

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL: CUTTACK.**

S.A. No. 11(C) of 2021

(Arising out of the order of the learned JCCT,
Balasore Range, Balasore,
in First Appeal case No. AA-12/BAC/2017-18 (CST)
disposed of on 06.04.2018)

P r e s e n t :

**Sri. S.K.Rout
Judicial Member-II**

M/s. Neelam Robber,
Industrial Estate,
Ganeswarpur, Januganj,
Balasore.

... Appellant.

- V e r s u s -

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

... Respondent.

For the Appellant
For the Respondent

... Mr. S.R.Mishra, Advocate.
... Mr. D.Behura, SC(CT).

Date of hearing: **12.08.2022**

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Date of Order: **12.09.2022**

O R D E R

Challenge in this appeal is the order dated 06.04.2018 passed by the learned Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore in first appeal case No.AA.12/BAC/2017-18(CST) thereby confirming the re-assessment order dated 31.12.2016 passed by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, AA/STO) under Rule 12(3)(f) of the CST (O) Rules, 1957 for the period from 01.04.2007 to 31.12.2012 raising demand of Rs.2,23,223.00 which includes interest of Rs.87,920.00 levied under Rule 8(1) of the CST (O) Rules, 1957 for non-submission of declaration in Form 'C' in support of claim of concessional rate of tax claimed in returns.

2. The case at hand is that the dealer appellant is engaged in the business of processing of rubber scraps and china clay to produce rubber dust by using scrap rubber and china clay as raw materials. The dealer appellant also carries on trading business in china clay, rubber scraps and rubber dust. It (dealer appellant) purchases scrap tyres of car, jeep and from factories and process those to rubber scraps and finally to rubber dust for sale. Purchases are effected both from inside and outside the State. Inside purchases are effected from registered dealers on payment of VAT and also from unregistered dealers. The assessment order reveals that the dealer appellant has effected total purchases amounting to Rs.2,08,33,176.80 which includes raw materials amounting to Rs.1,22,25,069.80 and machineries amounting to Rs.86,08,107.00 from outside the State and Rs.10,85,24,154.00 from inside the state. The above inside purchases includes 4% taxable goods of Rs.5,59,12,787.00, 5% taxable goods of Rs.85,36,978.00 and purchases from unregistered dealers of Rs.4,40,78,389.00. The dealer appellant has effected total sales amounting to Rs.17,63,47,595.90 which includes outside sales amounting to Rs.13,00,46,947.60 and inside sales amounting to Rs.4,63,00,648.30. Outside sales includes sales to SEZ amounting to Rs.3,30,000.00, export amounting to Rs.1,43,581.00 and interstate sales amounting to Rs.12,95,73,366.00. Against interstate sales amounting to Rs.12,95,73,366.00, the dealer appellant submitted declaration in Form -C amounting to Rs.12,03,38,142.38. After verification of books of accounts, the learned assessing officer raised demand of Rs.6,01,023.00 including penalty under the CST Act earlier due to non-submission of declaration in Form 'C'.

3. Being aggrieved by the order passed earlier, the dealer preferred appeal before the learned JCST, (first appellate authority), Balasore Range, Balasore wherein the first appellate authority observed that the imposition of penalty on the facts and

circumstances of the case is unwarranted since no suppression of turnover has been established by the assessing officer for which the first appellate authority set aside the case and remanded back to the assessing officer to levy interest instead of penalty on the additional tax so assessed. Pursuant to such observation, the learned assessing officer completed the reassessment and raised the demand of Rs.2,23,223.00 which includes interest of Rs.87,920.00.

4. Being aggrieved with such reassessment order dated 31.12.2016, the dealer preferred first appeal before the learned JCST (Appeal), Balasore Range, Balasore, who confirmed the assessment order.

5. Being further dis-satisfied with the order of the learned first appellate authority, the dealer appellant has preferred the present second appeal.

6. Cross objection has been filed in this case by the state respondent.

7. Heard the contentions and submissions of both the parties in this regard. Learned counsel appearing for the dealer appellant contended that the order of assessment passed by the learned STO is erroneous and illegal and non sustainable in the eye of law. That the appellant has not control over the purchasing dealer to collect form for submission for which it (dealer) has already paid the tax at higher rate and charging interest on it is illegal. That the assessing authority has not gone into the veracity of the transaction although placed before it and the demand made is excessive and illegal. That the appellate authority has gone wrong in confirming the appeal and disallowance of adjustment of tax deposited under OVAT Act is not genuine.

