

upon an audit visit report (in short, the AVR), the learned STO initiated a proceeding u/r.12(3) of the CST(O) Rules against the respondent-dealer for its assessment for the period from 01.04.2012 to 31.03.2014 and issued a notice to appear and to produce the books of account and the other relevant document and in response to the notice, the authorized representative of the respondent-dealer appeared and produced the books of account and certain declaration forms which were duly been examined by him. On examination of the books of account and the other relevant materials, the learned STO found out that, though the respondent-dealer has furnished the required declarations in form 'C' for transactions amounting to Rs.9,57,917.00, it has failed to furnish the same for transactions amounting to Rs.6,11,559.00. Similarly, though the respondent-dealer has furnished the required declarations in form 'F' for transactions amounting to Rs.5,42,35,500.00, it has failed to furnish the same for transactions amounting to Rs.36,26,727.00 and as such on consideration of the non-submission of the required statutory declaration Forms, the learned STO levied tax on different transactions at the appropriate rates which came to be Rs.5,82,354.00 in total. As the respondent-dealer had already paid tax to the tune of Rs.4,08,116.00 earlier, he raised the balance tax demand of Rs.1,74,238.00 and also imposed a penalty of Rs.3,48,476.00, equal to twice of the balance tax demand under Rule-12(3)(g) of the CST (O) Rules and as such both the balance tax demand and penalty came to be Rs.5,22,714.00 in total, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST bearing First Appeal Case No. AA 107121512000120. On hearing and on consideration of the materials on record, though the learned JCST found out the tax demand raised by the learned STO to be proper and justified, he waived the penalty imposed upon the respondent-dealer under Rule-12(3)(g) of the CST (O) Rules in view of the Circular issued by the Finance Department of the Govt. of Odisha. Thus, being aggrieved with the order of the learned JCST, the appellant-Revenue has preferred this second appeal

mainly with a prayer to levy interest upon the respondent-dealer in lieu of the waived penalty.

4. In the grounds of appeal, the appellant-Revenue has taken the following grounds:-

- (i) That, the order of the 1st appellate authority appears to be unjust and improper.
- (ii) That, the first appellate authority has deleted the penalty under Rule 12(3) (g) of the CST (O) Rules which is mandatory in nature. The mandatory penalty is to be imposed without any discretion as observed by the Hon'ble Apex Court in the case of 18 VST 180 C Dharmendra Textiles as well as 54 VST 1 in the case of Jindal Steels.
- (iii) That, if at all the penalty is not leviable but imposition of interest is mandatory in nature as per Rule 8(a)(2) of the CST(O) Rules, 1957, The 1st appellate authority has failed to impose the same while deleting the penalty without citing any reason thereof.
- (iv) That, the order of 1st appellate authority may be modified accordingly.

5. Cross objection has been filed by the respondent-dealer supporting the order of the learned JCST.

6. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the respondent-dealer has failed to furnish the required declarations in form 'C' and form 'F' for certain transactions and has also furnished the same for certain transactions in much delay and as such, at least, it is liable to pay interest as per Rule 8(a)(2) of the CST(O) Rules. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned JCST and submitted that, application of Rule 8(a)(2) of the CST(O) Rules in the present case to levy interest upon the respondent-dealer is not at all

desirable and as such the appeal being devoid of merit is liable to be dismissed.

7. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, though the respondent-dealer has furnished the required declarations in form 'C' for transactions amounting to Rs.9,57,917.00, it has failed to furnish the same for transactions amounting to Rs.6,11,559.00. Similarly, though the respondent-dealer has furnished the required declarations in form 'F' for transactions amounting to Rs.5,42,35,500.00, it has failed to furnish the same for transactions amounting to Rs.36,26,727.00 and as such on consideration of the non-submission of the required statutory declaration forms, the learned STO levied tax on different transactions at the appropriate rates and the same has further been confirmed by the learned JCST at the first appeal stage.

