

**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. 31(C) of 2019

(Arising out of the order of the learned Joint Commissioner of
CT & GST (Appeal), Sundargarh Territorial Range, Rourkela,
in First Appeal Case No. AA 53 (RL-II-C) of 2016-17,
disposed of on dtd.01.12.2018)

M/s. Grihasti Udyog,
Chhend Bati, Rourkela,
Dist.- Sundargarh.

... Appellant

- V e r s u s -

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

... Respondent

For the Appellant ... Mr. B.N. Agarwal, Advocate
For the Respondent ... Mr. S.K. Pradhan, A.S.C.

Date of hearing: 17.05.2023 *** Date of order: 12.06.2023

ORDER

The dealer prefers this appeal challenging the order dtd.01.12.2018 passed by the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela (hereinafter referred to as, JCST/first appellate authority) in First Appeal Case No. First Appeal Case No. AA 53 (RL-II-C) of 2016-17, thereby reducing the demand to ₹5,85,499.00 against the provisional order of assessment passed by the learned Sales Tax Officer, Rourkela II Circle, Panposh

(hereinafter referred to as, learned STO/assessing authority) u/r.12(1) of the Central Sale Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules) relating to the tax period 01.04.2011 to 31.03.2012 raising demand of ₹7,54,773.00 including tax of ₹4,83,829.00 and interest of ₹2,70,944.00.

2. The case at hand is that, the dealer-appellant in the instant case is engaged in manufacturing of different types of spices and vermicelli. Apart from this, it undertakes grinding of Atta, Besan, Wheat Dalia, Chana Satu for sale and resale of different types of spices and black salt. The appellant effects sales in course of interstate trade and commerce and dispatches goods to outside the state for sale on commission basis.

3. During course of assessment, learned assessing authority scrutinized the return and found that the appellant had effected sale of ₹2,13,38,627.00 against declarations in form 'C' at the concessional rate in course of interstate trade and commerce, ₹2,51,72,401.00 towards branch transfer and ₹41,58,044.00 towards consignment sale against form 'F'. In order to examine the genuineness of the books of account of the appellant, learned assessing authority issued statutory notice to furnish the declaration forms. During assessment stage, the appellant furnished the requisite declaration in form 'C' valued at ₹76,51,827.00, form 'F' towards branch transfer for ₹2,06,67,306.00 and allowed the sale of goods at the concessional rate of 2% and branch transfer against form 'F'. The balance turnover of ₹1,55,28,197.00, for which the appellant failed to produce 'C' declaration form for

₹68,65,058.00 and form 'F' for ₹86,63,139.00 despite availing sufficient time and opportunities. So, the learned assessing authority taxed at the appropriate rate and raised demand of ₹7,54,773.00.

4. Against such tax demand, the dealer preferred first appeal before the learned Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela/first appellate authority who reduced the demand to ₹5,85,499.00.

5. 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.

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

7. During course of argument, learned Counsel for the dealer vehemently contended stating that that there is no provision in CST(O) Rules for charge of interest on the differential tax assessed for non-submission of statutory declaration forms 'C' or 'F'. To support the claim, the appellant has relied upon the order of Full Bench of this Tribunal vide order dtd.06.12.2017 passed in **S.A. No.71(C) of 2012-13** in the case of **Bengal Energy Ltd. vs. State of Odisha** and the order of the Division Bench of this Tribunal vide order dtd.21.12.2017 passed in **S.A. No.110(C) of 2015-16** in the case of **Meena Zarda Udyog (P) Ltd. vs. State of Odisha**.

