

regular return claiming the supplied goods as tax free goods. The purchasing dealer M/s. OPEPA while making payment, deducted tax at source and in consequence thereof, the dealer had to file revised return and in the process of the revised return, the dealer had prayed and got return of the excess amount paid. On this backdrop, while accepting the revised return, the AA initiated proceeding u/s.11(3) of the OST Act for the Quarter ending 6/2001 to 3/2002 and year ending 2001-02 and there in consideration of the delay of 1515 days in filing the return, the AA imposed penalty of Rs.15,150/- on the dealer.

Being aggrieved, the dealer had carried the matter before the FAA, whereby the Id.ACST, Cuttack-II Range, Cuttack in the first appeal denied any relief to the dealer thereby, the penalty imposed by the AA remained as it was.

When the matters stood thus, the dealer preferred this second appeal challenging the sustainability of the order imposing penalty.

Contentions :

3. The dealer's contention is, it had filed return regularly. It had performed the contract job awarded by the OPEPA Authority and the OPEPA Authority had deducted tax from the bill amount and deposited the same in the name of the appellant. So in accordance to that deduction, the dealer had filed revised return. As such there was no delay in filing return. It is further contended that, the dealer had sufficient reason to file revised return in late since it was consequential to the tax deducted at source by the contractee.

4. The appeal is heard without cross objection from the side of the State. The substantial question to be decided in this appeal is, Whether the penalty u/s.11(3) of the OST Act is sustainable in the case in law as well as in fact ?

5. The provision u/s.11(3) as it envisages, whenever there is failure to file return by the prescribed date under Sub-section (1),

penalty shall be imposed. Sub section (1) of the Sec.11 speaks of regular return whereas Sub section (2) speaks of revised return, which gives an extended period of 3 months from the due date of regular return. It is argued that, unless the allegation of delay in filing the return comes under the ambit of Sub section (1) of Section 11, penalty under Sub section (3) cannot be asked for. In the case in hand, there is no such violation of Sub section (1). However, it is the revised return filed in late. Conversely, learned Addl. Standing Counsel argued that, Sub section (1) and Sub section (2) of Sec.11 are not mutually exclusively each other. Sub section (2) itself is a scope to file the return and thereby the total time period is extended to 4 months i.e. 1 month for regular return and 3 months for revised return. So in the event, there is non-filing of return in 1 month and revised return in 3 months thereafter, in both contingencies, penalty should be imposed.

In respectful disagreement with the interpretation and scope of the provision u/s.11(3) of the OST Act as advanced by the learned Addl. Standing Counsel, it is believed that, the legislature has in its wisdom while mentioning the Sub section (1) of Sec.11 as a basis to impose penalty left out the Sub section (2) and harmonious reading of the entire Section 11 of the OST Act, it is found that, regular return under Sub section 1 does not include revised return or final return if any. Revised return is included in the provision under different sub sections called Sub section (2). Penalty for non-filing of return as per Sub section (3) is restricted to Sub section (1) only.

Coming to the similar provisions under the OVAT Act, which has replaced the Odisha Sales Tax Act, periodical return and revised return are there in the Sec.33 whereas Sec.34 relates to penalty for default in filing return. If we go by the Sec.34 of the OVAT Act, it is found that, at the inception Sec.34 (1)(a) has included sub section 1, 2 or 3 and even after amendment of the year 2008 came into force on

01.06.2008, the provision includes return, revised return or final return. If filed at a later date without reasonable cause, it attracts penalty. Thus, from the above it can safely be concluded by saying that, revised return or delay filing of revised return cannot be a basis to attract penalty as per Sec.11(3).

6. The next plunk of argument advanced by the learned Addl. Standing Counsel is, the revised returns filed on 16.11.2002 as reflected in the impugned order are actually the original return but on mechanically termed as revised return. In fact the dealer had not filed any regular return. On the other hand, learned Counsel for the dealer presented a copy of the regular return for the tax period 06/2011. On perusal of the LCR, it was found that only one regular return i.e. for the period pending 06/2001 is available, whereas both the fora below has mentioned all the returns filed by the dealer as revised return. This is a pure question of fact which needs further detail scrutiny. However, it is found that, in one case at least the dealer has filed regular return and then filed revised return in a later period. In such view of the fact, we cannot accept the argument of the learned Addl. Standing Counsel entirely that the dealer had never filed any regular return and all the returns filed by the dealer are regular return. If that be, it is found necessary to ascertain that, whether the dealer had ever filed regular return covered u/s.11(1) for all the periods of which he has filed revised return on 16.11.2002. If that is, the dealer is not liable under the provision Sec.11(3) otherwise the dealer can be asked to pay penalty, if the delay has not been explained with sufficient cause.

In consideration of the facts above, it is found that, this is a fit case where the matter should be remitted back to the AA for proper scrutiny of the fact that, whether the dealer had filed regular return for all the tax periods under question. If yes, for filing of revised return in

late, which is nothing but a consequential act, the dealer is not liable to pay penalty. Conversely, if it is found that, the dealer has not filed original return, in that case, after fresh calculation of the period of delay, penalty can be imposed. Besides, the AA is not debarred to take consideration of the reason for delay if any advanced by the dealer before him. Keeping view the discussion above it is ordered.

The appeal is allowed in contest. The impugned order is set-aside. The matter is remitted back to the AA for assessment afresh as per the direction above.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(A.K. Panda)
1st Judicial Member

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I