

respondent-dealer through his Advocate appeared and produced complete set of books of accounts for verification. On verification it was found that the respondent-dealer maintained sale register, purchase register, sales invoices, purchase invoices, stock-cum-production, accounts of waybill issued and 'C' forms. It was also found that the respondent-dealer obtained only 4 nos. of original 'C' forms worth Rs.19,000.00 against interstate sale of mahua flower for the basic value at Rs.9,50,000.00 @ 2%. On confrontation, the respondent-dealer could not produce the 'C' declaration forms for the value of goods worth Rs.3,20,000.00 from the respective outside purchaser. Hence the learned STO treated it as interstate transaction and levied tax @ 5% as per OVAT tax rate. The learned STO determined the GTO at Rs.9,69,000.00 and after deduction of CST the NTO came to Rs.3,20,000.00. Total CST came to Rs.28,600.00. As the respondent-dealer had already paid CST of Rs.19,000.00, he was liable to pay Rs.9,600.00. Tax and twice the amount of penalty together came to Rs.28,800.00 which the respondent-dealer was liable to pay.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned DCST who just deleted the penalty by giving a finding that the penalty imposed by the learned STO is not justified because penalty is allowed by law but it does not mean that penalty must be imposed without exercising judicially. So, the learned DCST just upheld the tax demand raised by the learned STO to be paid by the respondent-dealer. Being aggrieved by the order of the learned DCST, the Revenue as appellant has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer.

5. Heard the learned Standing Counsel appearing for the Revenue so also the learned Counsel for the respondent-dealer.

Perused the orders of both the fora below, materials available on record and grounds taken in the appeal. In the grounds of appeal the appellant-Revenue has contended that the learned first appellate authority has deleted the penalty u/r.12(3)(g) of the CST(O) Rules which is mandatory in nature. The Revenue-appellant however fairly conceded in the grounds of appeal that considering the circular of the CCT(O), if at all penalty is not leviable imposition of interest is mandatory. On perusal of the impugned order it is seen that the learned DCST has held that imposition of tax at full rate for non-submission of 'C' forms is against the spirit of circular of the Commissioner of Commercial Taxes, Odisha, Cuttack vide No.42/CT dtd.20.04.2015. The learned DCST has held that mere non-submission of declaration in form 'C' against a bonafide transaction does not constitute an offence u/r.12(3) of the CST(O) Rules so as to attract liability for imposition of penalty under clause(g) of the said Rule. The learned DCST has rightly held that 'C' form being optional and being a mere condition to avail concessional rate, lapses if any cannot be considered to operate as a penal clause. The learned Standing Counsel failed to substantiate as to how and under what provision the interest is to be levied in this case. The learned Standing Counsel grossly failed to substantiate how interest is to be levied under the facts and circumstances of the case when there is a circular of CCT(O). Hence I do not find any infirmity in the order of the learned DCST.

6. 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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