



Panposh (hereinafter referred to as, DCST/assessing authority) u/r.12(3) of the Central Sale Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) for the period 01.07.2006 to 31.03.2011 raising demand of ₹42,28,599.00 including tax of ₹13,50,990.00, penalty of ₹27,01,980.00 and interest of ₹1,75,629.00.

2. The case at hand is that, the dealer-appellant in the instant case carries on business in manufacture and trading of resin catalyst and sponge iron. The business of the dealer-appellant was audited by a team of audit officials and found that the appellant failed to furnish declaration form 'C' in respect of its interstate sales and 'H' form for sale in course of export. So, the learned assessing authority initiated assessment proceeding under Rule 12(3) of the CST(O) Rules and raised the demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned first appellate authority who allowed the appeal in part and reduced the 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. Heard the contentions and submissions of both parties in this regard. Perused the materials available on record vis-à-vis the grounds of appeal, cross objection and the orders of the fora below. After have a glance to the case record

it reveals that the dealer-appellant had failed to furnish declaration in form 'C' for ₹3,24,30,471.00 and declaration in form 'H' for ₹28,26,849.00 for the period under challenge. This apart, the record reveals that the learned assessing authority demanded the differential tax of ₹10,06,854.00 due to non-submission of declaration in form 'C' and tax of ₹1,13,074.00 due to non-submission of declaration in form 'H' which in toto calculated to ₹11,19,928.00. Apart from non-submission of forms, learned assessing authority also found that the appellant had failed to pay the admitted tax of ₹2,31,062.00 till the date of assessment. After have a glance to the order of the first appellate authority, it reveals that the appellant had collected CST amounting to ₹5,40,75,831.00 towards sale of goods in course of interstate trade and commerce but paid an amount of ₹1,71,67,724.00 by way of adjustment of ITC and ₹3,66,77,129.00 through offline and online payment. Thus, the dealer paid total payment of tax of ₹5,38,44,853.00 only causing less payment of admitted tax of ₹2,31,062.00. During such process, the learned assessing authority raised a total tax demand of rs.13,50,990.00 excluding interest and penalty. This apart, learned assessing authority imposed penalty of ₹27,01,980.00 which is twice the amount of tax demanded u/r.12(3)(g) of the CST(O) Rules. On this score it becomes clear that out of the total tax demand of ₹13,50,990.00, an amount of ₹11,19,928.00 relates to demand on account of non-submission of declaration in form 'C' and 'H'. In view of such, the demand raised shall not attract penalty in view of the Circular of the Commissioner of Sales Tax, Odisha, Cuttack vide No.42/CT dtd.20.04.2015 which has been issued

on the basis of judgment of this Tribunal passed in the case of M/s. Sri Lalbaba Roller Flour Mills, Nayabazar, Cuttack vrs. State of Odisha in S.A. No.87(C) of 2012-13 dtd.03.04.2014 and the order passed in the case of M/s. Gajalaxmi Iron Works, Industrial Estate, Kalunga, Rourkela vrs. State of Odisha in S.A. No.53 of 2011-12 dtd.18.12.2013. This apart, if reliance is placed on the judgment dtd.08.12.2022 passed by the Hon'ble High Court of Orissa in case of **M/s. General Traders, Berhampur vrs. State of Odisha**, it becomes clear that Hon'ble High Court was pleased to delete the penalty for non-submission of statutory forms against bonafide transactions.

7. This apart, with regard to imposition of penalty on the balance amount of tax of ₹2,31,062.00 so demanded, let me have a glance to the condition precedent for imposition of penalty under clause (g) of Rule 12(3) as provided in clause (a) of the said Rule are as follows:-

- (i) Suppression of purchases or sales or both
- (ii) Erroneous claim of exemption or deductions
- (iii) Evasion of tax
- (iv) Contravention of any provision of the Act affecting the tax liability of the dealer.

So, when the balance demand in question relates to non-payment of admitted tax, now the question comes whether the non-payment of admitted tax constitute an offence within the ambit of the language of Rule 12(3)(g). On this score, since the dealer-appellant has disclosed the turnover and the tax liability in his periodical returns, the same constitutes neither suppression nor evasion affecting the tax liability of the

dealer-appellant. So, the amount of admitted tax not paid by the appellant in its regular course of filing periodical returns, does not attract Rule 12(3)(g) of the CST(O) Rules. So, the admitted tax not so paid even if assessed as the tax additionally due in an assessment proceeding u/r.12(3) of the CST(O) Rules, shall not attract penalty. In view of such, the penalty imposed by the learned assessing authority amounting to ₹27,01,980.00 on the total tax demand of ₹13,50,990.00 is rightly deleted by the learned first appellate authority.

8. Next question for adjudication is the contention of the dealer-appellant with regard to levy of interest for non-submission of 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 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 E-I 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.

9. On this score if reliance is placed in the case of **Royal Boot House v. The State of Jammu & Kashmir** reported in **(1984) 56 STC 2012 (SC)**, it becomes clear that-

*“ 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.** reported in **(2010) 27 VST 1 (SC)**, 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, imposition of interest is automatic. This is by operation of law and not by decision of any authority. In view of such, learned first appellate authority has rightly adjudicated upon stating that the interest amounting to

₹1,75,629.00 as determined by the learned assessing authority is justified.

11. With regard to the contention of the dealer-appellant for reversal of ITC, it is clear that the dealer has not effected any reversal of ITC on account of CST sale as is obtained from the appellate order dtd.30.01.2014 passed under the OVAT Act by the learned Addl. Commissioner of Sales Tax, Central Zone in Appeal No.AA-SNG-108/13-14. At this juncture, it should be made clear that when there is no reversal of ITC u/s.20(3) proviso (d), question of refund does not arise.

12. In view of the above analysis, to my view, learned first appellate authority has rightly adjudicated upon all the issues in consonance with the provisions of law for which the same needs no interference.

13. 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)  
2<sup>nd</sup> Judicial Member

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