

**BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)**

S.A. No. 7 (C) of 2016-17

(Arising out of order of the learned JCST, Cuttack-I Range,
Cuttack in First Appeal Case No. 107121512000058
disposed of on dated 31.03.2016)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/s. G.K. Pulses Manufacturing Pvt. Ltd.,
Mahatab Road, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri B.B. Panda, Advocate
For the Respondent : Sri M.S. Raman, ASC (CT)

Date of hearing: 17.08.2020 ***** Date of order: 15.09.2020

O R D E R

. To be precise, on the ground of non-compliance of Rule 10(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') vis-a-vis the assessment proceeding under Rule 12(3) ibid, the dealer assessee preferred the instant appeal in terms of Rule 22 of the Rules read with Section 78(1) of the Odisha Value Added Tax Act, 2004 assailing the impugned order dated 31.03.2016 in Appeal No. 107121512000058 promulgated by the learned Joint Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, 'FAA') for the period of assessment 01.04.2012 to

31.3.2014 as against of assessment order dated 01.05.2015 passed by the learned Sales Tax Officer, Cuttack-I Central Circle, Cuttack (in short, 'AA'), wherein and whereby, additional demand was raised with penalty imposed under Rule 12(3)(g) of the Rules.

2. The appellant is a manufacturer and was subjected to audit assessment under Rule 12(3) of the Rules and finally, additional demand was raised along with penalty to the tune of ₹1,89,792.00 payable as per the terms and conditions of the demand notice. Being dissatisfied, the dealer assessee challenged it in appeal which was allowed in part by the FAA, as for non-submission of declaration Forms 'C' and 'F', penalty was deleted. The dealer assessee, in the instant appeal, questioned the jurisdiction of the assessing authority for non-compliance of Rule 10 of the Rules. According to the State, there is no delay in the preparation and submission of the Audit Visit Report (in short, 'AVR'), as is alleged by the dealer assessee. It is also alleged that the AVR was sent to the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack, which resulted in delay. In other words, within seven days of completion of the audit, the AVR having not been received by the assessing authority, there is infraction of Rule 10(3) of the Rules. The said question has, in fact, been dealt with by the Tribunal while disposing of S.A. No. 42 (VAT) of 2016-17.

3. On that point, the respondent State contended that there is no violation of Rule 10(3) of the Rules, as within seven days soon after completion of the audit, the AVR was submitted to the assessing authority along with all other

documents for the purpose of assessment and while claiming so, the details of the proceeding till the culmination of audit on 31.10.2014 was highlighted upon.

4. The learned Counsel for the dealer assessee, as is made to appear, challenged the jurisdiction of the AA solely on the ground that the latter did not receive the AVR as per Rule 10(3) of the Rules which was instead submitted to the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack, who did not take up the assessment himself. The learned ASC (CT) countered the same by contending that on such a ground, delay in submission of AVR cannot be alleged, morefully when, the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack is also an assessing authority under the Act, if Section 2(4) of the OVAT Act as to the definition of 'assessing authority' is read altogether. It is also contended that the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack is head of the Range and also duly authorised to function as one of the assessing authorities and after having received the AVR, he could even entrust the assessment by exercising power under Section 9(2) of the Act read with Section 42 of the OVAT Act.

5. As regards the audit inspection and about its day to day developments, the learned ASC (CT) provided a detail chart and contended that on 10.06.2014, Form VAT-301 was issued for inspection of the records and books of account of the dealer assessee on 15.07.2014, the date on which, its Director was examined and then, it continued till 30.10.2014 and ultimately, on 31.10.2014 the same was concluded. It is also claimed that the AVR was prepared on 31.10.2014 in

Cuttack-I Central Circle, Cuttack and on the very same day, it was sent to the office of the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack. From the above, it can well be understood that the audit inspection was carried on for about four and half months and finally, on 31.10.2014, the AVR was prepared, which was submitted and received by the office of the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack on that date itself, which is also borne out of the record. As such, considering the said facts with reference to the materials on record, it would not be fair enough to allege or attribute any kind of delay in preparation and submission of the AVR. The challenge of the dealer assessee is precisely not on that point, but for the AVR being submitted to the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack, who did not undertake the assessment proceeding. Admittedly, the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack is the head of the Range and also an assessing authority under the Act. For the AVR having not been received by the assessing authority within seven days, who held the assessment in respect of the tax period vis-a-vis the dealer assessee but being sent to the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack, in the considered view of the Tribunal, on such a ground, the authority of the AA cannot be questioned. That apart, at no point of time the assessee ever raised objection in that behalf. If the dealer assessee was really prejudiced on account of receipt of AVR by the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack, it was immediately to be raised at the very inception. Of course, there is no bar to raise an objection

