BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 31(C) of 2017-18

(Arising out of the order of the ld. JCST (Appeal), Sambalpur Range, Sambalpur, in First Appeal Case No. AA 229/JSG/CST/2011-12, disposed of on dtd.25.03.2017)

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

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

- V e r s u s -

M/s. Shree Shyam Trading Co., Bamra, Dist.- Sambalpur. ... Respondent

For the assessment period: 01.05.2007 to 31.12.2010

For the Appellant ... Mr. M.S. Raman, A.S.C.
For the Respondent ... Mr. U. Behera, Advocate

Date of hearing: 29.06.2019 ******** Date of order: 29.06.2019

O R D E R

This appeal is at the instance of the Revenue preferred against the order of learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur in an assessment u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules claiming for imposition of interest in lieu of waiver of penalty for non-submission of declaration forms.

2. M/s. Shree Shyam Trading Co., a registered TIN dealer faced audit assessment for the assessment period 01.05.2007 to 31.12.2010. During the period of assessment, the dealer has found to have affected interstate sale claiming rebate in tax rate on furnishing declaration form 'C'.

The dealer produced one declaration form 'C' covering transaction of Rs.39,21,681.00 against intrastate sale to one M/s. Paras Vanaspati Pvt. Ltd., Urla Industrial Area, Raigarh. But, on examination of the books of account, learned assessing authority found the dealer had disclosed intrastate transaction of Rs.35,92,189.00. As regards, the discrepancy in the amount of sale and amount depicted in the declaration form 'C', the dealer's explanation was the declaration form 'C' covers the value of goods and transportation charges both but on verification the assessing authority found sale bill contain transportation charges separately. As a result, the assessing authority held that, the dealer had not maintained true and correct account of his transactions. In result, he determined the GTO at Rs.39,21,681.00. Deduction of Rs.1,04,627.00 was allowed, the TTO was determined at Rs.38,17,054.00, tax liability was calculated at Rs.1,14,512.00, penalty imposed at Rs.19,770.00 as per Rule 12(3)(g) of the CST(O) Rules. Thus, the total tax due raised at Rs.1,34,282.00. Adjusting the tax already paid at Rs.1,04,627.00, the balance tax was raised at Rs.29,655.00.

3. The dealer knocked the door of first appellate authority who in turn deleted the penalty with the finding that, non-submission of declaration form for bona fide reason will not attract penalty. As a result, the demand became re-determined at Rs.9,885.00.

4. It is pertinent to mention here that, keeping view the ratio laid down by the Apex Court in **Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP** and in view of the Circular issued by Commissioner of Commercial Tax vide **"Circular No.42/CT/No.III(I) 38/09 dtd.20.04.2015 of the Commissioner of Commercial Tax, Odisha, Cuttack."** the principle is well settled that, in the event of failure to procure and furnish the declaration Form 'C' for no fault of the selling dealer, the selling dealer is liable to pay tax without concession in rate of tax, but no penalty can be imposed. The circular or the order of the Hon'ble Apex Court is silent on the question of imposition of interest.

Interest is invariably levied whenever there is non-payment of tax or delay payment of tax. The payment of tax without concession in rate of tax is a consequence for non-production of declaration Form 'C' in the case in hand. So, in that event, the taxing authority is not debarred to raise interest. In the case of **Indodan Industries Ltd. Vs. State of UP,** reported in **[2010] 27 VST 1 (SC)**, it was 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 the 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.

But, in the peculiarity of the case, which is discussed below, whether it is within the competency of this Tribunal in this appeal in hand to award interest? The AA has not imposed penalty or interest. The FAA, which is an extended forum of assessment, has also not imposed penalty or interest. So far as the assessment is concerned, both the AA and FAA both stand on a same platform. The order of the FAA is under challenge by the Revenue.

5. The prayer of Revenue like imposition of interest in lieu of penalty is bad in law because penalty and interest accrue on separate contingencies. It is well settled that, a decree or order can be challenged in appeal by the party against whom the decree or order is passed or by the party, even though the order is passed in his favour, but the findings on any question or issue involve in this dispute is decided against him, or in the event, the order or decree passed in his favour, all the issues/questions are decided in his favour, but while deciding any question or issue, any question of fact has been wrongly decided against him, in that event also, the party has a right to prefer appeal.

Here, it is not understood how and in which way the impugned order can be subjected to appeal at the instance of the Revenue. The first appeal was preferred by the dealer questioning the imposition of higher rate of tax. It was decided by the FAA giving relaxation in tax to the extent

declaration form furnished. It was not a question before the FAA that, the dealer is liable to pay interest or not? Once, this issue is never raised or decided, then the scope in the hands of the parties in appeal to raise the question of interest does not arise. Revenue has failed to establish against which findings of FAA it is aggrieved so as to enable it to prefer appeal. However, it is apt to mention here that, the Revenue is not left remediless. The forum of revision is available in the hands of the learned Commissioner when an order affects the interest of the Revenue. But so far as the purpose of appeal is concerned, I am of the considered view that, the impugned order is not open to attack in appeal at the instance of the Revenue. Thus, we are constrained to opine that, when there is delay in payment of tax, interest should be levied but this question neither can be raised nor decided in this appeal at the instance of the Revenue. It is also made clear that, Revenue is not debarred from raising any demand, which is lawful against the dealer. Accordingly, it is ordered.

6. The appeal is dismissed as of no merit with the observation hereinabove.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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