

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

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-II

S.A. No. 20(C) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax (Appeal), Sundargarh Range, Rourkela,
in First Appeal Case No. AA 41 (RL-II-C) of 2016-2017,
disposed of on dated 28.02.2017)

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

-Versus-

M/s. Royal Weavers Pvt. Ltd.,
B-15, Industrial Estate, Rourkela,
Dist.- Sudargarh. ... Respondent

S.A. No. 13(C) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax (Appeal), Sundargarh Range, Rourkela,
in First Appeal Case No. AA 41 (RL-II-C) of 2016-2017,
disposed of on dated 28.02.2017)

M/s. Royal Weavers Pvt. Ltd.,
B-15, Industrial Estate, Rourkela,
Dist.- Sudargarh. ... Appellant

-Versus-

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

For the State : Mr. S.K. Pradhan, A.S.C.
For the Respondent : Mr. S.K. Mishra, Advocate

Date of hearing: 13.07.2023 *** Date of order:05.08.2023

ORDER

Both these appeals are disposed of by this composite order as the same involve common question of fact and law in between the same parties and for the same assessment period.

S.A. No.20(C) of 2017-18 is preferred by the State, whereas S.A. No.13(C) of 2017-18 is preferred by the dealer. By preferring these appeals, both have challenged the order dtd.28.02.2017 passed by the learned Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter referred to as, JCST/first appellate authority) in First Appeal Case No. AA 41 (RL-II-C) of 2016-2017, thereby reducing the demand to ₹2,00,787.00 against the order of provisional assessment passed by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, STO/assessing authority) u/r.12(1) of the Central Sales Tax (Orissa) Rules, 1957, in short CST(O) Rules for the tax period 01.04.2010 to 31.03.2011 raising demand of ₹11,97,338.00.

2. The case at hand is that, the dealer-assessee in the instant case carries on business in manufacturing of paper board, polypropelene woven sacks etc. It also deals in trading of polymers of vinyl chloride or of other halogenated olefins in primary forms and effects sale of the same in course of intrastate and interstate trade and

commerce. On scrutiny of returns, the learned assessing authority found that the dealer-assessee has failed to submit declaration in form 'C' and form 'F' in support of its claim of concessional sale and despatch of goods otherwise than by way of sale. So, statutory notice was issued to the dealer-assessee for production of books of account and declaration forms. But the dealer-assessee failed to produce such declaration form 'C' for ₹95,23,573.00. So, the said turnover of ₹95,23,573.00 was taxed at the appropriate rate of 4%. The 'C' forms furnished for a transaction of ₹1,19,84,762.00 has been taxed at the concessional rate. This apart the dealer-assessee had also dispatched goods worth ₹4,56,18,514.00 otherwise than by way of sale against declaration in form 'F'. But the dealer-assessee could be able to furnish declaration form 'F' covering transaction of ₹2,07,04,748.00 which the learned assessing authority allowed as exemption to the dealer-assessee. With regard to the balance turnover of ₹2,49,13,766.00 for which the dealer-assessee failed to produce declaration form 'F', was taxed at the appropriate rate. In this way learned assessing authority calculated the total tax payable at ₹16,17,189.00 against which the dealer-assessee was allowed adjustment against VAT ITC of ₹4,19,851.00. So, the balance tax was computed at ₹11,97,338.00 against the dealer-assessee.

3. Against such tax demand, the dealer preferred first appeal before the learned Joint Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela/first appellate authority who reduced the tax demand to ₹2,00,787.00.

4. Further being dissatisfied with the order of the learned first appellate authority, both the dealer and the State have preferred these second appeals as per the grounds stated in their grounds of appeal.

5. No cross objection is filed by the State-respondent in dealer's appeal, whereas the dealer-assessee being the respondent in State appeal has filed cross objection.

6. During course of argument, learned Addl. Standing Counsel for the Revenue vehemently contended stating that the first appellate authority has deleted the penalty and further considering the circular of the CCT(O), if at all the penalty is not leviable but imposition of interest is also mandatory in nature as per Rule 8(1) & (2) of the CST(O) Rules, 1957. The learned first appellate authority has failed to impose the same while deleting the penalty without citing any reason thereof.

Per contra, learned Counsel for the dealer-assessee argued that the learned forum below committed error in law and facts in not allowing reasonable opportunity of time to the dealer-assessee to furnish statutory declaration form 'C' and 'F' before the assessing authority.

7. From the rival contentions of the parties it becomes evident that the point of dispute is with regard to deletion of penalty and non-levy of interest. Now the question comes whether in the instant case penalty and non-levy of interest is justified or not ? Perused the orders of fora below and the materials available on record. With regard to deletion of penalty by the first appellate authority pursuant to circular dtd.20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha, Cuttack is genuine as penalty will not attract under clause (2) 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 become clear from the case record that neither the audit team nor the learned assessing authority detected any suppression of sales in course of verification of the books of account. So, deletion of penalty by the learned first appellate authority is quite genuine.

2. With regard to the contention raised by the appellant-Revenue relating to levy of interest upon the dealer-assessee 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 or some good reason 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 & Turnover) Rule, 1957 which is relevant in this regard is extracted below:-

“the declaration in form ‘C’ or form ‘F’ or the certificate in form E1 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 above. 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 sec.215 of the Income Tax Act and Rule 40 of the Income Tax Rules and Sec.139 of the Income Tax and Rule 117A 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 a 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.

8. 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.

9. With regard to imposition of interest as emphasized by the learned Addl. Standing Counsel for the Revenue that the dealer is liable to pay interest as required declaration in Form 'F' has not filed by the dealer within the statutory period. So, now question comes whether in such a case the dealer is liable to pay interest. In the case of **Royal Boot House Vrs. State of Jammu and Kashmir** reported in **(1984) 56 STC-212 (SC)**, 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”.

10. So, when the dealer has failed to support its claim of concessional tax in spite of affording ample opportunity, 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. The case record reveals that after long lapse of time also, the dealer could not be able to furnish the declaration form ‘C’ & ‘F’ before the first appellate authority nor before this Tribunal. If the same could have been furnished before those forums, matter would have been otherwise.

12. In view of the above analysis and placing reliance to the verdicts of the Hon’ble Courts, we are of the unanimous view to interfere with the impugned order to the extent indicated hereinabove.

13. In the result, the appeal preferred by the State is allowed in part, whereas the appeal preferred by the dealer is dismissed. 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 of the dealer is disposed of.

Dictated & corrected by me

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II