

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

S.A.No. 60(C)/2017-18

(From the order of the Id.JCST (Appeal), Bhubaneswar Range,
Bhubaneswar, in Appeal No. AA-107221622000074/CST/BH-IV,
dtd.31.05.2017, remanding the assessment order
of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Qualicom Solutions Pvt.Ltd.,
Bhubaneswar.

.... Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : Mr. P. Sahu, Advocate

(Assessment period : 01.04.2012 to 31.03.2014)

Date of Hearing: 23.02.2019 *** Date of Order: 23.02.2019

ORDER

Against a remanding order with a direction to
assessment afresh passed by the learned First Appellate
Authority/Joint Commissioner of Sales Tax (Appeal),
Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in
First Appeal Case No. AA-107221622000074/CST/BH-IV at the
behest of the dealer in an assessment u/r.12(3) of Central Sales
Tax (Orissa) Rules, 1956 (in short, CST(O) Rules, this appeal is
preferred by the Revenue.

2. The instant dealer, a trader of A.C.s, boilers and its spare parts, machineries, water treatment equipments, Electrical motors, pump sets, pipes and pipe fittings, was assessed u/r.12(3) of the CST(O) Rules for the assessment period from 01.04.2012 to 31.03.2014 on the basis of Audit Visit Report (AVR) with two numbers of allegations such as the dealer's claim of inter-state sale on concessional rate was not supported with declaration Form 'C' and the dealer's claim of tax exemption sale under Rule 6(2) of the CST Rule was not supported by the certificate in Form 'E1' relating to Form 'C' and other connected documents. The Assessing Authority/Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, AA/STO) in consideration of the declaration Form 'C' produced by the dealer against claim of exempted sale u/s.6(2) of the CST Act, allowed to the extent of furnishing of Form 'E1' and Form 'C'. However, the rest amount was taxed @13.5%, whereas in the similar manner, the inter-state sale on concession rate was also denied for which, the declaration Form 'C' was not furnished and, thereby, the rest sale was taxed @5%. In appeal, the dealer could furnish declaration forms and on scrutiny of those declaration forms, the learned FAA remanded the matter back to the AA and while remanding the matter back for assessment afresh, learned FAA has held that, the dealer is not liable to pay penalty.

3. As against the aforesaid finding, State has come up with the appeal with a prayer that, the FAA should have directed to impose interest for delay payment of tax on the sale for which, the dealer failed to furnish forms, because interest is automatic by operation of law.

4. The appeal is heard on contest in presence of both the parties. Mr. M.L. Agarwal, learned Standing Counsel is present for the appellant-Revenue, whereas learned Counsel Mr. P. Sahu was contesting on behalf of the respondent-dealer.

5. It is pertinent to mention here that, the dealer has claimed some exemption and some concession in rate of tax against inter-state transactions. The AA denied the exemption/concession to the extent the dealer failed to produce declaration Form 'C' and 'E1' as the case may be. The learned FAA accepted the declaration forms produced before him and made an observation that, the dealer is entitled to exemption/concession to the extent the declaration forms are furnished. As a result, the dealer is found liable to pay tax at full rate on the rest amount of sale turnover against which he failed to furnish the declaration forms. Such findings of the Id.FAA is not challenged, on the other hand, the findings being lawful, need not be interfered with. Thereafter, the Id.FAA has held that, the dealer should not be imposed with penalty for non-payment of tax at full rate, as the collection of the declaration forms was not exclusively within the capacity of the dealer. The findings of the FAA is supported by different authorities pronounced by the Hon'ble Court and even by the Circular of the Commissioner of Commercial Tax i.e. **"Circular No.42/CT/No.III(I) 38/09 dtd.20.04.2015 of the Commissioner of Commercial Tax, Odisha, Cuttack."** Be that as it may, it is held that, direction of the FAA for non-imposition of penalty also suffers from no illegality. The only question raised by the Revenue is, the dealer is liable to pay interest for delay in payment of tax. Argument is,

interest is automatic as per law. Reserving any findings conclusively on this, it is said that, question of imposition of interest is a matter to be taken care of by the taxing authority in accordance with law. The appellate authority cannot entertain the appeal to decide, whether a particular provision under the Act is applicable or not?. In the result, it is held that, the AA sitting over the remand assessment is to decide the question of interest in accordance to law.

With the observation above, the appeal is disposed of accordingly in favour of the Revenue.

Dictated and Corrected by me,

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

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