

BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. Nos. 27 (C)& 28 (C) of 2019

(Arising out of orders of the learned Joint Commissioner of CT & GST (Appeal),
CT & GST, Territorial Range, Bhubaneswar in Appeal Case Nos.
AA-008/CST/BH-IV/2018-19 & AA-009/CST/BH-IV/2018-19
disposed of on dated 22.10.2018)

Present: Shri R.K. Pattanaik,
Chairman

M/s. Rameswar Agro Industries Pvt. Ltd.,
Plot No. 52, I.E Bhagabanpur,
Patrapada, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri A.K. Roy, Advocate
For the Respondent : Sri D. Behura, Standing Counsel (CT)

Date of hearing: 01.03.2021 ***** Date of order: 05.04.2021

ORDER

Both the above appeals, since involve a common question of law
vis-a-vis parties, stand disposed of combinedly.

S.A. No. 27 (C) of 2019:

2. Instant appeal under Section 78(1) of the Odisha Value Added
Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 22 of the Central
Sales Tax (Odisha) Rules, 1957 is at the behest of the dealer assessee assailing the

impugned order dated 22.10.2018 promulgated in Appeal Case No. AA-008/CST/BH-IV/2018-19 by the learned Joint Commissioner of CT & GST (Appeal), CT & GST, Territorial Range, Bhubaneswar (in short, 'FAA') directed against the order of assessment dated 27.03.2018 framed under Rule 12(1)(b) of the CST (O) Rules, 1957 by the learned Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (hence called 'AA') for the tax period 01.07.2013 to 30.09.2013 confining it to levy of interest as not being sustainable.

S.A. No. 28 (C) of 2019:

3. The present appeal under the Act is also at the instance of the dealer assessee questioning the legality and judicial propriety of the impugned order dated 22.10.2018 passed in Appeal Case No. AA-009/CST/BH-IV/2018-19 by the FAA vis-a-vis order of assessment dated 27.03.2018 under Rule 12(1)(b) of the CST (O) Rules, 1957 for the period 01.04.2013 to 30.06.2013 again to the extent of interest only.

4. According to the dealer assessee, the assessments to be bad in law, inasmuch as, interest is not leviable in absence of any default in filing returns and paying admitted tax dues thereon as per Rule 7 of the CST (O) Rules, 1957. In fact, the dealer assessee was assessed for the relevant periods and additional demands were raised which included interest. As per the dealer assessee, interest is not imposable on a cursory glance of Rule(s) 7 and 8 of the CST (O) Rules, 1957 on account of clear distinction between the expressions 'tax due' and 'tax payable' as

appearing therein which was clearly lost sight of by the authorities below and thus, it has resulted in an illegal demand.

5. State filed cross-objections and contended that levy of interest for delayed payment of tax is to be treated as a tax due and in so far as levy of interest is concerned, it is compensatory in nature in the sense that when the dealer assessee paid tax after it was due, the presumption is that, revenue was lost thereby during the interregnum period (the date when the tax became due and the date on which it was paid), more so when, the assessee enjoys the amount during the alleged period.

6. It is revealed from the records that the dealer assessee, during the periods in question, had effected inter-State sales through declarations in Form-C claiming concessional rate of tax as per Section 3(a) of the CST Act. Furthermore, due to non-submission of statutory declarations in Form-C, not only tax dues were demanded but also the authorities included interest payable as per Rule 8(2) of the CST (O) Rules. The award of interest is under challenge by the dealer assessee by claiming that tax dues were deposited as per the returns filed for the relevant periods. The State would contend that since the dealer assessee did not deposit the tax due which is on account of its failure to submit the declarations in Form-C, the interest shall have to be levied as compensation and therefore, the authorities below did not commit any wrong or error or illegality, for that matter.