8. As regard the imposition of penalty relating to the non submission or delay submission of the statutory declaration forms, it is to be noted that, the Government of Orissa through Finance Department has issued a circular to the effect that non-filing of form 'C' and 'F' for bonafide transaction in terms of the provision of clause (a) of Rule 12(3) of the CST(O) Rules will not attract penalty under clause (g) of the said Rule in absence of any substantive provision for such imposition U/s.9(2) of the CST Act or CST (R&T) Rules. While issuing this circular the Government has considered various pronouncements of judgments of different High Courts relating to the matter. Out of those judgments one of the important judgment relates to the case of **Gujarat Ambuja Cement Ltd. and another v. Assessing Authority-cum-Asst. Excise and Taxation Commissioner and others; (2000) 118 STC 315 HP**, wherein the Hon'ble High Court of Himachal Pradesh has held that:

“Case laws are innumerable where the courts, including the Apex Court, have held that even at the appellate stage the assessee may be allowed to file C forms of file rectified and proper forms if those filed were found to be defective in any manner or for any reason. Further, Sri Shanti Bhusan, learned Senior Counsel is also right in contending that in a case where the availing of concession is dependent upon filing C form, the non filing of C form or filing of defective C forms may only

render the assessee liable to pay at the full rate of taxation without the benefit of concessional rate in their favour, and the filing of C forms being optional and a mere condition to avail of the concessional rate contemplated in the statutory provision as such, the lapse, if any, cannot be considered to operate as a penal or forfeiture of clause. Being an optional benefit available, non availing of the same or non compliance of such provision, in any event, cannot be held to be non compliance with the provisions of the Act. Rules and notifications, envisaged in the notification dated January, 1996. Placing such interpretation would amount to being not merely perfidious, but vitiated by perversity of approach also.”

9. The same view has also been expressed by the Hon’ble High Court of Karnataka in the case of **Fosroc Chemicals (India) Pvt. Ltd. v. State of Karnataka in STRP Nos. 130, 136 – 168 and 169 – 170 of 2014** and also by this Tribunal in several cases.

10. On perusal of the materials on record, a conclusion cannot be arrived that the respondent-dealer has not submitted the required statutory declarations forms for certain amount deliberately. Similarly, a conclusion also cannot be arrived that it has submitted the same for certain amount with some delay deliberately or with an ulterior motive. Thus, as the submission of the statutory declaration forms is an optional one only to get certain concession by a dealer, the non-submission of the same by the respondent-dealer cannot attract levy of penalty by the assessing authorities. Therefore, considering these facts and considering the principle of law, the learned JCST has waived the penalty levied upon the respondent-dealer by the learned STO for non-submission of or for delay submission of the required statutory declaration forms.

11. As regard the contention raised by the appellant-Revenue relating to the levy of interest upon the respondent-dealer for non-filing or delay filing of the statutory declaration forms, it is to be noted that, under the provisions of the sales tax law, a registered dealer is entitled to get exemption or concession for payment of tax on the strength of certain statutory declaration forms. A dealer cannot be deprived of the said exemption or concession if for some good reasons the same could not be produced before the learned assessing authority and was produced subsequently at the appellate stage or even before the Tribunal at the

second appeal stage. Sub-rule (7) of Rule 12 of the Central Sales Tax (Registration & Turnover) Rules, 1957 which is relevant in this regard is extracted below:-

“The declaration in Form ‘C’ or Form ‘F’ or the certificate in Form ‘E-I’ or Form ‘E-II’ shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.”

12. In the case of **Sahu Trading Co. v. State of Orissa; (1983) 54 STC 122**, the Hon’ble High Court of Orissa has held that-

“in the scheme of procedure of assessment under the Orissa Sales Tax Act, 1947, the declarations for claiming deductions on account of sales to registered dealers under Section 5(2)(A)(a)(ii) of the Act are bound to be produced before the assessment is completed in case the assessee is to be given the deductions he claimed. There is however, no provision in the Act or the Rules to the effect that declarations not furnished at the original stage could not be produced later. There may be cases where for some good reasons deductions though claimed could not be supported by production of declarations at the assessment stage. In the absence of any prohibition, they can be certainly produced as evidence before the First Appellate Authority and such additional evidence could be received by the First Appellate Authority. In a suitable case, such declarations can even be produced as additional evidence before the Tribunal in second appeal after complying with the requirement of Rule 61 of the Orissa Sales Tax Rules, 1947. It is within the discretion of the appellate authority to accept the evidence produced in support of the claim in appeal. It may be that in view of Rule 27 of the Rules the assessee would not be entitled as of law to ask the declarations to be received and acted upon; but if the Assistant Commissioner in exercise of his discretion under Rule 50(2) accepts the declarations, the same cannot be refused for having been filed after the assessment was over.”

