

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 98(C)/2017-18**

(From the order of the Id.ACST (Appeal), Odisha, Cuttack,
in Appeal No. AA-CUII/371/JCST/2011-12, dtd.04.10.2017
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. Godrej Hershey Ltd.,
Cuttack.

.... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. G.B. Jena, Advocate

(Assessment Period : 01.04.2005 to 30.11.2010)

Date of Hearing: 26.06.2019 *** Date of Order: 26.06.2019

ORDER

The present second appeal has been directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal) Odisha, Cuttack (in short, FAA/Addl.CST) reducing the tax demand raised on the dealer in the order of assessment passed by the Assessing Authority/Joint Commissioner of Sales Tax, Cuttack-II Range, Cuttack (in short, AA/JCST) for the assessment period from 01.04.2005 to 30.11.2010 u/r. 12(3) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules.

2. The brief facts of the case are stated as follows:

The dealer in the instant case is a Private Limited Company in the name and style of M/s. Godrej Hershey Ltd., Manguli in the district of Cuttack bearing TIN-211261300147 for the above mentioned tax period, deals in goods like tea, confectionery and beverages on wholesale basis. The said company's Headquarter is situated at Mumbai and regional office at Kolkata. The dealer for the purpose of trading, receives stocks from outside States by way of stock transfer basis against declaration Form 'F'. Besides the dealer also transfer its stocks to its ex-state branches and effected purchases from inside State on due payment of tax. Basing upon the surprise visit to the dealer's unit at Manguli by Audit Unit, it was found that, the dealer has transferred goods to its outside State branches on stock transfer basis during the aforesaid tax period to the tune of Rs.47,01,971.17 against non-submission of declaration Form 'F'. When confronted with the said allegation by the Audit Unit, the dealer produced his books of account consisting of purchase, sale and stock, statement of way bill and Form 'F'. In this context, the dealer produced only 10 numbers of declaration Form 'F' worth of Rs.30,80,352.74 and for the rest of the amount i.e. Rs.16,21,618.43, he could not be able to submit the same even availing due opportunities by the AA. Hence, the AA held the rest amount of Rs.16,21,618.43 as GTO/NTO and in absence of submission of declaration Form 'F' to the said

amount and taxed the same @12.5% i.e. Rs.2,02,702.30. Since the dealer has paid nothing at the time of filing of its return, penalty twice on it u/s.12(3)(g) of the CST(O) Rules imposed on the dealer, which became calculated to Rs.4,05,404.60. Thus, calculating tax due along with penalty, the total tax demand became calculated to Rs.6,08,106.90 or say Rs.6,08,107/- which the dealer became liable to pay as per the order of assessment.

3. Being aggrieved with the order of assessment passed by the AA, the dealer preferred first appeal before the learned FAA as Addl. CST, Odisha, Cuttack, who in turn, after proper examination of all the documents and materials available in the record and keeping in view the ratio laid down by different Hon'ble Courts and Apex Court, deleted the penalty from the tax due and reduced the tax demand from Rs.6,08,107/- to Rs.65,318/-.

4. Feeling aggrieved with the reduction in demand and deletion of penalty in the order passed by the learned FAA, State preferred second appeal before this forum with the contention that:

(a) The transaction for want of declaration in Form 'F' towards the stock transfer effected to another State is treated to be deemed sale. Hence, the dealer is liable to pay interest for the transaction under the said assessment period.

(b) The imposition of interest is mandatory in nature as per Rule 8(A)(2) of the CST(O) Rules, 1957. For better appreciation, the said Rule is quoted herein below :

“[8A. Levy of penalty for default of payment of tax and interest payable.-

(1) xx xxx xxx

(2) If a registered dealer, without any sufficient cause, fails to furnish the proof of payment as required under Rule 7, the assessing authority may, subject to sub-rule (3), direct him to pay, in addition to the tax, interest under sub-rule (1) of Rule 8 and penalty under sub-rule (1) of this rule payable or paid by him, a penalty of a sum of rupees one hundred per each day of default, subject to a maximum of rupees ten thousand”.

Notwithstanding that, State-appellant has also cited the decision in the case of **Dwarika Prasad Sheo Karan Das** wherein, the Hon’ble 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.

On the contrary, to the points of law argued by the learned Addl. Standing Counsel for the State, Mr. Pradhan, the learned Counsel for the dealer, Mr. G.B. Jena during the course of argument, submitted two e-challan copies filed for the tax period in question for a sum of Rs.2,50,000/- as additional evidence, which were duly paid prior to the determination of CST sale on two occasions i.e. on dtd.17.11.2011 for Rs.40,541/- and on dtd.16.03.2012 for Rs.2,09,459/- respectively and

approached this Tribunal to take those tax payments thorough e-challans into consideration, as those were paid prior to the determination of CST sale for the tax period in question.

5. Heard the learned Counsels for both the sides. Gone through the assessment order as well as first appellate order, grounds of appeal filed by the State and additional evidence submitted by the dealer during the course of argument.

6. The crux of the dispute which needs to be decided in the present case is, the FAA in his first appeal order has accepted additional five numbers of declaration Form 'F' covering an amount of Rs.10,99,071.23 but in absence of the remaining amount of Rs.5,22,547.20, the dealer could not produce the same before the FAA. Hence, the FAA waived the penalty to be imposed on the dealer and only taxed the remaining amount of Rs.5,22,547/- covering non-submission of declaration Form 'F' @12.5% only, thus the tax demand.

7. After hearing the argument advanced by the State-appellant for imposition of interest on the dealer keeping in view the ratio laid down by the Hon'ble Apex Court cited (supra) and perusing the e-challan copies filed by the dealer as additional evidence produced by the dealer before this forum carefully, I am of the opinion that, since the dealer produced the e-challan copies of filing his returns much before the determination of CST sale for the

said period, the question of imposition of interest does not arise in the case of the present dealer. Accordingly, it is ordered.

8. The appeal by the State is dismissed on contest being devoid of merit and the first appeal order passed by the learned FAA stands confirmed.

Dictated and Corrected by me,

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

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(S. Mishra)
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