8. Per contra, learned Standing Counsel Mr. D.Behura for revenue argued that the grounds taken by the dealer appellant is

without material fact because there is no dispute on transaction and the demand raised is due to non-submission of statutory 'C' form and interest there on is as per statute. Mr. Behura also submitted that the learned STO has rightly determined the tax liability by imposing interest under Section 8(1) of the CST Act for failure of the dealer appellant to comply the statutory provisions as stated under Rule 12(7) of CST (R & T) Rules and Rule-7(A) of the CST (O) Rules.

9. From the rival contentions of the parties, the issues emerged for adjudication are as follows:

- (i) Whether the claim of concessional rate of tax is justified even non-submission of declaration in Form-'C'?
- (ii) Whether submission of Form-'C' is optional?
- (iii) Whether deposit of Rs.4 lakhs under OVAT is liable to be justified against CST demand?
- (iv) Whether imposition of interest by the STO is genuine?

With regard to issue No.1 & 2, first have a glance to the language of Section 8(4) of the CST Act which provides for condition to be fulfilled for availing aforesaid concessional rate of tax. Said sub-section lays down that "The provisions of sub-section(1) shall not apply to any sale in the course of interstate trade or commerce unless, the dealer selling the goods furnishes to the prescribed authority at the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit"

Further more, Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957, prescribes that the declaration

referred to in sub-section (4) of Section 8 shall be in Form 'C'. Rule 12(7) *ibid*, further prescribes that the declaration in Form 'C' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration relates.

10. In the instant case, it is quite evident from the materials available on record that the appellant dealer though claimed concessional rate of tax but could not be able to furnish declaration form. The dealer appellant though claimed concessional rate of tax as per Section 8(1) of the CST Act did not furnish requisite declaration in Form C at the relevant point of time as required to do so under section 8(4) of the said Act in respect of certain transactions. So in view of such, submission of form 'C' is quite required, but that has not been furnished and as such the dealer is not entitled to claim concessional rate of tax. Accordingly, these issues are answered.

With regard to issue no.3, as per say of the dealer appellant, it has deposited an amount of Rs.4 lakhs under OVAT Act which he claims to be adjusted against CST demand. At this juncture, noteworthy to mention that "Ignorance of law is not an excuse". Why and what for the amount was not deposited against CST demand? If that is so, then it cannot be adjusted against CST demand as the VAT Act never provides for a scheme whereby an amount due by way of refund could be adjusted against dues of CST Act. The object of VAT Act could only be to impose, determine and recover VAT in accordance with that Act. There is no legislative intent shown to exist under that Act, to recover dues of CST Act. So, the first appellate authority has rightly observed it as unsustainable.

Now, the last issue to be decided is whether the imposition of interest by the STO is genuine? Learned Addl. Standing Counsel Mr. Behura has relied upon the decision decided in the case

of Royal Boot House Vrs. State of JK (1984) 56 STC 212 (SC) where in it has been observed as follows:

“Where the tax payable on the basis of a quarterly return is not paid before the 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. Moreover, in the case of State of Odisha Vrs. Kail Limited, S.A. No.75(C) of 2016-17, disposed of on 14.03.2018, this Hon’ble Tribunal (Single Bench) in identical situation as obtained in the present case, directed the assessing authority to impose interest in respect of tax assessed on account of non-submission of declaration form. Mr. Behura for the revenue also relied upon the order of this OSTT dated 23.05.2018 in S.A. No.4(C) for 2017-18 in case of Gupta Trading Co. Vrs. State of Odisha in which it is observed that payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form. This apart Mr. Behura has also relied upon the case decided in the case of CCT Vrs. 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 under Section 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. So in view of the above settled principle of law, the action of the learned assessing officer and the learned first appellate authority in levying tax and interest on the amount payable in addition to tax is justified.

On the other hand, the decision relied upon by the dealer appellant decided in the case of Gujarat Ambuja Cement Ltd.

Vrs. Assessing Authority (2000) 118 STC 315 (HP) and J.K. Synthetics Ltd. Vrs. CTO (1994) 94 STC 422 (SC) appear to be not befitting to the instant case in view of its peculiar facts and circumstances. So the above analysis makes it clear that the learned first appellate authority has rightly analysed all aspects in consonance with the provisions of law and as such the order needs no interference.

11. In the result, the appeal preferred by the dealer appellant is dismissed and the order of the first appellate authority passed on dated 06.04.2018 in first appeal case No.AA.12/BAC 2017-18 (CST) is hereby confirmed. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

Sd/-
(Shri S.K.Rout)
Judicial Member-II

Sd/-
(Shri S.K.Rout)
Judicial Member-II