

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 79(C)/2015-16**

(Arising out of order of the 1d.JCST, Sundargarh Range, Rourkela, in Appeal No. AA.63(RL-II-C) of 2013-2014, disposed of on dtd.28.11.2014)

Present: Sri S. Mohanty & Sri R.K. Pattnaik
2nd Judicial Member Accounts Member-III

M/s. Shree Ganesh Rolling Mills Pvt.Ltd.,
Goibhangha, Kalunga,
Dist. Sundargarh. ... Appellant

-Versus-

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

For the Appellant : None

For the Respondent: Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

Date of Hearing: 25.05.2018 *** Date of Order: 26.05.2018

ORDER

This appeal is directed against the order of the First Appellate Authority/Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/JCST) in First Appeal Case No.AA.63(RL-II-C) of 2013-2014 dtd.28.11.2014.

2. The brief fact of the case is :- In a proceeding u/s.12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules basing on Audit Visit Report (AVR), the AO found that the dealer was wanting declaration forms for Rs.77,,20,703/- relating to the assessment year 2007-08 and for Rs.7,69,588/- assessment year 2010-11. It is also found that, the dealer has wrongly collected CST @2% instead of 3% during the assessment year 2008-09. Thus, the total tax

due for the tax period in question i.e. from 01.04.2007 to 31.03.2012 was determined at Rs.11,58,695.15. Adjusting the CST and VAT already paid along with the return, the dealer was found liable to balance tax due of Rs.2,96,587.15. The AO imposed penalty twice of it u/r.12(3)(g) of the CST(O) Rules and besides that, also imposed interest u/r.8(1) of the CST(O) Rules, 1957. As a result, the total due became raised to Rs.9,43,147/-.

3. The assessee-dealer carried the matter before the FAA in First Appeal Case No. AA.63(RL-II-C) of 2013-2014, who in turn, vide impugned order reduced the tax demand to the extent the dealer could furnish the declaration form before him. When the findings of the AO regarding imposition of penalty and interest remained un-interfered, the dealer preferred this second appeal questioning the sustainability of the penalty and interest for the default in production of declaration form, which was beyond the control of the dealer.

4. The points to be decided in this appeal are, whether the FAA is wrong in holding the view of imposition of penalty u/r.12(3)(g) of the CST(O) Rules and interest u/r.8(1) of the CST(O) Rules.

5. The appeal is heard with cross objection from the side of the Revenue supporting the findings of the FAA regarding imposition of penalty and interest.

6. In the case at hand, the admitted fact is, the dealer is an inter-state trader. He has effected inter-state sale and claimed concession in tax, but as against the claim of concession in rate of tax, he failed to furnish declaration form 'C' to the extent of Rs.77,20,703/- for the year 2007-08 and to the extent of Rs.7,69,588/- for the year 2010-11. The AO had denied the concession rate of tax

on this amount and while raising tax, imposed penalty and interest both. Before the FAA, the dealer could furnish few declaration forms. As a result, the AO determined the goods valued at Rs.27,55,230/- for the tax period 2007-08 and Rs.7,69,588/- for the year 2010-11 as inter-state sale without declaration Form 'C'. In consequence thereof, the tax due became reduced but the fact remained, the FAA has also imposed penalty and interest as well.

Keeping in view the circular issued by the Commissioner of Commercial Tax bearing **No.42/CT/No.III(I) 38/09 dtd.20.04.2015**, which was occasioned basing the decisions of different authorities including the authority in **Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP**, it has become a settled principle and well accepted view by this Tribunal that, when the dealer has shown his bona-fideness for non-furnishing of declaration form, which is beyond his control, he cannot be asked to pay penalty but the fact remains, deletion of penalty does not relax the dealer from payment with full rate of tax. Thus, here it can be said that, the imposition of penalty and confirmation of the same by the FAA is erroneous and not in consonance to the authorities and circular mentioned above. It is reversed hereby.

7. So far as the question of sustainability of the findings on interest, it is remain undisputed that, when the dealer has failed to furnish the declaration form against inter-state sale, concession in rate of tax is not available to the dealer. So, when the dealer is liable to pay tax, then the delay payment of tax

necessarily attracts the provision u/r.2(B) of the Sec.9 of the CST Rule, 1957 and Rule 8(1) of the CST(O) Rules.

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 **CCT Vrs. Control Switch Gears Co. ltd. (2011) 10 VST 18 (ALL)** it observed that :-

“even though declaration form for claiming exemption/concession may be required to be filed during the course of assessment proceedings but, in cases of non-furnishing thereof, tax has to be levied at the normal rate which would become the admitted tax and interest u/s.8(1) of the U.P. Act would be leviable from the due date of the return in which turnover was disclosed and exemption/concession has been claimed. There is no scope for consideration of legitimate expectation or hope or bonafide plea u/s.8(1) of the Act”.

In the matter of **Sales Tax Officer & Another Vrs. Dwarika Prasad Sheo Karan Dass (1977) 39 STC 36 (SC)**, relying on earlier decision of the Apex Court in **Haji Lal Mohammad Biri Works Vrs. State of U.P. (1973) 32 STC 496 (SC)** the above view is reiterated. In **M/s. Indodan Industries Ltd. Vrs. State of U.P. and Others in 2009 (7) Supreme 116 (SC)** it is held as follows :

“One more aspect needs to be highlighted. In the present case, we are concerned with the levy of interest for delayed payment. Under sub-Section (2B) to Section 9, such interest for delayed payment is given the status of “tax due”. The said 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 (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that the interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated by Section 120 of the Finance Act, 2000 retrospectively.”

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)...”

The dealer has disclosed the turnover in periodical return but has not paid the correct amount of tax attracting the charge of under-assessment, that amounts to evasion of tax. In **State of Karnataka Vrs. Maintec Technologies Pvt. Ltd. (2015) 78 VST 429 (Karnataka)** the court held that “in order to get concessional rate of tax payable under the Central Act it knew it had to furnish a declaration in form C. It also knew that if it failed to furnish a declaration in form C, it was liable to pay tax under the Act. That was why after the assessment order, on its default in producing the declaration in form C, when it was called upon to pay the tax under the OVAT Act, it paid the tax accepting the order. The payment of interest being compensative in nature, the tax which it paid in pursuance of the assessment order in respect of which there was no dispute, should have been paid along with the return as prescribed, under law, from the date it was liable to pay tax to compensate the delay in payment of tax.”

8. The provision u/s.9 (2B) inserted to the tax book w.e.f 12.05.2000 reads as follows :

[9. Levy and collection of tax and penalties.-

xxx xxx

[(2B) "If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the task and the interest payable under this Act were a tax and an interest under such sales tax law.]"

Keeping view such authoritative pronouncements here in this case, it is held that, the findings of the authorities below imposing interest calls for no interference, hence confirmed. In the wake of above, it is ordered.

The appeal preferred by the dealer is allowed in part. The dealer is not liable to pay penalty but is required to pay interest on the amount of inter-state sale against which, he failed to produce declaration form 'C' as determined by the FAA.

Dictated and Corrected by me,

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

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

I agree,

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