7. Section 8(1) of the CST Act stipulates that every dealer, in course of inter-State trade sells goods to a registered dealer of the description referred to in sub-section (3) thereof, shall be liable to pay tax under the said Act which shall be 3% of the turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State whichever is lower. It is also evident from Section 8(4) of the CST Act that in order to avail the concessional rate of tax, necessary condition contained therein shall have to be fulfilled, which is to the effect that the dealer assessee selling the goods is required to furnish a declaration. In so far as Form-C is concerned, as per Rule 12(1) of the CST (R&T) Rules, it shall have to be furnished to the prescribed authority within three months after the end of the period to which the declaration relates. In the instant case, the dealer assessee seems to have failed in furnishing declarations in Form-C which prompted the authorities below to levy interest on the tax due. As earlier mentioned, the dealer assessee claims that when tax dues were deposited as per the returns filed, there was no violation of Rule 8 of the CST (O) Rules, 1957 and hence, levy of interest in favour of the State is untenable.

8. The learned Standing Counsel (CT) cited a ruling of the Hon'ble Apex Court in the case of Manalal Khetan Vs. Kedar Nath Khetan reported in (1977) Tax LR 1638 (SC) and contended that Section 8(4) of the CST Act is negatively couched and the concession can only be availed subject furnishing statutory declarations duly filled and signed by the registered dealer to whom the goods are

sold. One more decision in the case of Indian Commerce & Industries Co. Pvt. Ltd. Vs. CTO reported in (2003) 129 STC 509 (Madras) is placed reliance on to contend that liability to pay interest is by operation of law, when there is default in paying tax due. In reply to the distinction carved out by the learned Counsel for the dealer assessee on 'tax due' and 'tax payable', a decision of the Hon'ble Apex Court in the case of Indodan Industries Ltd. Vs. State of U.P. reported in (2010) 27 VST 1 (SC) is pressed into service and it is contended that levy of interest for delayed payment of tax assumes a status of tax due and it shall have to be levied in order to compensate the State, while recovering the lost revenue. The learned Standing Counsel (CT) also urged that the declaration forms were to be furnished within the time stipulated in order to claim the concessional rate of tax and while filing the returns, it was well within the knowledge of the dealer assessee that the law clearly mandates it and therefore, since the tax dues were not deposited with the absence of reasonable excuse, State was required to be compensated, which the authorities below finally did. On the other hand, the learned Counsel for the dealer assessee referred to a ruling of the Hon'ble Apex Court in the case of J.K. Synthetics Ltd. Vs. CTO reported in (1994) 94 STC 422 (SC) in order to substantiate its stand. In fact, in the decision supra, interest was levied over and above the tax dues on determination of tax at the final assessment which was held to be unjustified on the ground that as per the return, the tax was deposited and the assessee could not have predicted the final assessment which was with reference to a question, whether, amount of freight

charged in respect of sale of cement under the Cement Control Order did form part of sale price or not for the payment of sales tax. Two more decisions are cited from the side of the dealer assessee reported in (2009) 26 VST 168 (Uttarakhand) and (2011) 44 VST 80 (P&H) contending that interest is not to be levied, when tax liability has been discharged as per the returns filed. In the case at hand, there is no denial to the fact that the dealer assessee miserably failed to submit the declarations in Form-C despite claiming concessional rate of tax for the transactions vis-a-vis the relevant periods, as a result of which, tax due was demanded with interest. It was fully within the knowledge of the dealer assessee that statutory declarations had to be furnished in order to avail the concessional rate of tax, which it failed to do so and in view of the ruling of the Hon'ble Apex Court in the case of Indodan Industries Ltd. *ibid*, levy of interest on delayed payment of tax must be assumed as the tax due. Had the dealer assessee paid the tax without claiming concession, State would have received it in full. If tax due is not paid, when concession is claimed, but later on, dealer assessee failed to honour and submit statutory declarations, it is to be presumed that the State supposedly lost the revenue during the interregnum. In fact, the decision in J.K. Synthetics Ltd. case renders no assistance to the dealer assessee for the reason that it is distinguishable and does not relate to failing in furnishing declaration forms, but decided on the premises and with reference to the determination of sale price, whether to include the freight charges or not. The other rulings are also clearly distinguishable and therefore, the contention of the learned

Counsel for the dealer assessee on interest is totally misconceived and thus, unacceptable.

9. Hence, it is ordered.

10. In the result, the appeals stand dismissed. As a logical sequitur, the impugned orders dated 22.10.2018 passed in Appeal Nos. AA-008/CST/BH-IV/2018-19 & AA-009/CST/BH-IV/2018-19 are hereby confirmed. The cross-objections filed by the State are disposed of accordingly.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman