

steel sheets, galvanized iron sheet, waste and scrap of caste iron. The respondent-dealer effected purchase from inside the State and sales both inside and outside the State. The respondent-dealer effected some outside sales against 'C' form and some of them were sold by paying tax as per VAT rate. In response to Audit Visit Report (in short, the AVR), the respondent-dealer produced the original 'C' form amounting to Rs.56,25,280.00 against which he had effected interstate sale which was found to be correct by the learned STO. The respondent-dealer had effected total interstate sale of Rs.1,58,20,432.00, out of which Rs.56,25,280.00 was sold against 'C' form and the remaining Rs.1,01,95,152.00 was sold taxing as per VAT tax rate i.e. @ 4%. Therefore, the CST @ 2% of Rs.56,25,280.00 was computed at Rs.1,12,505.60 and 4% of Rs.1,01,95,152.00 was computed at Rs.4,07,806.00. So, the total CST payable was determined at Rs.5,20,311.60 out of which Rs.3,30,717.00 was adjusted against the excess ITC. After deducting Rs.3,30,717.00, CST payable was determined at Rs.1,89,594.60 against which the respondent-dealer had paid CST of Rs.1,33,640.00 which was Rs.55,954.60 and was less than the CST payable. Penalty of Rs.1,11,909.20 was imposed u/r.12(3)(g) of the CST(O) Rules and the total tax and penalty together came to Rs.1,67,864.00.

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 nil. 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 by the respondent-dealer in this case. The respondent-dealer did not remain present at the time of hearing. Hence, the matter was heard exparte.

5. Heard the learned Addl. Standing Counsel on behalf of the Revenue and the matter was heard exparte but on merit. Perused the case record and the grounds of appeal. I also perused the

materials available on record. I have also carefully gone through the orders of both learned fora below. The Revenue has preferred this appeal seeking direction for levy of interest under CST Act and Rules.

6. It is the settled principle of law that levy of interest is mandatory when there is default in payment of tax. Such levy of interest is compensatory and automatic. A dealer while filing the periodical returns has to fill up and submit the annexure with details of concessional sales effected u/s.8 of the CST Act and accordingly has to furnish the declaration form 'C' thereof for depositing less amount of tax i.e. at concessional rate of tax instead of full rate of tax. Due to delayed payment of tax for non-furnishing of declaration forms, the exchequer has to be compensated for belated payment of differential tax due through levy of interest. The CST Act prescribes levy of interest u/s.9 of the Act whereas CST(O) Rules provides levy of interest u/r.8.

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. This case is different from the facts that I discussed in the aforesaid paragraphs. In this case the learned JCST allowed the appeal and the demand was reduced to nil. Hence the question of imposition of mandatory penalty as stated in the grounds of appeal does not arise. The Revenue has also stated in the grounds of appeal that if penalty is not imposed then interest is to be levied which is mandatory as per Rule 8(1) & (2) of the CST(O) Rules, 1957 which the first appellate authority has failed to impose. However, during the course of hearing the learned Addl. Standing Counsel fairly conceded that neither penalty nor interest can be imposed in this case in view of the findings of the learned JCST. I also hold the same view. Hence the question of modifying the order of first appellate authority does not

arise. In view of such discussion I find that there is no infirmity in the order of the learned JCST.

10. In the result, the appeal is dismissed and the impugned order is hereby confirmed.

Dictated & corrected by me,

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

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