BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

S.A. No. 115(C) of 2017-18

(From the order of the ld. JCST (Appeal), Bhubaneswar Range, Bhubaneswar, in First Appeal Case No. AA-107221622000214/ CST/BH-I, disposed of on 12.05.2017)

M/s. ICOMM Tele Limited,
A/2, HIG Duplex, Ananta Vihar,
Pokhariput, Bhubaneswar. ... Appellant

- V e r s u s -

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

S.A. No. 59(C) of 2017-18

(From the order of the ld. Addl. CST (Appeal) Odisha, Cuttack, in Appeal Case No. AA-JCST/JR/145/2014-15, disposed of on 20.07.2017)

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

- V e r s u s -

M/s. ICOMM Tele Limited,
A/2, HIG Duplex, Ananta Vihar,
Pokhariput, Bhubaneswar. ... Respondent

For the assessment period: 01.04.2010 to 31.03.2014

For the Dealer ... Mr. N.K. Dash, Advocate
For the Revenue ... Mr. M.L. Agarwal, S.C.

Date of hearing: 27.08.2019 ******** Date of order: 28.08.2019

O R D E R

The appeal and cross appeal above arise out of self-same order of first appellate authority, hence taken up together and decided vide this common order

(i) Whether sufficient opportunity/time was not provided to the assessee-dealer to procure and furnish declaration form 'C' against the claim of inter-State sale by both the fora below and thereby there was violation of principle of natural justice in the case in hand?

And

(ii) Whether both the fora below has committed wrong in demanding declaration form 'F' for the goods transferred for interstate job work and returned and thereby, wrongly levied tax as per sec.6(a) of the CST Act?

And

(iii) Whether both the fora below committed wrong in not imposing interest in liew if penalty for default of the dealer in furnishing declaration forms?

Above are the questions framed for decision in this order keeping in view the rival contentions of adversary parties.

2. The case in brief is the dealer was subjected to assessment u/r.12(3) of the CST(O) Rules, 1957 for the assessment period 01.04.2010 to 31.03.2014. In the assessment, for non-production of required declaration form 'C' against CST sale and declaration form 'F' against alleged branch transfer of goods to other branches claimed to be covered u/s.6(a) of the CST Act, the assessing authority denied the claim of concession and exemption in tax. Accordingly, he calculated tax payable by the dealer at Rs.5,81,096.00. Above it penalty of Rs.10,96,328.00,was imposed. Adjusting the admitted tax paid demand in totality was determined to (Rs.16,77,424.00 - Rs.32,932.00 as tax paid) = Rs.16,44,492.00.

3. Being aggrieved, the dealer carried the matter in first appeal. Before first appellate authority also,the dealer could not

furnish any declaration form. So the FAA confirmed the balance tax due but deleted the penalty. As a result, the demand became reduced to the balance tax due i.e. Rs.5,48,164.00.

Dealer's contentions

4. it is contended by the dealer that, sufficient opportunity was not extended to procure and furnish the declaration form 'C' and demand of declaration form 'F' against the transfer of goods used, for the purpose of job work being not a transaction attracting trade and commerce under the CST Act, the dealer is not required to furnish form F and not liable to pay any tax on it.

On the other hand the contention of the revenue is while deleting penalty u/r 12 (3)(g)of the CST(O) Rules the for a below should have levied interest u/s. 8(a)(2) of the CST(O) Rules which is automatic in nature.

5. The appeal and cross appeal both are heard with Cross Objection from adversaries in respective appeals.

6. **Findings**

Question No. (i)

The dealers claim is, sufficient opportunity was not provided to procure and furnish the declaration forms. The fact remains, the dealer has failed to produce declaration forms before the assessing authority, he has also failed to produce the declaration form before the first appellate authority and thereafter, even before this forum also he has failed to procure and furnish the declaration forms. So, the grievance like sufficient time was provided is found not established. There is no reason to believe that, principle of natural justice is violated. This the question is accordingly decided against the dealer.

Question No. (ii)

The allegation against the dealer is, it had effected dispatch of goods worth of Rs.84,60,631.00 to outside the State. Out of which it had effected interstate sale of goods value of

Rs.16,46,600.00. The goods of rest amount for Rs.68,14,031.00 has not been disclosed in periodical return. The plea of the dealer is, the goods are received from other branches but after execution of work without keeping the same transferred the same to other branches.

