

**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. 92(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)04/19-20,
disposed of on dtd.23.10.2019)

M/s. Anubhav Traders,
At:- Burja, P.O.- 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)04/19-20, thereby enhancing the tax demand to ₹4,13,378.00 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 ₹3,55,374.00 including penalty of ₹33,131.00.

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 ₹13,48,22,304.00 i.e. sale against 'C' forms. 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. In apprehension that the dealer has illegally availed concessional rate of tax without any declaration form, the assessing authority initiated assessment proceeding u/r.12(1) of the said Rules. During the time of examination of books of account it was found that although the dealer has filed returns disclosing the turnover of ₹13,48,22,304.00, but as per way bills utilization he has dispatched goods amounting to ₹13,97,60,072.00 which was in excess of ₹49,75,883.00. So, on detail examination the assessing authority found that, there has been actual escapement of turnover of ₹6,62,629.00 on account of way bill transactions. This apart, it was also found that against 'C' form sale of ₹13,48,22,304.00 the dealer has furnished 33 nos. of 'C' forms of ₹13,09,80,063.00 for the period under challenge out of which 3 'C' forms for ₹67,64,414.00 found fake as the same were not shown in the search of TINXSYS. So, the assessing authority disallowed such 'C' forms leaving valid

and genuine 'C' forms for ₹12,42,15,649.00. Thereafter, the escape turnover of ₹6,62,629.00 was added into the returned turnover of ₹13,48,22,304.00. The GTO has been determined at ₹13,54,84,933.00. After allowing deduction of ₹26,43,575.00 towards CST collection, the assessing authority determined the TTO at ₹13,28,41,358.00. Tax was levied @ 2% on ₹12,17,80,048.00 (against 'C' forms) and @ 5% on ₹1,10,61,310.00. Tax payable has been thus arrived at ₹29,88,666.00. Against this, the assessing authority adjusted tax payment of ₹26,66,423.00 and balance tax payable has been calculated at ₹3,22,243.00. This apart, the assessing authority also levied penalty of ₹33,131.00 (on the 5% tax of non-disclosed turnover of ₹6,62,629.00) and passed the assessment order raising total demand of ₹3,55,374.00.

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 vehemently argued stating that the assessment order as well as the appeal order is illegal and arbitrary. The enhancement made in the turnover is illegal. The disallowance of 3 nos. of 'C' forms for ₹67,64,414.00 is

whimsical. The penalty imposed u/r.12(1) of the CST(O) Rules on the tax on presumptive enhanced the amount is illegal.

7. Per contra, learned Addl. Standing Counsel for the Revenue argued stating that Hon'ble Odisha Sales Tax Tribunal vide order dtd.23.05.2018 in S.A. No.4(C) of 2017-18 in the case of Gupta Trading Co. v. The State of Odisha has observed that payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form. So, the learned first appellate authority has rightly levied interest on the differential amount of tax assessed for non-submission of statutory forms. The learned assessing authority has rightly imposed penalty of ₹6,62,629.00 other than against declaration forms which is as per the provisions of law. The 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.

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 the dealer did not do so, even after availing sufficient time till passing of the order. The learned assessing authority passed the assessment order on dtd.29.03.2018 u/r.12(1) of the CST(O) Rules and thereafter on 04.02.2019 u/s.81 of the OVAT Act r/w. Rule 22 of the CST(O) Rules for the period 10/2015 to 6/2017 after lapse of long period from the due date. So, it cannot be said that the assessing authority had not given adequate opportunity to the dealer to submit the balance 'C' form. This apart, during the appeal stage also the dealer could not be able to furnish the balance declaration forms and also failed to produce the books of account. In view of such, the learned first appellate authority confirmed the tax due as calculated by the assessing authority at ₹3,22,243.00. With regard to imposition of penalty, learned assessing authority found to have imposed penalty on the tax payable for non-disclosure of turnover of ₹6,62,629.00. But 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 ₹33,131.00 on account of non-disclosed turnover. This apart, the dealer is liable to pay interest for balance tax amount which the learned assessing authority has not levied. The Hon'ble Kerala High Court in the case of Terumo Penpol Ltd. V. State of Kerala reported in

[2011] 43 STC page 147 considering the case where no declaration form could be furnish by the dealer as observed that the payment of tax at concessional rate @ 4% along with monthly returns is on the specific premise that the dealer will produce 'C' forms later or will pay differential tax with interest. Section 9(2B) of the CST Act provides for payment of interest for any delay in payment of tax. In this case the dealer has availed concessional rate of tax and exemption of tax in the returns on the condition that he will produce relevant declaration form 'C' and form 'H' later. But no such declaration forms could be furnished at the assessment stage in support of transactions for which the dealer will pay interest as required under the State Sales Tax Law. This apart, 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 and as such it was calculated at ₹58,004.00 i.e. @ ₹3,222.43 for 18 months. As such the dealer shall pay balance tax, interest and penalty in toto amounting to ₹4,13,378.00 instead of ₹3,55,374.00. So, in view of above analysis, the learned first appellate authority has rightly adjudicated upon the matter inconsonance with the provisions of law which 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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