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

***S.A. No. 15(C) of 2018***
(Arising out of the order of the learned JCST, Ganjam Range, Berhampur, in First Appeal Case No. AAC-07/2013-14, disposed of on dtd.31.03.2014)

**P r e s e n t: Shri A.K. Dalbehera, O.S.J.S.**
**M.A., LL.M.**
**1st Judicial Member**

M/s. Laxmi Healthy Oils Pvt. Ltd.,
Surala Road, Girisola,
Dist.- Ganjam. ... Appellant

**- V e r s u s -**

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

For the Appellant ... Mr. G.R. Sahu, Advocate
For the Respondent ... Mr. M.S. Raman, A.S.C.

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Date of hearing: 22.01.2021 *** Date of order: 15.02.2021

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***O R D E R***

This appeal is directed against the order dtd.31.03.2014 passed by the learned Joint Commissioner of Sales Tax, Ganajm Range, Berhampur (hereinafter referred to as, the learned JCST) in First Appeal Case No. AAC-07/2013-14, wherein he confirmed the order of the learned Asst. Commissioner of Sales Tax, Ganjam II Circle, Berhampur (hereinafter referred to as, the learned ACST) for the

assessment period 01.04.2007 to 31.03.2011 u/r.12(3) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. The brief facts of the case are that, the appellant-dealer is a limited company engaged in processing rice bran oil and by-products D-oil bran in course of interstate trade and commerce as well as export sales. The appellant-dealer has disclosed total sales to the tune of Rs.4,70,24,938.00 out of which Rs.13,04,463.00 was in course of export sale, Rs.66,15,888.00 was towards exempted sale and Rs.3,91,04,587.00 was in course of interstate sale and collection of CST was of Rs.7,86,784.00. Consequent upon receipt of Audit Visit Report (in short, the AVR) submitted by the STO, Audit Unit, Ganjam Range, Berhampur, the learned ACST issued notice in Form IV under CST(O) Rules for production of books of account and statutory forms pursuant to which the appellant-dealer produced the same, which were examined. The learned ACST accepted the report of the STO (Audit), Ganjam Range, Berhampur for non-submission of supporting export order like agreement with foreign buyer, bill of lading etc. which is provided in Sec.5(3) of the CST Act, 1956 that the penultimate sale is also deemed to be in course of export and is exempted from CST. The learned ACST found that the appellant-dealer had exported the goods in pursuance of export like customs documents, bank certificate, bill of lading, shipping bill etc. But, there was no bill of lading and other documents along with statutory declaration in form 'H'. Therefore, the learned ACST rejected the claim of export sale

u/s.5(3) of the CST Act for non-submission of statutory form 'H' declaration towards sale of Rs.13,04,463.00 and the same was taxed @ 4%. It was further stated that out of interstate sale of Rs.3,91,04,587.00, the appellant-dealer had submitted 53 nos. of declaration in form 'C' for an amount of Rs.3,04,66,340.00 leaving the balance amount of Rs.86,38,247.00. In absence of 'C' declaration form the learned ACST determined the GTO and NTO at Rs.4,78,11,722.00 and Rs.4,04,09,050.00 respectively and raised an extra demand of Rs.20,82,291.00 including penalty u/r.12(3)(g) of the CST(O) Rules.

3. Being aggrieved by the order of the learned ACST, the appellant-dealer preferred an appeal before the learned JCST who confirmed the order of the learned ACST. Being aggrieved by the order of the learned ACST the appellant-dealer has preferred this second appeal.

4. The appellant-dealer has come up with the second appeal on the grounds that the order passed by the learned JCST by confirming the order of the learned ACST is without appreciation of facts and merit of the case and hence bad in law; that the learned JCST as well as the learned ACST erred in law by imposing penalty for non-submission of 'C' and 'H' declaration forms; that it is a fact that the appellant-dealer had sold the goods on good faith in course of interstate trade but the appellant-dealer was unable to obtain the declaration forms for some of its transactions for which the obligation is limited to tax only and that various Courts as well as the circular of the Sales Tax Department clearly advised not to

impose penalty for which imposition of penalty is illegal and arbitrary which should be deleted in the interest of justice.

