

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 19(C)/2017-18

(Arising out of order of the Id. JCST, Sundargarh Range, Rourkela, in Appeal
No. AA.45 (RL-II-C) of 2016-17,
disposed of on dtd.23.03.2017)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Kedia Carbon (P) Ltd.,
Gotidhara,
Balanda, Kalunga,
Dist. Sundargarh.

... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. N.K. Rout, Advocate

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

Date of Hearing: 22.05.2018 *** Date of Order: 24.05.2018

ORDER

The only question to be determined in this appeal as preferred by the dealer is, whether imposition of penalty u/r.8(1) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules for the delay payment of tax due against the value of goods for which the dealer failed to substantiate the claim of concessional rate of tax on production of declaration Form 'C' is justified and sustainable under law.

2. The appeal is directed against the order of the First Appellate Authority/Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/JCST) passed in First Appeal Case No. AA.45 (RL-II-C) of 2016-17 dtd.23.03.2017 whereby the FAA accepted 15 numbers of declaration forms in addition to declaration forms already accepted by the AO in regular assessment u/r.12(1) of the CST(O) Rules and thereupon on re-determination of the volume of inter-state transaction without declaration form 'C' determined the tax due replacing the tax due assessed by the AO.

The inter-state sale transaction of the dealer, disclosure of the turnover by the dealer are all gone unchallenged. The dispute cropped up for decision before the AO was non-production of valid declaration form for a value of Rs.12,36,48,939/-. The AO denied concessional rate of tax and imposed appropriate rate @4% on this amount and raised demand of tax with interest computed at Rs.38,33,117/-.

3. In the first appeal preferred by the assessee-dealer, the FAA accepted 15 numbers of declaration forms to the tune of Rs.11,64,06,222/- and thereby the balance turnover of Rs.95,25,193/- was remained not supported by declaration form. Accordingly, the FAA taxed this amount at full rate of tax i.e. 4% and then imposed interest under Rule 8(1) of the CST(O) Rules i.e. Rs.2,95,281/-.

4. As mentioned above the dealer while admitting the levy of full rate of tax for non-production of declaration form questioned the imposition of penalty and applicability of the provision under Rule 8(1) of the CST(O) Rules. Learned Counsel for the dealer placed reliance in the matter of **Birla Cement Works Vrs. State of Rajasthan 94 STC 422 (SC)**. It is argued that, the levy of interest is limited to the tax due on the basis of turnover disclosed in the return which does not include tax determined on final assessment. It is further argued that, provision relating to interest are substantive in nature and in absence of any substantive provision interest cannot be imposed that to the provision u/r.8(1) is not applicable.

5. Question of imposition of interest for non-payment of tax in appropriate rate has been dealt with time and again by different authorities. Some of the authorities deciding this question may be mentioned herein below :

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 KVAT 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."

5. 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.-

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[(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 tax and the interest payable under this Act were a tax and an interest under such sales tax law.]"

Thus from the discussion herein above, it is held that, the argument advanced by the learned Counsel for the dealer has no force whereas keeping in view the authoritative pronouncement made by the dealer, it is held that, the interest levied u/r.8(1) of the CST(O) Rules in the impugned order by the FAA is in accordance with law, hence calls for no interference.

In the result, it is hereby ordered.

The appeal stands dismissed as of no merit.

Dictated and Corrected by me,

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

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