant to the circular dated 20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha, Cuttack as penalty will not attract under Clause (g) of Rule 12(3) of the CST (O) Rules for non filing of Form 'C' and Form 'F' for a bonafide transaction. This apart, it becomes clear from the case record that neither the audit team nor the learned assessing officer detected any suppression of sales in course of verification of the books of accounts. So deletion of penalty by the learned first appellate authority is quite genuine. Now comes the fact to be adjudicated upon is with regard to levy of interest.

With regard to the contention raised by the appellant revenue relating to the levy of interest upon the respondent dealer for non-filing or delay filing of the statutory declaration forms, noteworthy

that as per the provision of sales tax law, a registered dealer is entitled to get exemption or concession for payment of tax on the strength of certain statutory declaration forms. A dealer cannot be deprived of the said exemption or concession if for some good reasons, the same could not be produced before the assessing authority and was produced subsequently at the appellate stage or even before the Tribunal at the second appeal stage. Sub-Rule(7) of Rule-12 of the Central Sales Tax Act (Registration and Turnover) Rule, 1957 which is relevant in this regard as extracted below:

“The declaration in Form-‘C’ or Form-‘F’ or the certificate in Form E-1 or Form E-II shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or certificate relates....”

Provided that, if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time that the authority may permit.” So it becomes clear that the law permits a dealer to produce the statutory declaration forms at any stage of the proceeding showing sufficient cause, it is not desirable to levy interest upon the respondent dealer for non-filing or delay filing of the same in absence of any clear statutory provision on that behalf. Moreover, in the case of **Bengal Energy Ltd. Vrs. State of Odisha** in S.A.No.71© of 2013-14, the Full Bench of this Tribunal has considered the non-submission of the required declaration in Form-C and has rejected the plea of the revenue for levy interest considering the fact that a dealer assessee is at liberty to furnish the required declaration forms at any stage of the proceeding showing sufficient cause and further considering the fact that there is no specific provision in the Central Sales Tax Act for levy of interest in case of failure to furnish the same. This Tribunal has also expressed the same view in several other cases as submitted by the dealer respondent. In the case

of **M.G. Brothers Vrs. Commissioner of Income Tax (1985) 154 STC-ITR-695 at page 712** while considering the provision of Section-215 of the Income Tax Act and Rule, 40 of the Incomes Tax Rules and Section 139 of the Income Tax Act and Rule 117-A of the income tax rules, a division bench of the Hon'ble Andhra Pradesh High Court has held that charge of interest is not a matter of automatic consequence and that an assessee has a say in the matter before the interest is actually charged. Similarly, before charge of interest, the Income Tax Officer should give an opportunity to the assessee to show cause, why interest should not be levied and the interest can only be levied after considering the representation of the assessee.

9. In the present case, no such occasion has arisen as the matter for levy of interest was not at all for consideration before the learned forums below. This apart while dealing with a matter relating to the Income Tax, the Hon'ble Madras High Court in the case of **Ramanujan Vrs. Commissioner of Income Tax (1999) 238 -ITR-978** has held that without an opportunity of show cause, no interest can be levied on an assessee.

10. With regard to imposition of interest as emphasized by the learned Standing Counsel for the Revenue that the dealer is liable to pay interest as required declaration in Form-'C' has not been filed by the dealer within the statutory period. So, now the question comes whether in such a case the dealer is liable to pay interest. To support such claim, the learned Standing Counsel for revenue has relied upon the decisions decided in the cases of **Royal Boot House Vrs. State of Jammu and Kashmir reported in (1984) 56 STC-212 (SC)**, **Indodan Industries Ltd. Vrs. State of U.P. reported in (2010) 27 VST 1 (SC)** and **Indian Commerce and Industries Co. (p) Ltd. Vrs. The Commercial Tax Officer reported in (2003) 129 STC 509 (Mad)**. In the case of **Royal Boot House Vrs. State of J.K.**, it is held as follows:

“ Whether the tax payable on the basis of a quarterly return is not paid before expiry of the last date for filing such return under the Jammu and Kashmir General Sales Tax Act, 1962, it is not necessary to issue any notice on demand, but on the default being committed, the dealer becomes liable to pay interest under Section 8(2) of the Act on the amount of such tax from the last date for filing the quarterly return prescribed under the Act.”

Likewise, in the case of **Indodan Industries Ltd. Vrs. State of U.P.**, it is held that

“ the interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the department has lost the revenue during interregnum period and that the assessee enjoys that amount during the said period and in order to recover the lost revenue, the levy of interest is contemplated. On the other hand, Rule 8 of CST (O) Rules provides for levy of interest if a registered dealer fails without sufficient cause to pay the amount of tax due as per the return furnished by it.

So, when the dealer has failed to support its claim of concessional tax, imposition of interest is automatic. This is by operation of law and not by decision of any authority.

If reliance is placed upon the case of **Indian Commerce and Industries Co. (P) Ltd. Vrs. The Commercial Tax Officer (supra)** , the Hon’ble Madras High Court have held as under”

“ Liability to pay interest under Section 24(3) is automatic and arises by operation of law from the date on which tax was required to be paid. The petitioner opted to pay tax by self assessment and filed return including the taxable turnover in respect of the works contract. The assessee paid tax on works contract turnover up to August and though filed return disclosing turnover of works contract after September failed to pay tax thereon. The petitioner assessee is bound to

pay tax and in default have to pay interest. The department is entitled to recover interest under Section 24(3)...”

11. In view of the above analysis and placing reliance to the verdicts of the Hon’ble Courts relied upon by the revenue, we are of the unanimous view to interfere with the impugned order to the extent indicated herein above.

12. In the result, the appeal preferred by the State is allowed. The case is remanded to the learned assessing authority with a direction to levy interest on the tax due as per law and raise fresh demand for the period under assessment. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

Sd/-

(Shri S.K.Rout)
Judicial Member-II

I agree,

Sd/-

(Shri S.K.Rout)
Judicial Member-II

Sd/-

(Shri G.C.Behera)
Chairman

I agree,

Sd/-

(Shri B.Bhoi)
Accounts Member-II