



u/r.12(4) 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 respondent-dealer carries on business in sal seeds which he purchases from local areas both from registered and unregistered dealers and sells the same within as well as outside the State of Odisha. As per the Audit Visit Report (in short, the AVR), the respondent-dealer had effected CST sale of goods for Rs.5,11,80,087.00 against which it had filed returns disclosing turnover of Rs.4,49,47,061.00 (excluding 2% CST) which resulted in escapement of turnover. The AVR suggested to adjust excess input tax of Rs.2,67,070.80 accrued under the VAT Act against the CST payable for the same period. On the basis of the AVR, the learned STO initiated proceedings under the above provision and issued notice with subsequent intimations for production of books of account but the respondent-dealer did not respond. So, the learned STO passed exparte assessment order determining the GTO and TTO at Rs.5,11,85,287.00 and Rs.5,01,81,755.88 respectively after deduction of Rs.10,03,531.12 towards CST collection. He levied tax @ 2% on Rs.5,01,76,555.88 (sale against 'C' forms) and @ 4% on Rs.5,200.00 which was computed at Rs.10,03,739.00. Against this, the learned STO adjusted tax payment of Rs.8,84,827.00 and determined the balance tax payable at Rs.1,18,912.00. On this amount, the learned STO also imposed penalty of Rs.2,37,824.00 u/r.12(4)(c) and passed the assessment order raising the total demand of Rs.3,56,736.00.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST who reduced the demand to Rs.1,18,912.00 and deleted the penalty. Being aggrieved by the order of the learned JCST the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed in this case.

5. The Revenue as appellant has come up with this second appeal on the grounds that the order of the learned JCS appears to be unjust and improper; that as per CCT's Circular No.42 dtd.20.04.2015, the penalty is not leviable but interest has to be levied; that the learned JCST has not levied any interest for which the first appeal order is not as per provisions of law to the extent of non-levy of interest and that the order of the learned JCST may be set aside.

6. Heard the learned Addl. Standing Counsel for the State and the learned Counsel for the respondent-dealer. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal so also the written submissions submitted by both the sides. In this case the respondent-dealer was required to furnish the necessary declaration forms within the stipulated period in order to claim the benefit of concessional rate of tax as per return. At the time of filing of return it was within the knowledge of the dealer that it was required to comply with the statutory mandate but the respondent-dealer failed. Since the respondent-dealer 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 respondent-dealer. Therefore, in order to

compensate the Revenue the learned JCST should have levied interest. Different Benches of this Tribunal by instructing the authorities to levy interest in similar facts situation have disposed of many cases.

7. The tax due disclosed by the dealer in its return was incorrect inasmuch as it was not supported by the required declarations in Form 'C'. 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.

8. 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. Thus the dealer is liable to pay interest calculated from the date of filing of return. This Tribunal has taken similar view in many cases relied upon by the appellant-Revenue. 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 impose interest to be levied on the ultimate tax dues of the dealer-assessee in accordance with law.

9. In the result, the appeal is allowed and the impugned order is set aside. In view of the aforesaid observation the matter is remitted back to the learned JCST for calculation of tax dues along with interest as per law within 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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