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

S.A. No. 54(C) of 2017-18

(Arising out of the order of the learned JCST, Koraput Range, Jeypore, in 1st Appeal No. AAC (NGP)16/16-17, disposed of on dtd.25.05.2017)

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

M/s. Vishnu Trading Co.,
At/P.O.- Righar,
Dist.- Nabarangpur. ... Appellant

- V e r s u s -

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

For the Appellant ... Mr. N. Anand Rao, A.R.
For the Respondent ... Mr. M.L. Agarwal, S.C.

Date of hearing: 18.12.2019 ******** Date of order: 04.01.2020

O R D E R

This appeal is directed against the order dtd.25.05.2017 passed by the learned Joint Commissioner of Sales Taxes, Koraput Range, Jeypore (hereinafter referred to as, the learned JCST) in 1st Appeal Order No. AAC (NGP)16/16-17, wherein he allowed the appeal in part by reducing the demand from Rs.28,05,101.00 to Rs.8,89,209.00 in the assessment made by the learned Asst. Commissioner of Sales Tax, Nabarangpur Circle, Nabarangpur (hereinafter referred to as, the learned ACST) for the assessment period 01.04.2011 to 31.03.2013 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 appellant-dealer carried on business in maize both inside and outside the State of Odisha. The dealer was self-assessed against the return filed by him u/r.7 of the CST(O) Rules. It was found that the appellant-dealer had availed concessional rate of tax without filing due declaration forms. In view of this, it warranted for reopening of the case to safeguard the revenue of the State. Accordingly, proceeding u/r.12(4) of the CST(O) Rules was initiated against the appellant-dealer. In spite of several notices, the appellant-dealer did not appear nor produced the books of account before the learned ACST. Though the appellant-dealer did not respond, but the learned ACST passed assessment order as exparte. Information on issue/use of way bills were extracted from VATIS, from which it was found that 78 nos. of way bills for the period from 28.11.2012 to 16.02.2013 were utilized by the dealer showing sale of maize to different dealers of outside the State whose sale value was at Rs.2,08,62,267.25. In view of this, the GTO of the appellant-dealer was determined at Rs.2,08,62,267.25. Since no declaration forms were filed till the date of the order, the GTO was determined as NTO and taxed @ 5% on Rs.2,08,62,267.25. Tax on computation came to Rs.10,43,113.36. As the appellant-dealer had paid Rs.1,08,080.00, the appellant-dealer was liable to pay the balance tax of Rs.9,35,033.36 and penalty u/r.12(4)(c) on it amounting to Rs.18,70,066.72 and tax along with penalty came together at Rs.28,05,100.08 as per the order of the learned ACST.

3. Being aggrieved by the order of the learned ACST, the appellant-dealer had preferred an appeal before the learned JCST. In the first appeal stage, the appellant-dealer appeared through his Counsel and produced five numbers of 'C' forms for Rs.65,16,787.00 and 11 numbers of 'H' forms for Rs.1,86,93,784.00 along with the turnover statement but could not produce the books of account for verification. On examination of such forms, the learned JCST found

that, out of 5 'C' forms, one 'C' form covering Rs.1,49,100.00 was the xerox copy. Similarly, out of 11 'H' forms, three 'H' forms covering Rs.38,02,783.00 were duplicate copies. As per Rule 6(a)(ii) read with Rule 6D of the CST(O) Rules, a selling dealer claiming concessional rate of tax or/and exemption, shall furnish the "Original" marked copy of 'C' form or/and 'H' form along with the statement Form-A or/and Form-D respectively to the assessing authority. In course of verification by the learned JCST, it was found that out of 5 'C' forms, 4 'C' forms were found to be genuine. Likewise, out of 11 numbers of 'H' forms, 3 numbers of 'H' form were found to be genuine. Accordingly, the learned JCST determined the GTO at Rs.2,58,71,496.00. By deducting Rs.17,14,710.00 he allowed exempted sale u/s.5(3) of the CST(O) Rules. The TTO was determined at Rs.2,41,56,786.00 and the tax payable @ 2% on Rs.62,42,827.00 and @ 5% on Rs.1,79,13,959.00 was computed at Rs.10,20,554.00. The appellant-dealer having paid Rs.1,08,080.00 and Rs.23,265.00, he was required to pay balance amount of Rs.8,89,209.00 as per the order.

