

01.04.2012 to 31.03.2014 vide order of assessment dt. 20.01.2016, was reduced to `30,860.00.

2. Briefly stated, the relevant facts of the case are that the dealer is a Non-Banking Finance Corporation (NBFC) engaged in providing asset finance or loan to its customers for procuring assets, viz. plant and machinery, commercial vehicles etc. and also provides finance in the form of loan against hypothecation or operating lease. Besides, the dealer is engaged in inter-State as well as intra-State rental activities. Basing on Audit Visit Report (AVR), a proceeding u/r. 12(3) of the CST (O) Rules for the period 01.04.2012 to 31.03.2014 was initiated. In the assessment proceeding, the dealer failed to furnish the entire claim of concessional sale against declaration in Form-C for `11,85,869.00, for which learned assessing authority levied appropriate tax @ 5% on such turnover and also imposed penalty of `61,720.00 u/r. 12(3)(g) of the CST (O) Rules. In the process, the demand as aforesaid was raised.

Being aggrieved, the dealer carried the matter in appeal. Learned first appellate authority considering the statutory provisions, deleted the penalty imposed due to non-submission of declaration form by the dealer, thereby resulting in reduction of demand as aforesaid.

Being aggrieved, the Revenue has approached this Tribunal.

3. Sri M.S. Raman, learned Addl. Standing Counsel (CT) appearing for the Revenue submitted that levy of penalty being mandatory in nature, deletion of the same by learned first appellate authority without citing any reason is erroneous. Further, he submitted that since according to Rule 8(2) of the CST (O) Rules, interest is payable by the dealer for failure to pay the tax due as per return, the authorities below should have imposed the same.

4. Per contra, Sri S.C. Sahoo, learned Counsel appearing for the dealer submits that penalty cannot be imposed for non-furnishing of declaration forms as no mens rea is involved therein. He further contends that interest cannot be imposed since the tax due has been paid in time except for the transaction covered under wanting 'C' form, which was beyond his control.

5. Undisputedly, the dealer, in the instant case, failed to furnish declaration in Form-C for `11,85,869.00 towards the claim of concessional sale. Such claim of concessional sale was, therefore, disallowed and tax at the appropriate rate was levied. Law is well settled that non-furnishing of declaration form by a dealer shall result in disallowance of his claim for concessional tax, but cannot be treated as a violation so as to attract any penal liability. The decision of the Hon'ble High Court of Himachal Pradesh in the case of ***Gujarat Ambuja Cement Ltd. and another Vs. Assessing Authority-cum-Assistant Excise and Taxation***

Commissioner and others, reported in **[2000] 118 STC 315 (HP)**, may be referred to in this regard. I, therefore, find no merit in the submission of Sri Raman that the dealer having failed to furnish the declaration form, is liable to pay penalty.

6. As regards imposition of interest, it is submitted by Sri Raman that the dealer not having paid the tax due within the statutory period, is liable to pay interest. There is no dispute that the dealer had filed returns showing tax due by claiming concessional rate of tax on inter-State sale of goods. However, the necessary declaration in Form 'C' supporting such claim was not filed along with the returns. Obviously, the disallowance of concessional tax in that respect cannot be faulted with in any manner. Now, the question is, whether in such a case, interest is payable by the dealer. In the case of **Royal Boot House Vs. State of JK**, reported in **[1984] 56 STC 212 (SC)**, the Apex Court while dealing with the provisions of J&K General Sales Tax Act held as under :-

"...Where the tax payable on the basis of a quarterly return is not paid before the expiry of the last date for filing such return under the Jammu and Kashmir General Sales Tax Act, 1962, it is not necessary to issue any notice on demand; but on the default being committed the dealer becomes liable to pay interest under Section 8(2) of the Act on the amount of such tax from the last date for filing the quarterly return prescribed under the Act..."

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.

Coming to the statutory provisions, it is seen that Rule 8 of the CST (O) Rules provides for levy of interest if a registered dealer fails without sufficient cause to pay the amount of tax due as per the return furnished by it.

7. At the cost of repetition, it is stated that the tax due disclosed by the dealer in its return was incorrect inasmuch as it was not supported by the required declaration in Form 'C'. Therefore, what was ultimately assessed becomes the tax due. The dealer having failed to support its claim of concessional tax, imposition of interest is automatic. This is by operation of law and not by decision of any authority. In the case of ***Indian Commerce and Industries Co. Pvt. Ltd. Vs. The Commercial Tax Officer***, reported in ***[2003] 129 STC 509 (Mad.)***, the Hon'ble Madras High Court have held as under :-

"... Liability to pay interest under Section 24(3) is automatic and arises by operation of law from the date on which tax was required to be paid. The petitioner opted to pay tax by

self assessment and filed return including the taxable turnover in respect of works contract. The assessee paid tax on works contract turnover up to August and though filed return disclosing turnover of works contract after September failed to pay tax thereon. The petitioner assessee is bound to pay tax and in default have to pay interest. The department is entitled to recover interest under Section 24(3)...”

8. For the foregoing reasons, therefore, I am inclined to interfere with the impugned order to the extent indicated herein above.

9. In the result, the appeal is allowed in part. The assessing authority is directed to levy interest on the tax due as per law and raise fresh demand for the period under assessment accordingly.

Dictated & Corrected by me,

Sd/-
(Sashikanta Mishra)
Chairman

Sd/-
(Sashikanta Mishra)
Chairman