Per contra, learned Standing Counsel for the Revenue argued stating that, the learned first appellate authority has rightly taxed the dealer-appellant on non-submission of statutory forms and imposed interest u/r.8(1) of

the CST(O) Rules because the dealer-appellant failed to discharge his statutory liability u/r.7A r/w. u/r.12(7) of the CST(O) Rules. To support such claim learned Standing Counsel relied upon the order of this Tribunal passed on dtd.23.05.2018 in **S.A. No.4(C) of 2017-18** in the case of **Gupta Trading Co. vs. The State of Odisha**, wherein it was observed that payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form. Learned Standing Counsel also relied upon the decision of the Hon'ble Apex Court decided in the case of **Royal Boot House vs. the State of Jammu & Kashmir** reported in **(1984) 56 STC 2012 (SC)**, wherein it is held that where the tax payable on the basis of quarterly return is not paid before the expiry of the last date of filing such return, it is not necessary to issue any notice on demand but on the default being committed, the dealer becomes liable to pay tax u/s.8(2) of the Act on the amount of such tax from the last date for filing quarterly return prescribed under the Act. This apart, learned Standing Counsel also relied upon the decision decided in the case of **CCT vs. Control Switch Gear Co. Ltd. (2011) 10 VST 18 (ALL)**, wherein it is observed that "Even though declaration form for claiming exemption/concession may be required to be filed during the course of assessment proceeding but in case of non-furnishing thereof, tax has to be levied at normal rate which would become the admitted tax and interest u/s.8(1) of the UP Act would be leviable from the due date of return in which turnover was disclosed and exemption/concession has been claimed. There is no scope for consideration of legitimate expectation or hope or bona-fide

plea u/r.8(1) of the Act. So in view of above settled principle of law, the action of learned appellate authority in levying interest on the amount of tax payable, in addition to tax, is justified.”

8. Heard the contentions and submissions of both the parties in this regard. Perused the orders of fora below and the materials available on record. The sole dispute in the instant case is, whether interest should be levied on the dealer-assessee due to failure of submission of declaration forms at the time of assessment. With regard to the contention for levy of interest upon the dealer for non-filing or delay filing of 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 for some good reasons, 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 and Turnover) Rule, 1957 which is relevant in this regard as extracted below:

“The declaration in Form-‘C’ or Form-‘F’ or the certificate in Form E-1 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 behalf. In the case of **Bengal Energy Ltd. Vrs. State of Odisha** in **S.A.No.71(C) of 2013-14**, the Full Bench of this Tribunal has considered the non-submission of the required declaration in Form ‘C’ and has rejected the plea of the revenue for levy interest considering the fact that a dealer-assessee is at liberty to furnish the required declaration forms at any stage of the proceeding showing sufficient cause and further considering the fact that there is no specific provision in the Central Sales Tax Act for levy of interest in case of failure to furnish the same. 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 Section 215 of the Income Tax Act and Rule 40 of the Income Tax Rules and Section 139 of the Income Tax Act and Rule 117-A 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, while interest should not be levied and the interest can only be levied after considering the representation of the assessee. 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. With regard to imposition of interest as emphasized by the learned Standing Counsel for the Revenue that the dealer is liable to pay interest as required declaration in form 'C' has not been filed by the dealer within the statutory period. So, now question comes whether in such a case dealer is liable to pay interest. To support such claim, the learned Standing Counsel for revenue has relied upon the decisions decided in the cases of **Royal Boot House Vrs. State of Jammu and Kashmir** reported in **(1984) 56 STC-212 (SC)**, **Indodan Industries Ltd. Vrs. State of U.P.** reported in **(2010) 27 VST 1 (SC)** and **Indian Commerce and Industries Co. (P) Ltd. Vrs. The Commercial Tax Officer** reported in **(2003) 129 STC 509 (Mad)**.

9. In the case of **Royal Boot House Vrs. State of J.K.**, 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, imposition of interest is automatic. This is by operation of law and not by decision of any authority.

11. 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 upto 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)...”

12. In view of the above analysis and placing reliance to the verdict of the Hon'ble Courts relied upon by the Revenue, I am of the view that the claim of the dealer-appellant deserves no merited acceptance.

13. In the result, the appeal preferred by the dealer is dismissed. As a corollary the order passed by the learned

Joint Commissioner of CT & GST (Appeal), Sundargarh Territorial Range, Rourkela in First Appeal Case No. AA 53 (RL-II-C) of 2016-17 on dtd.01.12.2018 is hereby confirmed. Cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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