BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 89(C)/2017-18

(From the order of the ld.Addl.CST (Appeal), NZ, Sambalpur, in Appeal Case No. AA.77(BP)/12-13, dtd.31.08.2017 modifying the assessment order of the Assessing Officer)

Present: Smt. Sweta Mishra
2nd Judicial Member

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

-Versus-

M/s. Natural Organic Farm,
Dist. Kalahandi. .... Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : Mr. B.P. Mohanty, Advocate

(Assessment Period : 01.01.2009 to 30.09.2011)

Date of Hearing: 02.08.2019 *** Date of Order: 02.08.2019

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Addl.CST (Appeal), NZ, Sambalpur (in short, FAA/Addl.CST) in First Appeal Case No. AA.77(BP)/12-13, dtd.31.08.2017 in reducing the order of assessment passed by the Assessing Authority/Joint Commissioner of Sales Tax, Balangir Range, Balangir (in short, AA/JCST) for the assessment period from 01.01.2009 to 30.09.2011 u/r. 12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The fact of the case leading to the present appeal in short is that:

The dealer-assessee, M/s. Natural Organic Farm, Kesinga, Bhawanipatna in the instant case, deals in cotton and cotton seeds and effected purchases and sales both in course of inter-state trade and commerce and export. For the period under assessment, the dealer-farm was audited by the ACST, Kalahandi Circle, Bhawanipatna on dt.22.09.2011 and the Audit Visit Report (AVR) was submitted to the Assessing Authority/JCST. The dealer was hence assessed u/r.12(3) of the CST(O) Rules and accordingly intimation was issued to the dealer to appear for production of his books of account and other relevant documents for necessary verification. During verification, it was found that, the dealer has effected total purchase of goods to the tune of Rs.63,03,52,995/- and against those purchases, it has disclosed CST sale of Rs.61,47,08,050/- and accordingly collected CST of Rs.1,22,76,371/- against 'C' Form thereon. Out of the total sale, the dealer produced total 76 numbers of declarations in Form 'C' to the tune of Rs.50,92,79,663/-. Also the dealer during the year 2009-10 had disclosed the sales turnover in course of inter-state trade and commerce to the tune of Rs.12,03,70,913/- but instead submitted 'C' forms worth of Rs.12,23,21,797/-. Thus, the Audit team treated such excess value as freight and other charges and CST was charged thereon to Rs.19,51,284/-. Regarding the export sale to the tune of Rs.5,30,24,131/- against 'H' Form, the dealer could only be able to produce 8 numbers of declarations in Form 'H' to the tune of Rs.4,01,03,585/-. Accordingly, after deducting the export sales and CST collected by the dealer, the AA determined the GTO and TTO of the dealer at Rs.68,19,59,836/- and Rs.62,95,79,880/- respectively. Tax @2%

on production of 'C' Form worth of Rs.50,92,79,663/-, @4% on non-submission of 'C' Form worth of Rs.10,54,28,387/-, @4% on Rs.19,51,284/- for discrepancies of sale value and @4% on Rs.1,29,20,546/- for non-production of 'H' Forms were altogether calculated at Rs.1,49,97,602/-. Thereafter, taking into consideration the deduction ITC of Rs.7,73,979/- as claimed by the dealer and tax to the tune of Rs.1,34,57,351/- already paid by the dealer at the time of filing of return for the assessment period, the balance tax due stood at Rs.7,73,979/-. Penalty twice of it u/r.12(3)(g) of the CST(O) Rules calculated at Rs.15,32,544/-. Thus, the tax due along with penalty comes together at Rs.22,98,816/-, which the dealer is ultimately found liable to pay at the assessment stage by the AA.

3. Being aggrieved with the order of assessment passed by AA, the dealer preferred first appeal before the FAA as Addl.CST, (Appeal), NZ, Sambalpur, who in turn, after revising the GTO, TTO and taking into consideration additional 'C' forms and 'H' forms submitted by the dealer at the first appellate stage and deleting the freight charges to certain extent, reduced the entire demand raised by the AA and held the dealer liable to get refund of Rs.18,43,621/-.

4. Feeling dis-satisfied with the order passed by the FAA, State-appellant has knocked the door of this Tribunal with a prayer to modify the order of assessment passed by the AA especially in terms of imposition of interest as imposition of interest is mandatory in nature as per Rule 8(A)(2) of the CST(O) Rule, 1957 in absence of proof of payment as required u/r.7 of the OST Rule.