13. As the law permits a dealer to produce the statutory declaration forms at any stage of the proceeding showing sufficient cause, it is not desirable to levy interest upon the respondent-dealer for non-filing or delay filing of the same in absence of any clear statutory provision in that regard.

14. It is not in dispute that, the respondent-dealer has not submitted certain statutory declaration forms and it has been taxed accordingly at the appropriate rate relating to such transactions. But, no material is available to show that, the respondent-dealer has not submitted the said declaration forms deliberately or with an ulterior motive. The appellant-Revenue has raised the contention for taking note of Rule 8(1) of the CST(O) Rules, which speaks as follows:-

“(1) If a registered dealer fails, without sufficient cause, to pay the amount of tax due as per the return furnished under Rule 7 or fails to furnish a return under these rules, such dealer shall be liable to pay interest in respect of the tax, which he fails to pay according to the return, at the rate of one per centum per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier.”

15. On a bare reading of this sub-section, it is very much clear that, this provision relates to the liability of the dealer to pay interest in case of his failure to file return or in case of his failure to pay the amount of tax due as per the furnished return and not in case of failure of payment of any disputed tax. In case of failure of a dealer to furnish the required declaration forms, though it can be said that, he is admitting the transactions or the turnover while filing the return, he is not admitting the rate of tax due in case of his failure to furnish the required declaration forms by then.

16. In the case of **Bengal Energy Ltd. v. State of Odisha; S.A. No.71(C) of 2013-14**, the Full Bench of this Tribunal has considered the non-submission of the required declarations in form 'C' and has rejected the plea of the Revenue for levy of interest considering the fact that a dealer-assessee is at liberty to furnish the required declaration forms at any stage of the proceeding showing sufficient cause and further considering the fact that there is no specific provision in the Central Sales Tax Act for levy of interest in case of failure to furnish the same. This Tribunal has also expressed the same view in several other cases.

17. In the case of **M.G. Brothers v. Commissioner of Income Tax (1985) 154 STC ITR 695** at page 712 while considering the provision of Section 215 of the Income Tax Act and Rule 40 of the Income Tax Rules and also Section 139 of the Income Tax Act and Rule 117-A of the Income Tax Rules, a Division Bench of the Hon'ble Andhra Pradesh High Court has held that, charge of interest is not a matter of automatic consequence and that an assessee has a say in the matter before the interest is actually charged. Similarly, before charge of interest, the ITO should give an opportunity to the assessee to show cause, why interest should not be levied and the interest can only be levied after considering the representation of the assessee. In the present case no such occasion has arose as the matter for levy of interest was not at all for consideration before the learned forums below.

18. Further, while dealing with a matter relating to the Income Tax, the Hon'ble Madras High Court in the case of **Ramanujam v. Commissioner of Income Tax; (1999) 238 ITR 978** has held that without an opportunity of showing cause, no interest can be levied on an assessee.

19. Thus, on consideration of the entire facts and circumstances and on consideration of the principle of law, levy of interest upon the respondent-dealer as prayed for by the appellant-Revenue can never be considered to be proper and justified in the present case.

20. In view of the aforementioned discussion, the appeal is dismissed being devoid of merit. The cross objection is disposed of accordingly.

Dictated & corrected by me,

1st Judicial Member,
Orissa Sales Tax Tribunal.

1st Judicial Member,
Orissa Sales Tax Tribunal.

I agree,

Accounts Member-III,
Orissa Sales Tax Tribunal.