

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A. No. 12(C) of 2017-18

(Arising out of the order of the learned JCST,
(Appeal), Bhubaneswar Range, Bhubaneswar in
First Appeal Case No. AA
107221622000075/CST/BH-I disposed of on
27.02.2017)

**Present: Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-I**

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

..... Appellant.

-Vrs. -

M/s. Lalani Infotech Limited,
2-AB, Geetanjali Palace, Bomikhal,
Bhubaneswar, TIN-21901111657.

..... Respondent.

For the Appellant : : Mr. S.K. Pradhan, Addl. S.C. (C.T.)

For the Respondent : : Mr. P.K. Sahu, Advocate

Date of Hearing : 29.11.2023 * Date of Order: 28.12.2023**

O R D E R

The State is in appeal against the order dated
27.02.2017 of the Joint Commissioner of Sales Tax (Appeal),
Bhubaneswar Range, Bhubaneswar (in short, 'ld. FAA') passed
in First Appeal Case No. AA-107221622000075/CST/BH-I
deleting the penalty imposed in the order of assessment passed
under Rule 12(3) of the CST (O) Rules by the Sales Tax Officer,

Bhubaneswar-I Circle, Bhubaneswar (in short, 'ld. assessing authority') and non-levy of interest by the forums below as per Rule 8(1) of the CST(O) Rules.

2. The facts in nutshell are that M/s. Lalani Infotech Limited, Plot No.2-AB, Geetanjali Palace, Bomikhal, Bhubaneswar is engaged in trading of Computer and its spare parts, Copier etc. on retail-cum-whole sale basis. It effects sale of the same in course of intra-state and interstate trade or commerce. The ld. Assessing Authority assessed the dealer-Company under Rule 12(3) of the CST(O) Rules basing on the Audit Visit Report (AVR). In course of assessment, the dealer-assessee is found to have transacted interstate sales to the tune of ₹28,35,831.00 out of which, an amount of ₹24,25,165.00 has been claimed as sales against declaration in Form 'C'. But, the dealer-assessee could furnish declaration in Form 'C' for an amount of ₹13,94,750.00 in assessment. Thus, the balance amount of ₹10,30,415.00 was sought to be taxed at the appropriate rate of tax. Further, as against the claim of branch transfer for ₹1,312,12,076.00 against declaration in Form 'F', the dealer could furnish valid declaration in Form 'F' for an amount of ₹1,17,80,888.00 leaving thus a balance of ₹13,31,188.00 for tax at the appropriate rate of tax. The ld. assessing authority assessed the dealer-company to tax of

₹1,12,366.94 and levied penalty under Rule 12(3)(g) of the CST(O) Rules for ₹2,24,733.88. The tax and penalty put together calculated to ₹3,37,101.00 was made liable to pay by the dealer company in assessment. Aggrieved, the dealer-company filed first appeal. The first appeal resulted in deletion of the penalty levied in assessment and thus, the demand reduced to ₹1,12,367.00.

3. The State being not contended with the order of the Id. FAA preferred second appeal before this forum disputing deletion of penalty by the Id. FAA and non-levy of interest by both the forums below.

4. The dealer-assessee has not filed cross objection. But, Mr. P.K. Sahu, Id. Counsel appearing on behalf of the dealer-assessee has filed a written note on 29.11.2023 holding that deletion of penalty by the Id. FAA is legal and based on the circular of the Commissioner of Commercial Taxes, Odisha, Cuttack vide Circular No.43/CT dated 20.04.2015.

5. Gone through the rival submissions. The orders of the forums below coupled with the materials available on records are gone through. The dispute hinges on deletion of penalty of ₹2,24,733.88 by the Id.FAA and non-levy of interest. As to deletion of penalty in consequence of non submission of declaration in Form 'C' and Form 'F', the decision of this forum

passed in **S.A. No.40(C) of 2015-16 dated 17.01.2023** is relevant. It is observed therein that “imposition of penalty for non-submission of ‘C’ Forms is not appropriate on the ground that without suppression of purchase and sale or both and erroneous claim of exemption of deduction, such levy of penalty is not at all warranted”. This decision of this forum finds support in the judgment of the Hon’ble High Court of Himachal Pradesh in case of **Gujurat Ambuja Cement Ltd. and Another Vrs. Assessing Authority cum Assistant Excise and Taxation Commissioner and Others reported in (2000) 118-STC-315**. In view of the settled principles of law, imposition of penalty in the instant case due to non submission of declaration in form ‘C’ and ‘F’ by the dealer-company is not sustainable in the eyes of law. Accordingly, the contention taken by the State on this score deserves no interference.

7. As regards levy of interest under Rule 8(1) of the CST(O) Rules, the decision of the Hon’ble Apex Court rendered in case of **Indodan Industries Limited Vs. State of U.P. reported in (2010) 27 VST 1(SC)** is relied upon wherein the Hon’ble Court observes as under:-

“The levy of interest for delayed payment of tax is given the status of ‘tax due’. 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 the interregnum period (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that the interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated under the statute.”

8. A decision of the Hon'ble High Court of Kerala reported in (2008) 16 VST 294 in case of **Chandramani Traders Vs. State of Kerala** is sought to rely on wherein it is observed that 'if the assessee fails to produce the declaration Forms for part of the turnover declared in the returns filed, the assessing authority while quantifying the tax liability is required to levy higher rate of tax as provided in the schedule besides levying interest on the ground that the assessee has failed to remit tax due under the Act in the manner prescribed under the Act.' Under this principle of law, the dealer-company is liable to pay interest on the extra demand emanated on account of non submission of declaration Forms. In view of this, the contention taken by the State on this score solicits interference.

9. It is hereby ordered as under:-

The appeal filed by the State is allowed in part. The order of the ld. FAA is set aside with a direction to the ld. assessing authority to re-compute the tax liability of the dealer-

company in the light of the observations stated supra after affording reasonable opportunity of being heard to the dealer-assessee within a period of three months from the date receipt of this order.

Dictated & corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

Sd/-
(Bibekananda Bhoi)
Accounts Member-I

I agree,

I agree,

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