

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.**  
**S.A.No. 4(C)/2017-18**

(Arising out of order of the Id.DCST (Appeal), Bhubaneswar Range, Bhubaneswar,  
in Appeal No. AA-107221622000006,  
disposed of on dtd.16.01.2017)

**Present: Sri S. Mohanty & Sri R.K. Pattnaik**  
**2<sup>nd</sup> Judicial Member Accounts Member-III**

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

.... Appellant

**-Versus-**

M/s. Gupta Trading Co.,  
Bhubaneswar.

... Respondent

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

For the Respondent : None

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Date of Hearing: 22.05.2018 \*\*\* Date of Order: 23.05.2018

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**ORDER**

Revenue has assailed the order of First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/DCST) reducing the tax due and deleting the penalty on the contention that, the penalty being mandatory in nature should not have deleted by the FAA and/or in the event of deletion of penalty, the FAA should have imposed interest as per Rule-8(a)(2) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules).

2. Bereft of unnecessary details, the facts in brief giving rise to the appeal are: the dealer being failed to furnish the required declaration in Form 'C' against the inter-state trade, in a proceeding u/s.12(3) of the CST(O) Rules, the

AO found that, the dealer had effected CST sale amounting to Rs.2,51,08,270/- during the tax period 2012-13 but could furnish the declaration Form 'C' of Rs.2,44,58,302/- only. Similarly for the tax period 2013-14, there was CST sale of Rs.1,67,15,802/- but declaration Form 'C' was furnished for Rs.1,26,48,366/-. Accordingly, the dealer was found wanting of 'C' Form of Rs.6,49,968/- for the year 2012-13 and Rs.40,67,436/- for the year 2013-14. As he failed to produce the declaration form, the AO disallowed the concession in rate of tax. As a result, the tax due was calculated at Rs.2,14,105.05. Penalty twice on it u/r.12(3)(g) of the CST(O) Rules, 1957 of Rs.4,28,210.10 was levied vis-à-vis interest amounting to Rs.4,532/- for late payment of return was also levied. As a result, the total tax due with penalty and interest became raised to Rs.6,42,315/-.

3. In appeal before the FAA, Id.DCST deleted the penalty but confirmed the tax due with the interest for delay filing of return, thereby the demand became reduced to Rs.2,18,637/-.

4. Being dissatisfied and aggrieved with such reduction, the Revenue has preferred this appeal claiming reduction of penalty and further prayed for imposition of interest if penalty is deleted.

5. Following questions are framed for decision in this appeal: (i) if the deletion of penalty is unjustified and (ii) if the authority below should have imposed interest as per Rule 8(a)(2) of the CST(O) Rules.

6. The appeal is heard with cross objection from the side of the dealer wherein and whereby the dealer has supported the claim of the dealer and further prayed for remand of the order on acceptance of declaration form to be produced by him.

7. Adverting to the questions framed above, at the outset, it is pertinent to mention here that, this Tribunal has taken a view consistently in the matters involving similar question i.e. where the dealer shows his bona-fideness that procurement of declaration form 'C' is beyond his control and when he has not suppressed the fact of sale, then he should be exempted from payment of penalty i.e. in the light of direction issued by the Department in the CCT Circular bearing **No.42/CT/No.III(1)38/09 dtd.20.04.2015** and in the light of the authority in **M/s. Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others : (2000) 118 STC 315 HP**. In application of the aforesaid view, here in the case at hand, the FAA has rightly deleted the penalty taking into consideration of the fact that, the dealer is at fault for non-furnishing of declaration Form 'C'.

However, so far as the claim of levy of interest as advanced by the learned Addl. Standing Counsel, it can also safely be said that, this Tribunal has consistently taken the view that, imposition of interest a must as it is an automatic one when there is non-payment of tax in due time. 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 bona-fide plea u/s.8(1) of the Act”.

Further in **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)** we can also conclude saying that imposition of interest is necessary consequence when the dealer failed to pay the tax in time. From the discussion above, it is held that the FAA has committed error in not imposing interest.

8. Here it is not out of place to mention here that, the provision required for furnishing declaration form within a period of 3 months from the due date of return. Similarly, on the other hand in the facts and circumstances of the case, it is believed that, on bona-fide belief of obtaining the declaration Form ‘C’ within time and that, he will be entitled for concessional rate of tax

even where the declaration forms are not within his control, the dealer had paid the tax with concessional rate. It is a fact that, the dealer has not suppressed the fact of sale. Taking consideration of the facts above, it is held that, in the instant case the dealer should be asked to pay interest accrued from the date of assessment u/r.12(3) of the CST(O) Rules.

In view of the discussion above, it is hereby ordered.

The dealer is liable to pay interest. The interest should be calculated from the date of audit assessment. The AA is directed to re-compute the tax liability with interest. The State appeal is allowed on contest and the impugned order under challenge is modified accordingly.

Dictated and Corrected by me,

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

Sd/-  
(S. Mohanty)  
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I agree,

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