5. Heard the appeal at length. Perused the order of assessment as well as order of FAA, materials available on record, grounds of appeal filed by the State-appellant and vis-a-vis cross objection submitted by the dealer-respondent. For the State-appellant Mr. M.L. Agarwal, learned Standing Counsel was present whereas Mr. B.P. Mohanty, learned Advocate appeared on behalf of the dealer-respondent. During the course of hearing, learned Standing Counsel Mr. Agarwal contended that, it is a settled principle of law that, the interest is generally automatic unlike the penalty which is payable on conclusion of assessment or reassessment and interest is compensatory in nature and required to be remitted by the selling dealer to make good the loss to the State. To substantiate his claim, he has advanced plethora of decisions passed by different Hon'ble Courts and Apex Court which is relevant for the purpose of this case. He has given stress upon the Hon'ble Apex Court's decision in the case of **Sales Tax Officer & another Vrs. Dwarika Prasad Sheo Karan Dass 39 VST (SC) Page 36**, wherein the Apex Court has observed that, the assessee is liable to pay interest on unpaid amount of tax and such liability arises automatically by operation of law. Further he has cited several decisions of the different Hon'ble Courts like **State of Karnataka -Vrs.- (1) Maintec Technologies Pvt. Ltd. & Bharat Heavy Electronics Ltd. (2015) 78 VST 429 (Karn),** and in the matter of **Fosroc Chemicals (India) Pvt. Ltd. -Vrs.- State of Karnataka (2015) 79 VST 25 (Karn)** and also in the matter of **Indodan Industries Ltd. -Vrs.- State of U.P. & Others (2010) 27 VST 1 (SC).** Perused the judgments cited by the learned Standing Counsel for the State. The judgments are

of great importance but facts and circumstances of this case are quite different from these cases.

Conversely, learned Advocate for the dealer, Mr. Mohanty vehemently argued before this Tribunal that, the State has filed the grounds of appeal without any basis and the issue raised by the State-appellant relating to imposition of penalty on unpaid amount of tax is purely hypothetical and illegal as neither of the fora below has imposed any interest on the tax due, but State in the mis-concept of fact and law regarding imposition of interest at concessional rate of tax have no legs to stand in the present case. To further strengthen his claim, he has cited decision of the Hon'ble Apex Court in the matter of **Gujarat Ambuja Cement Ltd. & another Vrs. Assessing Authority-cum-Asst. Excise & 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",** the principle is well settled that, in the event of fault of the selling dealer, the selling dealer is liable to pay tax without concession in rate of tax, but no penalty can be imposed. The circular or the order of the Hon'ble Apex Court is silent on the question of imposition of interest.

6. At the outset, it is pertinent to mention here that, interest is invariably levied whenever there is non-payment of tax or delay payment of tax. The payment of tax without concession in rate of tax is a consequence for non-production of declaration Form 'C' in the case in hand. So, in that event, the taxing authority is not debarred to raise interest. In the case of

Indodan Industries Ltd. Vrs. 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.

But, in the peculiarity of the case, which is discussed below, whether it is within the competency of this Tribunal in this appeal in hand to award interest? The AA has not imposed penalty or interest. The FAA, which is an extended forum of assessment, has also not imposed penalty or interest. So far as the assessment is concerned, both the AA and FAA both stand on a same platform. The order of the FAA is under challenge by the Revenue.

7. The prayer of Revenue like imposition of interest in lieu of penalty is bad in law because penalty and interest accrue on separate contingencies. It is well settled that, a decree or order can be challenged in appeal by the party against whom the decree or order is passed or by the party, even though the order is passed in his favour, but the findings on any question or issue involve in this dispute is decided against him, or in the event, the order or decree passed in his favour, all the issues/questions are decided in his favour, but while deciding any question or issue, any question of fact has been wrongly decided against him, in that event also, the party has a right to prefer appeal.

Here, it is not understood how and in which way the impugned order can be subjected to appeal at the instance of the Revenue. The first appeal was preferred by the dealer questioning the imposition of higher rate of tax. It was decided by the FAA giving relaxation in tax to the extent declaration form furnished. It was not a question before the FAA that, the dealer is liable to pay interest or not ? Once, this issue is never raised or decided, then the scope in the hands of the parties in appeal to raise the question of interest does not arise. Revenue has failed to establish against which findings of FAA it is aggrieved so as to enable it to prefer appeal. However, it is apt to mention here that, the Revenue is not left remediless. The forum of revision is available in the hands of the learned Commissioner when an order affects the interest of the Revenue. But so far as the purpose of appeal is concerned, I am of the considered view that, the impugned order is not open to attack in appeal at the instance of the Revenue. Thus, this Tribunal came to a conclusion that, when there is delay in payment of tax, interest should be levied but this question neither can be raised nor decided in this appeal at the instance of the Revenue. It is also made clear that, Revenue is not debarred from raising any demand, which is lawful against the dealer. Accordingly, it is ordered.

8. The appeal is dismissed as of no merit with the observation herein above.

Dictated and Corrected by me,

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