

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

**P r e s e n t: Shri S.K. Rout,
 2nd Judicial Member**

S.A. No. 91(C) of 2019

(Arising out of the order of the learned Addl. Commissioner of
Sales Tax, Koraput Range, Jeypore,
in 1st. Appeal No. AAC(NGP)03/19-20,
disposed of on dtd.23.10.2019)

M/s. Sangeeta Enterprises,
At/P.O.- Dhodra, Umerkote,
Dist.- Nabarangpur.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. Biswajit Mishra, Advocate
For the Respondent ... Mr. N.K. Rout, A.S.C.

Date of hearing: 25.08.2023 *** Date of order: 22.09.2023

ORDER

The dealer prefers this appeal challenging the order dtd.25.09.2019 passed by the learned Addl. Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter referred to as, ACST/first appellate authority) in 1st. Appeal No. AAC(NGP)03/19-20, thereby enhancing the tax liability to ₹1,03,714.00 against the order of assessment passed by the learned Asst. Commissioner of Sales Tax, Nabarangpur Circle, Nabarangpur (hereinafter referred to as, learned assessing

authority) u/r.12(1) of the Central Sale Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the period from 01.10.2015 to 30.06.2017 raising demand of ₹88,883.00 including penalty of ₹41,903.00.

2. The brief fact of the case is that, the dealer in the instant case carries on business in seasonal goods like Maize etc. It procures Maize from local cultivators and sells it within as well as outside the State of Odisha. For the period from 01.10.2015 to 30.06.2017 it had filed returns under the CST Act disclosing total sale turnover of ₹4,26,77,943.00. On scrutiny of returns, the assessing authority found that the dealer has availed concessional rate of tax on sale of goods on the strength of declaration form 'C', but no such declaration has been submitted at the office as required u/r.7-A of the CST(O) Rules. So, the assessing authority initiated assessment proceeding u/r.12(1) of the said Rules. At the time of examination of books of account it was found that although the dealer has filed returns disclosing the turnover of ₹4,26,77,943.00, but as per way bills utilization he has dispatched goods worth of ₹5,23,14,364.00 which is excess of ₹96,36,421.00. On detail examination it was found that, there has been escapement of turnover of ₹2,91,066.00 on account of way bill transactions. Further, it was also found that the dealer has furnished 'C' forms in excess of ₹5,46,989.00 for the period quarter ending 6/2017 which has not been disclosed in the return. So, the assessing authority added such figure of ₹2,91,066.00 and ₹5,46,989.00 into returned figures and determined the GTO at ₹4,35,15,998.00. After allowing deduction of ₹8,36,822.00 towards CST collection,

TTO was determined at ₹4,26,79,176.00. He levied tax @ 2% on ₹4,16,72,007.00 (against 'C' forms) and @ 5% on ₹10,07,169.00. Tax payable has been thus arrived at ₹8,83,798.00. Against this the assessing authority has adjusted tax payment of ₹8,36,818.00 and balance tax payable has been calculated at ₹46,980.00. This apart, he also levied penalty of ₹41,903.00 and passed the assessment order raising total demand of ₹88,883.00.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who enhanced the tax demand as mentioned above.

4. Further, being dissatisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

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

6. During the course of argument, learned counsel for the dealer-appellant argued stating that the assessment order as well as the appeal order is illegal, arbitrary and the order has been passed without affording reasonable opportunity of being heard. The enhancement made in the turnover is illegal as the learned assessing authority has not examined the books of account in true sense. The disallowance of one 'C' form for ₹14,95,974.00 as the same was not shown in TINXSYS is whimsical. The penalty has been imposed u/r.12(1) of the CST(O) Rules on the tax on presumptive enhanced the amount is illegal and unjust.

7. Per contra, learned Addl. Standing Counsel for the Revenue argued stating that TINXSYS is a system to facilitate effective tracking of interstate transactions. The system is designed to facilitate Commercial Tax Departments of various States and Union Territories to exchange the data regarding the interstate trade and help them in checking evasion of tax. So, the learned assessing authority has rightly disallowed 'C' forms which were not shown in the TINXYSES. The learned assessing authority enhanced the turnover on escapement of turnover on account of way bill utilization amounting to ₹2,91,066.00 and submission of 'c' forms in excess of ₹5,46,989.00 for the period quarter ending 06/2017 which has not been disclosed by the dealer. So, the learned assessing authority has rightly enhanced the turnover basing on the factual position as per the books of account. The learned assessing authority imposed penalty u/r.12(1) of the CST(O) Rules on the tax payable for non-disclosure of turnover of ₹8,38,055.00. The dealer did not turn up for further hearing after partly examination of books of account by the learned first appellate authority which was fixed on 29.08.2019. However, the dealer was given sufficient reasonable opportunity to submit the balance declaration forms.

8. Heard the contentions and submissions of both the parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal, cross objection and the order of the fora below. After have a glance to the Rule 7-A(1) of the CST(O) Rules, it becomes clear that every registered dealer filing return u/r.7 shall in respect of transactions in

each quarter furnish to the assessing officer statements in Form A, B, C, D, E and F showing particulars of transactions u/s.3, 5, 6, 6A and 8 of the Act as the case may be, along with the declaration forms and certificates in support of such transactions, within three months after the end of such quarter. So, the dealer is supposed to furnish the required declaration forms within the prescribed time framed u/r.7A(1) of the said Rules, but he did not do so, even after availing sufficient time till passing of the order. This apart, it becomes clear that learned assessing authority has passed the assessment order on dtd.29.03.2018 u/r.12(1) of the CST(O) Rules after lapse of a long period from the due date. So, it cannot be said that the assessing authority has not given adequate opportunity to submit the balance 'C' form. This apart, during the time of hearing of the first appeal the dealer also could not be able to furnish the 'C' forms. This apart, one 'C' form bearing No.19011610334197 for ₹1,05,84,913.00 was submitted by the dealer which had already been furnished at the assessment stage and that was considered. This apart, against turnover of ₹10,07,169.00 the dealer had furnished 'C' form for ₹1,05,84,913.00 but the same had already been considered at assessment stage. With regard to imposition of penalty, learned assessing authority found to have imposed penalty on the tax payable for non-disclosure turnover of ₹8,38,055.00. The law says that no penalty can be imposed for non-furnishing of declaration forms, but the dealer is liable to pay penalty on the turnover other than against declaration forms. So, the learned assessing authority has rightly imposed penalty of ₹41,903.00 on account of non-disclosed turnover.

The dealer is also liable to pay interest for balance amount. Section 9(2B) provides for payment of interest for any delay in payment of tax. So, irrespective of circumstances that led to delay in payment of tax, interest is payable at the rate prescribed in the statute. In this case the dealer has availed concessional rate of tax in the returns on the condition that he will produce relevant declaration forms later. But as no required declaration forms could be furnished at the assessment or at appeal stage, the dealer will have to pay interest as required under the State Sales Tax Law. OVAT Act in Sec.34(1) provides interest at one per centum per month from the due date of return till the date of order of assessment. So, in view of such interest was calculated at ₹14,831.00 which the dealer shall pay along with balance tax and penalty. Learned first appellate authority has rightly adjudicated upon the matter in consonance with the provisions of law and as such the same needs no interference.

9. In the result, the appeal preferred by the dealer is dismissed and the order of the learned first appellate authority is hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

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