vis-a-vis jurisdiction of an assessing authority which is a mixed question of fact and law or purely of law. However, the Tribunal does not find it to be a ground enough to hold that the assessment proceeding to be invalid for want of jurisdiction of the AA. In this regard, the learned ASC (CT) referring to a decision of the Hon'ble Court in Kalka Trading Agency Vs. Commissioner of Commercial Tax: W.P.(C) No. 1132 of 2016 decided on 02.03.2016 contended that the scope of the Audit Team is essentially administrative in nature and not quasi judicial and in that view of the matter, when dealers get adequate opportunity to submit explanations right at the stage of audit itself, prejudice is rare to happen. In the case at hand, it is not about the audit inspection and objections the dealer assessee were to raise, but is in connection with the delay in receipt of the AVR by the assessing authority as against the same being sent to the Joint Commissioner of Commercial Taxes, Cuttack-I Range, Cuttack. From any point of view considered and having regard to the relevant provisions of the Act, the Tribunal is of the humble opinion that the objection which has been raised by the dealer assessee vis-a-vis the jurisdiction of the AA is not to be tenable in law and thus, it has to be rejected outrightly.

6. A cross-objection is filed from the side of the State, which is with respect to grant of compensation in terms of Sections 9 read with 9(2B) of the Act. The learned ASC (CT) contends that the rate of tax under Section 8(1) of the Act has been reduced to 2% from 3% by way of a notification dated 30.05.2008 and according to sub-section (4) thereof, declarations are to be furnished, filled and signed by the registered dealers to whom the goods are sold within the prescribed

time or within such further time, as the authority may, for sufficient cause, permit and in the instant case, as per Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957, declarations in Form 'C' were to be furnished to the prescribed authority within three months after the end of the period to which it related to. It is alleged that the dealer assessee did not submit the declaration forms in time and even thereafter, which clearly reflected the conduct of the dealer assessee and under such circumstances, having regard to the provisions of Sections 9 and 9(2B) of the Act, interest was to be levied, notwithstanding deletion of penalty. It is also contended that in view of the settled law as laid down in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd.: (2002) 2 SCC 111 to the effect that a statutory act to be done only in the manner prescribed and not otherwise and the mandatory character of the expression 'shall not' employed in Section 8(4) of the Act as enunciated by the Hon'ble Apex Court in Manalal Khetan Vs. Kedarnath Khetan: 1977 Tax LR 1638 (SC) and having regard to the import of the relevant provisions, such as, Sections 9 and 9(2B) of the Act, the interest is to be levied on account of the failure of the dealer assessee in furnishing the declarations within the prescribed time. As regards Section 8(4) of the Act and considering the ratio of the Hon'ble Apex Court in the Manalal Khetan case, the Tribunal is of the considered view that exemption or concessional rate of tax can be availed of only upon production of statutory forms which is mandatory in nature. As to the levy of interest, the learned ASC (CT) relied upon the decisions, such as, Indian Commerce & Industries Co. Pvt. Ltd. Vs. The Commercial Tax Officer: (2003) 129 STC 509

(Mad.), Indodan Industries Ltd. Vs. State of U.P.: (2010) 27 VST 1 (SC), Commissioner of Trade Tax Vs. Control Switch Gears Co. Ltd: (2010) 36 VST 130 (All.), State of Karnataka Vs. Maintec Technologic Pvt. Ltd: (2015) 78 VST 429 (Kar.), Fosroc Chemicals (India) Pvt. Ltd. Vs. State of Karnataka: (2015) 79 VST 25 (Kar.) etc. while demanding levy of interest against the dealer assessee. In the humble view of the Tribunal, the dealer assessee had ample time, scope and opportunity to furnish the declaration Forms 'C' and 'F' but did not do so, the circumstances which are sufficient to levy interest, if not penalty, which has been deleted by the FAA. Having regard to the above facts, the Tribunal reaches at a logical conclusion that the dealer assessee miserably failed to furnish the declaration forms and for the fact that penalty was deleted in view of a Circular dated 20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha, Cuttack, it is a fit case, where interest should be levied for the alleged default of the dealer assessee. In other words, the conclusion is that the FAA considering the mandatory requirement of law, while deleting the penalty ought to have levied the interest on account of non-compliance of statutory obligations vis-a-vis declaration forms, having regard to the fact that such imposition is compensatory in nature.

7. Hence, it is ordered.

8. In the result, the appeal is dismissed. The cross-objection is, however, allowed. As a necessary corollary, the impugned order dated 31.03.2016 promulgated in Appeal No. 107121512000058 is hereby modified to the extent indicated above. As a consequence, the AA is to recompute the tax liability vis-a-vis

the dealer assessee for the period under assessment in the light of the decision of the Tribunal, as aforesaid, preferably within a period of three months from the date of receipt of the present order.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(A.K.Dalbehera)
1st Judicial Member

I agree, Sd/-
(R.K. Pattnaik)
Accounts Member-III