However, since the dealer-company could not produce any documentary evidence as per provision u/s.6-A of the CST Act. So, movement of the goods as aforesaid was treated as interstate sale exigible to tax. In absence of declaration form F, the assessing authority and in appeal the first appellate authority both has held the movement of such goods is deemed for all purpose of the Act to have been occasioned as a result of sale.

7. In support of the dealer's contention, learned Counsel for the dealer placed reliance in the matter of Lakshmi and Company v. State of Kerala (2001) 121 STC 424 (SC) held that-

> "that the conclusion of Tribunal is not acceptable because "F" form can be issued only in respect of a completed transaction."

Per contra, it is submitted by the ld standing counsel that the filing of 'F' forms in case of transfer of goods along with the prove of dispatch is mandatory as per the provisions of Section 6A of the CST Act.

Section 6A of the CST Act has been amended by Finance Act, 2002 w.e.f. 11.05.2002 wherein the following was inserted :

> "*and it the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale."*

It is argued, after the amendment of Section 6A of CST Act, the declaration form F is mandatory. In absence of declaration form 'F' tax is to be imposed reference is made to the case of *Ambica Steels Ltd v. State of UP (2008) 12 VST 216 (All.); Johnson Matthey Chemicals v. State of Maharastra (2016) 91 VST 385 (Bom.)*].

8. Here the claim is, the relationship between the job worker and the owner of the goods is not of principal-agent but that of Principal to Principal.

Section 6A of CST Act, 1956 provides that if a dealer claims that he is not liable to pay CST on an interstate movement of goods due to the reason that it is not sale and the goods have been transferred inter-state to any other place of his business or to his agent or principal, then he will have to produce a prescribed form i.e. Form F to his assessing authority duly signed by the principal officer of his other place of business or his agent or principal as the case may be.

9. It is clear from the wording of the above section6-A that it applies only to the cases -

(a) when the goods are sent interstate to one's principal place of business in other state or to one's agent or one's principal and

(b) the interstate movement of goods from one State to the other is otherwise than as sale.

10. As per the decision relied by the learned Standing Counsel in Ambica Steel (supra), it is observed that, in case goods are sent interstate for job work or repair outside the State then the movement of goods takes place always otherwise than as sales. The view of the Hon'ble Allahabad High Court was confirmed before the Hon'ble Apex Court in Ambica Steel v. State of U.P. 2009 (24) VST 356. Further, in the matter of Stic Pens Ltd. v. VAT Officer vide W.P.(C) No.4794/2018 dtd.22.05.2019, Hon'ble High Court of Delhi Division Bench also accepted the above view of the Allahabad High Court . In view of the aforesaid authoritative pronouncements in later period to the decision of the Hon'ble Court of Kerala in Lakshmi and Company (supra) further in view of the fact that, the facts and circumstances of the case in Ambica Steel (supra) when exactly similar to the case in hand, it is held that, the view of the Hon'ble Court of Allahabad which has been confirmed by the Hon'ble Supreme

Court will be the precedent to be followed in the appeal in hand. Consequently, the irresistible conclusion is, the dealer is required to furnish the declaration form 'F' for transfer of goods in the execution of job work also. Accordingly, it is held that, the view taken by both the fora below on the question is not interceptable, hence this question also decided against the dealer.

11. **Question No. (iii)**

The claim of the Revenue in the cross appeal is, in the event of deletion of penalty, the dealer is liable to pay interest which is mandatory in nature as per Rule 8(a)(2) of the CST(O) Rules. More over it can safely be said that the claim of interest in lieu of penalty has no sanction under law. It is also claimed that, interest is automatic in nature. If the plea is accepted that, interest is automatic in nature, then the taxing authority is not debarred from raising interest in appropriate case. There is no necessity of any order to that effect. When the interest is raised and the dealer is dissatisfied, then it is the dealer can raise the matter before the competent authority. It is not out of place to mention here that, in a number of decision the Tribunal has held that in the event of delay payment in tax, interest accrues from the due date of return, whereas in case the dealer failed to furnish declaration form and penalty is deleted, the interest is to be calculated from the date of assessment. With the findings above, it is held that, the Revenue is not debarred from raising interest but the appeal in present forum is not maintainable as any of the finding of the first appellate authority is not under challenge in this second appeal.

12. The question No. (i) & (ii) are decided against the dealer and similarly, the question No. (iii) is decided against the Revenue with observation above.

In the result it is ordered.

The appeal and the cross appeal both are dismissed on contest against each other as of no merit. The impugned order is confirmed hereby.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

Sd/-
(S. Mohanty)
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