

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 102(C)/2014-15**

(From the order of the ld.Addl.CST (Appeal), Central Zone, Odisha, Cuttack, in Appeal Case No. AA-JCST B/783/2013-14, dtd.06.12.2014, confirming the assessment order of the Assessing Officer)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Ori Plast Ltd.,
O.T. Road,
Dist. Balasore. Appellant

-Versus-

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

For the Appellant : Mr. D.K. Mohanty, Advocate
For the Respondent : Mr. M.L. Agarwal, Standing Counsel

(Assessment Period : 01.04.2010 to 31.03.2012)

Date of Hearing: 07.08.2019 *** Date of Order: 09.08.2019

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (in short, FAA/Addl.CST) in First Appeal Case No. AA-JCST B/783/2013-14, dtd.06.12.2014 in confirming the order of assessment passed by the Assessing Authority/Joint Commissioner of Sales Tax, Balasore Range, Balasore (in short, AA/JCST) for the assessment period from 01.04.2010 to 31.03.2012 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 brief is that:

The dealer, M/s. Ori Plast Ltd. in the instant case manufactures and sales PVC pipes, HDPE Pipe and fittings and direct action hand pump sets by utilizing raw materials like HDPE granules, PVC resins, master batch chemicals. For the said purpose, it purchases raw materials and inputs both from within and outside the State of Odisha. The dealer-company has total four places of business, which includes two from inside the State of Odisha at O.T. Road, Balasore and Nayabazar, Cuttack and other two business places outside the State of Odisha i.e. at Strand Road, Kolkata and Hyderbasthi, Secundarabad, Andhra Pradesh. Basing upon an Audit Visit Report (AVR) submitted by the Audit Team of Balasore Range, Balasore, and upon receipt of statutory notice in Form-IV, the Deputy Manager (Accounts) of the company appeared and produced his books of account and other relevant documents pertaining to his business transaction. As per the AVR, it was found that, the dealer has effected inter-state trade and commerce on three different counts those are (i) Direct export sale of finished goods u/s.5(1) and u/s.6(3) of the CST Act. (ii) Branch transfer of stock of finished goods against Form 'F' and (iii) Inter-state sale of finished goods against declaration Form 'C'. Regarding the first allegation, the dealer-company has effected total direct export sale of finished goods to two different companies namely M/s. Pawan Construction, Bhutan to the tune of Rs.6,23,693/- and claimed exemption u/s.5(1) of the CST Act and Rs.4,19,244/- to M/s. Unicef, Khartoun, Sudan u/s.5(1) of the CST Act respectively. During verification in

order to establish his claim, the dealer produced purchase order, sale invoices, evidence of dispatch of goods, receipt of payment evidence, exemption certificate and all were found in order and accordingly allowed. Similarly, so far as the inter-state branch transfer of finished goods worth of Rs.4,85,73,766/- against declaration Form 'F' is concerned, the dealer duly furnished the equivalent amount of 'F' form during scrutiny and hence allowed. Further, during the assessment period in question, the dealer has sold finished goods to outside the State of Odisha dealers against declaration in Form 'C' amounting to Rs.141,92,94,667/- out of which, the dealer collected CST @2% to the tune of Rs.2,83,85,893.34 against 'C' form and CST @4% on Rs.7,93,445.16 in absence of 'C' form. Thus, out of total Rs.141,92,94,667/- of total sale, the dealer could able to produce declaration in Form 'C' only to the extent of Rs.141,61,25,139/-. Therefore, the differential amount of Rs.31,69,528/- was taxed appropriately. Accordingly, the AA determined the GTO of the dealer at Rs.151,79,26,841/-after deducting total exemption claimed against total direct export sale of Rs.10,42,937/-, Rs.4,85,73,766/- towards branch transfer and CST collected to the tune of Rs.2,91,79,342/-, and TTO at Rs.143,91,30,796/-. Tax on the entire TTO was calculated appropriately to Rs.2,92,42,729.04. Since the dealer has already paid Rs.2,86,78,253/- at the time of filing of return and ITC claimed by the dealer of Rs.5,01,090/- adjusted thereon, the balance tax due remained at Rs.63,386.06. Penalty twice on it u/r.12(3)(g) of the CST(O) Rules became Rs.1,26,772.12. Thus, total tax due along with penalty altogether came to

Rs.1,90,158/-, which the dealer became liable to pay at the stage of assessment.

