

2. The brief facts of the case are that, the respondent-dealer is a partnership concern running a granite cutting and polishing unit. The respondent-dealer procures granite blocks from both inside and outside the State of Odisha and effects sale of granite tiles both inside as well as outside the State of Odisha. Pursuant to the Audit Visit Report (in short, the AVR), the learned ACST assessed the respondent-dealer where the Advocate-cum-Authorized Representative of the respondent-dealer had appeared and produced the books of account which were examined and it was found that the respondent-dealer had effected interstate sales worth of Rs.38,92,178.00 and collected CST to the tune of Rs.77,689.00. The respondent-dealer had also availed ITC adjustment of Rs.20,790.00 u/r.7(3)(c) of the CST(O) Rules. The respondent-dealer had also deposited CST of Rs.56,899.00 through challans at the time of filling periodical returns. The learned ACST found that, the respondent-dealer had not furnished 'C' declaration forms against interstate sale value of Rs.47,775.00 effected to M/s. Sri Adinath Enterprises, Mumbai. The learned ACST had disallowed the claim of concessional rate of tax against such sale at the time of assessment and calculated tax @ 12.5% on the state rate. Accordingly, the learned ACST had determined the GTO at Rs.39,68,906.00. After allowing deduction of Rs.77,689.00 towards collection of CST, the NTO was determined at Rs.38,92,178.00. Tax was calculated @ 2% on Rs.38,44,403.00 for the sale value against which the respondent-dealer produced 'C' declaration forms and @12.5% on Rs.47,775.00 for the sale value against which the respondent-dealer could not produce the 'C' declaration forms. Thus the total tax payable was arrived at Rs.82,860.00. Against the total tax payable, the learned ACST had allowed ITC adjustment to the tune of Rs.20,790.00 u/r.7(3)(c) of the CST(O) Rules against CST payable. After adjustment of ITC against CST payable, the balance CST payable came to Rs.62,070.00. The learned ACST had also

allowed deduction of Rs.56,899.00 towards CST deposited through challan. So, the learned ACST computed the tax demand to Rs.5,171.00 by imposing two times penalty at Rs.10,342.00 u/r.12(3)(g) of the CST(O) Rules, for which the total tax and penalty came to Rs.15,513.00.

3. Being aggrieved by the order of the learned ACST, the respondent-dealer preferred an appeal before the learned JCST who reduced the demand figure to Rs.5,171.00. Being aggrieved by the order of the learned JCST, the Revenue as appellant preferred this appeal.

4. Cross objection has been filed by the respondent-dealer praying for dismissal of the appeal.

5. Heard both the sides. Perused the case record and the grounds of appeal. I also perused the materials available on record and the plea taken in the cross objection.

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. Hence the matter has to be remitted back to the learned ACST for fresh computation after calculating interest in view of my aforesaid finding. 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. When the respondent-dealer during first appeal could not produce the wanting declaration form the tax demand was confirmed but the penalty was deleted. When the penalty was deleted the learned JCST should have levied interest. Due to delayed payment of tax for non-furnishing of declaration forms the exchequer has to be compensated of belated payment of differential 'tax due' by levying interest. The learned JCST deleted the penalty basing upon the circular of the Commissioner of Commercial Taxes, Odisha, Cuttack vide No.42/CT dtd.20.04.2015 which envisages for not imposing penalty in case of non-filing of the declaration forms. The Revenue in its written submission stated that it is not pressing for imposition of any penalty but pressing for levy of interest. From the facts narrated in the foregoing paragraphs the respondent-dealer has to pay interest for which the matter has to be remitted back to the learned ACST for necessary computation as per the provisions of law.

10. In the result, the appeal is allowed and the matter is remanded to the learned ACST to levy interest only on the tax dues instead of penalty as per law within three months from the date of receipt of this order. The respondent-dealer is also directed to appear before the learned ACST within two weeks from the date of receipt of this order for disposal of the matter. The cross objection is disposed of accordingly.

Dictated & corrected by me,

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

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