4. Being aggrieved, the assessee-dealer preferred this second appeal against the order of the first appellate authority. It is contended by the appellant-dealer that, the first appellate authority disallowed the 'H' forms on the ground of non-submission of linked documents in support of export sale. The first appellate authority has not given reasonable opportunity to rectify the defects as pointed out in the appeal order. It was further contended that, disallowing the 'H' forms is unjust, illegal and the action of the appellate authority is contrary to the principles of natural justice for which the matter needs fresh consideration.

5. The appeal is heard with cross objection from the side of the Revenue. Revenue has supported the impugned order to be justified and sustainable in law. In the cross objection it is stated that,

the appellant-dealer was given opportunities by the assessing officer and the appellate authority to produce the books of account, required declaration forms, rectification of defects if any in the declaration forms along with other documents in support of claim of concessional rate of tax and exemption u/s.5(3) of the CST Act. So, the allegation that no opportunities were extended to the dealer is fallacious. The transaction in question relates to the period 2011-12 and 2012-13 and the appellant-petitioner is supposed to furnish the declaration in form 'C' and form 'H' within a period of three months in support of his claim. But even after lapse of more than four years, he failed to furnish the same. The imposition of interest on the tax due on the ground of non-submission of statutory forms is automatic. Finally, it was contended that the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto.

6. The appellant-dealer has not filed any further declaration form before this Tribunal in support of the claim of inter-State or export sales nor has filed any document in support of such claim. The plea to accept the photocopies of the counter foil of 'C' declaration form advanced by the appellant-dealer is not sustainable in view of the provisions of Section 8 of the CST Act read with Rule 12 of the CST (R&T) Rules and Rule 6 of the CST(O) Rules, 1957 which indicate filing of original declaration form to claim deduction. Hence, photocopies of the declaration form cannot be accepted for grant of deduction. The argument advanced by the appellant-dealer that he had sold the goods less than the purchase value is not supported by any documentary evidence. The appellant-dealer has also not produced his books of account and documents anywhere including this Tribunal. As regards the export sales u/s.5(3) of the CST Act it can only be treated as a complete sale if the same has been effected after the shipment of export and production of necessary and relevant documents in support of such transaction of export. On bare reading

of the said section it is ascertained that the said provision, inter alia, provides that the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in course of such export provided that such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export. Unless and until such conditions are satisfied claim u/s.5(3) cannot be allowed. Hence, in the present case the appellant-dealer had to produce various documents such as foreign buyer agreement, purchase order, sale bills, proof of dispatch and way bills, receipt of goods, letter of credit, bill of lading and the original declaration form 'H' in order to avail the benefit of exemption u/s.5(3) which is lacking here. The same has been fortified by the Hon'ble Apex Court from time to time in different cases such as Consolidated Coffee Ltd. v. Coffee Board 1980 AIR 1468 SC and Saraf Trading Corporation v. State of Kerala (2011) 38 VST 1 (SC). In this case the appellant-dealer has failed to substantiate its claim before the lower forums so also before this Tribunal. The books of account and other documents have not been produced nor the complete declaration forms have been submitted. No new document can be introduced or pleaded for acceptance, nor exemption can be granted on oral submission of the appellant-dealer. The appellant-dealer on availing sufficient opportunities could not furnish the complete declaration forms. For non-submission of declaration form, the appellant-dealer is liable to be levied interest from the date of filing of returns till the date of payment as per the provisions of law. It is pertinent to mention here that the issue of levy of interest is no more in re-integra as the issue has been settled by this Tribunal in many cases. Further, the levy of interest has been settled by the Hon'ble Apex Court in case of Indodan Industries v. State of U.P. (2009) 27 VST 1 (SC). In view of such

discussion, I hold that there is no merit in the appeal which is liable to be dismissed.

7. In the result, the appeal is dismissed. The impugned order is hereby confirmed. The cross-objection is disposed of accordingly.

Dictated & corrected by me,

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

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