3. Being aggrieved with the order of assessment passed by AA, the dealer preferred first appeal before the FAA as Addl.CST, who in turn, confirmed the assessment order and hence the total tax demand raised on the dealer remained as it is.

4. Being further aggrieved, the dealer choose to approach this Tribunal by way of filing this second appeal with the ground that, the FAA was wrong in imposing penalty for want of declaration forms. He should have imposed interest but not penalty whereas it is also contended that, sufficient opportunity was not provided to the dealer to procure the declaration forms.

5. At the outset, it is pertinent to mention here that, learned Advocate for the dealer fairly conceded to his argument that, the dealer is ready and willing to pay interest for delay payment of tax. However, he vehemently questioned the findings of both the fora below imposing penalty for non-submission of declaration forms. It is argued that, the dealer has taken all pain to procure the declaration forms but only to some extent for non-cooperation of the purchasing dealers and as because it was not the fault of the dealer and it was not within the capacity of the dealer to furnish the declaration forms, the dealer should not have burdened with imposition of penalty. However, the dealer is liable to pay interest. In support of his argument, the dealer has cited the judgment of the Hon'ble Apex Court in the matter of **Shree Krishna Electricals Vrs. State of Tamilnadu and another**, reported in 23

VST 249, wherein it is clearly held that, the dealer should not be burdened with penalty for non-submission of declaration forms which is not beyond his control.

In course of the argument, learned Counsel for the State Mr. Agrawal, Standing Counsel has conceded to the submission of the learned Counsel for the dealer that, in view of plethora of decisions by the Hon'ble Court followed by Circular issued by the Commissioner of Commercial Tax No.42/CT/No.III(I) 38/09 dtd.20.04.2015, now the question regarding imposition of penalty is set at rest. It is when the dealer has shown his bona-fides for non-furnishing of declaration forms which are beyond his control, he is not liable to pay penalty. But the fact remains, deletion of penalty does not debar the dealer from payment of due tax without concessional rate of tax. No interpretation can be attributed to the authorities of the Hon'ble Court in **Gujarat Ambuja Cement Ltd. and another Vrs. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP**, and the Circular of the CCT that, if the bona-fides on the part of the dealer is shown, the dealer will be exempted from paying the tax. It is remained undisputed that, when the dealer has failed to furnish the forms whether it is branch transfer or whether it is inter-state sale in concessional rate of tax, both have no meaning and avail to the dealer. The dealer is required to pay the tax as if those are inter-state sale without any concessional rate of tax or free of tax due to branch transfer. The very moment the dealer's claim to give relaxation is denied, the dealer is liable to pay tax and any delay in payment of such tax necessarily attracts provision u/r.8(1) of the CST(O) Rules. In

Sales Tax Officer & Another Vrs. Dwarika Prasad Sheo Karan Dass 39 VST (SC) Page 36, it is also observed that, interest liability is automatic no fresh notice of demand is necessary for the same.

Now the next question before us is, in the fact and circumstances of the case, what is the date from which the interest or penalty began to accrue? Interest or penalty (i) For a failure to pay tax due, interest and penalty accrue from the due of the tax payment for each month or part of the month that the debt remains unpaid. (ii) For a failure to file a return, interest and penalty accrue from the due date of the return for each month or part of the month that the debt remains unpaid. (iii) For a failure to pay estimated tax, interest and penalty accrue from the due date of the estimated payment for each month or part of the month that the debt remains unpaid in full”.

Here it is not out of place to mention here that, the provision required for furnishing declaration form within a period of three months from the due date of return. Similarly, on the other hand, in the facts and circumstances of the case, it is believed that, on bona-fide belief of obtaining the declaration in Form ‘C’ and ‘F’ he will be entitled for concessional rate of tax as the declaration forms are not within his control, the dealer had filed return disclosing turnover which is remained undisputed. Taking consideration of the facts above, it is held that, in the instant case, the dealer comes under the third category mentioned above. As such the interest is accrued from the date of filing his return till the period of assessment. Accordingly, it is ordered.

The appeal stands allowed on contest. Though the dealer is not liable to pay penalty for non-submission of declaration forms but it is made clear that, the dealer is liable to pay interest calculated from the date of filing of the return u/r.12(3)(g) of the CST (O) Rules till the period of assessment. The AA is directed to re-compute the tax liability with interest and raise demand thereafter.

Dictated and Corrected by me,

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