

THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No.114 (C) of 2016-17

(From the order of the Addl. CST (Appeal), South Zone,
Berhampur, in First Appeal Case No. AA (CST) 21/2015-16,
disposed of on 21.12.2016)

Present: Sri S. Mohanty
2nd Judicial Member

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

.... Appellant

- V e r s u s -

M/s. Akzo Novel India Limited,
At:- Plot No.178-A,
Mancheswar Industrial Estate,
Bhubaneswar.

... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C.
For the Respondent : N o n e

Date of hearing: 27.04.2019 **** Date of order: 27.04.2019

ORDER

The only question raised by the appellant/Revenue in this appeal is, whether the assessee-dealer is liable to pay interest against the tax assessed, when the dealer failed to furnish the declaration form 'C' and if yes, what is the date of accrual of interest for the purpose of calculation.

2. Admittedly, the dealer has failed to furnish required declaration form against the claim of CST sale, as a result the assessing authority denied the concession as claimed by the dealer. The tax was calculated accordingly and raised against the dealer i.e. to the tune of Rs.1,28,703.00.

The learned Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur as first appellate authority on the other hand, recalculated the taxable turnover and tax due calculated at Rs.11,578.00. Thus, the dealer who challenged the order of assessment became found liable to pay more amount as per the order of the first appellate authority. However, the dealer accepted the assessment by the first appellate authority as he failed to establish the claim of sec.8(1) sale before the fora below.

When the matter stood thus, Revenue has preferred this appeal and claimed, the dealer is liable to pay interest in addition to the tax due.

2. The appeal is heard with cross objection but in absence of the dealer since the dealer did not turn up in spite of receipt of the notice of hearing. In the cross objection, the dealer took a plea that, non-submission of declaration form was not intentional, so the dealer is not liable to pay interest.

3. At the outset, it is pertinent to mention here that, the tax liability of the dealer as determined by the first appellate authority in the impugned order remain unchallenged. It is the dealer when failed to furnish declaration form against the claim of interstate sale, the authority below treated the sale covered under the OST Act and imposed tax at appropriate rate. Keeping view the plethora of decisions of this Tribunal based on the decision of the Hon'ble Apex Court in **Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP** and in view of the Circular issued by Commissioner of Commercial Tax vide "**Circular No.42/CT/No.III(I) 38/09 dtd.20.04.2015 of the Commissioner of Commercial Tax, Odisha, Cuttack**", it is well settled that, when dealer fails to furnish declaration form for bona fide reason then, penalty should not be imposed but no concession in rate of tax will be available.

Interest is consequential to non-payment of tax assessed.

4. In the case of **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 **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”.

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 distinguish findings in both these appeals with the observation that, those are relevant in the facts and circumstances of the particular cases. From the discussion above it can safely be said that, the findings of the FAA imposing interest suffers no illegality.

5. Now the next question before us is, in the fact and circumstances of the case, what is the date from which the interest or penalty began to accrue? (i) For a failure to pay tax due, interest and penalty accrue from the due of the tax payment for each month or part of the month that the debt

remains unpaid. (ii) For a failure to file a return, interest and penalty accrue from the due date of the return for each month or part of the month that the debt remains unpaid. (iii) For a failure to pay estimated tax, interest and penalty accrue from the due date of the estimated payment for each month or part of the month that the debt remains unpaid in full”.

Here it is not out of place to mention here that, the provision required for furnishing declaration form is 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, as the declaration forms are not within his control on bona-fide belief of obtaining the declaration Form and he will be entitled for concession in rate of tax, the dealer had not paid the tax at appropriate rate. However, the dealer has not suppressed the sale. Taking consideration of the facts above, it is held that, in the instant case the dealer comes under the third category mentioned above. As such, the interest is accrued from the due date of assessment u/r.12(3) of the CST(O) Rules.

6. The appeal is allowed accordingly. The dealer is liable to pay interest calculated from the date of assessment on the tax due.

Dictated & corrected by me,

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

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