On the other hand, the respondent-Revenue has not filed any cross objection.

5. Heard the learned Counsel for the appellant-dealer and the learned Addl. Standing Counsel for the respondent-Revenue. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal. In this case the appellant-dealer has mainly agitated about imposition of penalty which is arbitrary amongst other grounds. It was contended that the circular of the Sales Tax Department has clearly advised not to impose penalty. To that effect the learned Counsel for the appellant-dealer filed a circular of the office of the Commissioner of Commercial Tax, Odisha, Cuttack vide No.42/CT dtd.20.04.2015. On perusal of the said circular it is seen that imposition of penalty at the time of audit assessment for non-submission of 'C' forms may or may not be proper in all cases. It is further mentioned that no intention can be attributed to the assessee for his failure to submit declaration in form 'C'. It is also stated that non-filing of form 'C' and form 'F' for a bonafide transaction in terms of the provision of Clause (a) of Rule 12(3) of the CST(O) Rules will not attract penalty under Clause (g) of the said Rule.

6. The tax due disclosed by the dealer in its return was incorrect inasmuch as it was not supported by the required declarations in Forms 'C' & 'H'. Therefore, what was ultimately assessed became the tax due. The dealer having failed to support its claim of concessional tax, imposition of

interest is automatic. This is by operation of law and not by decision of any authority. In the case of **Indian Commerce and Industries Co. Pvt. Ltd. v. 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)..."

In the case of **Indodan Industries Ltd. vs. State of UP**, reported in **[2010] 27 VST 1 (SC)**, it was held that the 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 and that the assessee enjoys that amount during the said period and in order to recover the lost revenue, the levy of interest is contemplated.

7. It is well settled that the dealer is required to file return on the due date along with necessary documents

claiming exemption if any. So when he failed to submit the declaration forms with return he is required to pay interest which must be calculated from the date of the return filed by the dealer. The appellant-dealer has failed to produce the remaining 'C' & 'H' forms before the learned JCST. The appellant-dealer has also failed to produce the same before this Tribunal. Thus the dealer is liable to pay interest calculated from the date of filing of return. In the case in hand, the appellant-dealer was required to furnish the necessary declaration forms within the period stipulated in order to claim benefit of concessional rate of tax and exemption from payment of tax as per returns. At the time of filing of returns, it was within its knowledge that it was required to comply with the statutory mandate and it knew that it had not complied with such requirement. Therefore, in the self-assessment scheme it knew the quantum of "tax due" as per return. Since it had not deposited the "tax due" as per return, the Revenue is required to be protected for such default on the part of the dealer. No reasonable excuse is also explained by the appellant-dealer in this regard. Therefore, in order to compensate the Revenue it is necessary to invoke Rule 8 of the CST(O) Rules. This Tribunal has taken similar view in many cases relied upon by the appellant-Revenue. The Full Bench of this Tribunal in the case of M/s. G.K. Pulses Manufacturing Pvt. Ltd. v. State of Odisha vide S.A. No.7(C) of 2016-17, disposed of on dtd.15.09.2020 have reached at a logical conclusion that the dealer-assessee miserably failed to furnish the declaration forms and for the fact that penalty was

deleted in view of a Circular dated 20.04.2015 issued by the Commissioner of Commercial Taxes, Odisha, Cuttack, it is a fit case, where interest should be levied for the alleged default of the dealer-assessee and accordingly passed order directing the Assessing Authority to recompute the tax liability of the dealer-assessee. Similar view has also been taken by a Division Bench of this Tribunal vide S.A. Nos. 133(C) of 2017-18 & 2(C) of 2018, wherein the Tribunal directed the first appellate authority to levy interest on the ultimate tax dues of the dealer-assessee in accordance with law. Hence, in the present case the penalty imposed is arbitrary and in the light of the above discussion it is necessary to levy interest on the tax due for which the matter should be remitted back for necessary computation.

8. In the result, the appeal is allowed in part and the impugned order is set aside. The matter is remitted back to the learned ACST for necessary computation by levying interest on the tax due instead of penalty as per law preferably within a period of three months from the date of receipt of this order.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

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