

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 48(C)/2016-17**

(Arising out of order of the Id.Addl. CST (Appeal), North Zone,
Sambalpur, in Appeal Case No. AA-213/13-14,
disposed of on dtd.31.05.2016)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Rajnikant Brothers,
Madhusudan Marg,
Rourkela.

.... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. D. Pati, Advocate

For the Respondent : Mr. S.K.Pradhan, A.S.C. (C.T)

(Assessment Period : 01.04.2008 to 31.03.2011)

Date of Hearing: 22.01.2021 *** Date of Order: 08.02.2021

ORDER

The facts and circumstances of this case and the two orders of the learned lower fora below culminated to this second appeal.

2. The facts of this case can be briefly stated thus :

The dealer-appellant, in the instant case, M/s. Rajnikanta Brothers, Main Road, Rourkela deals in bearings, welding rod, nut & bolts, industrial fastener, V. Belts, cotton waste, pipe fittings, industrial machineries, paints, lubricants, oil and safety equipments. On receipt of Audit Visit Report (AVR) submitted by the ACST (VAT, Audit), the learned Sales Tax Officer/Deputy Commissioner of Sales Tax, Rourkela-I

Circle, Uditnagar (in short, STO/DCST) issued notice to the dealer to which the dealer responded by producing his books of account and other related documents. In course of verification, it was found that, the dealer has disclosed sale turnover of Rs.16,88,268.76 and produced declaration in Form 'C' and 'E-1' in support of his claim of exemption of tax u/s.6(2) of the CST Act. However, the dealer has also effected inter-state sale of Rs.60,138.40 without declaration Form 'C'. Further, the dealer has claimed concessional rate of tax for sale turnover of Rs.6,22,043.23. Moreover, the dealer has sold goods like mechanical spares to M/s. Bhilai Engineering Works and also Pipe fittings to M/s. Jay Durga Traders to the tune of Rs.69,573/- and Rs.58,202.70 without declaration Form 'C' for which he is liable to pay tax @12.5% and @4% respectively. Thus, the GTO is determined at Rs.22,85,708.09 and after allowing deduction of Rs.15,258.29 and CST collection to the tune of Rs.16,88,268.09, the TTO determined at Rs.6,82,181.71. Thereafter, tax @4% on Rs.1,14,970.70, tax @2% on Rs.4,97,638.01 and @12.05% on Rs.69,181.71 all together came out to Rs.23,248/-. Out of this total tax due, the dealer has already paid Rs.15,258/- at the time of return. Hence, the balance tax due stood at Rs.7,990/-. Further penalty at the rate of twice the tax due u/r.12(3)(g) of the CST(O) Rules was calculated at Rs.15,980/-. Eventually, both the tax due along with the penalty comes to Rs.23,970/-, which the dealer was liable to pay at the stage of assessment.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), North

Zone, Sambalpur (in short, FAA/Addl.CST), who in turn, rejected the appeal preferred by the dealer and confirmed the order of assessment. Resultantly, the tax demand raised by the learned STO remained unaltered.

4. Being further aggrieved with the order of the learned FAA/Addl.CST, the dealer-appellant knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA/Addl. CST is quite unjust and improper and needs to be set-aside.

5. Cross objection has been filed by the State-respondent in this case.

6. The learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He has vehemently argued that, the order of the learned FAA is quite improper and prejudice to the very principles of natural justice. The subject matter of appeal is the imposition of penalty on the quantum of demanded tax u/r.12(3)(g) of the CST(O) Rules. The Assessing Officer has raised a total demand of Rs.23,970/-, which includes a penalty of Rs.15,980/- on the ground of non-submission of statutory 'C' form as against the claim of concessional rate of tax on its sales. The dealer has sold goods on inter-state basis to registered dealers, who are authorised to purchase goods, specified in their registration certificate. The goods had moved on the basis of necessary statutory declaration form. The purchasing dealer did not furnish declaration form 'C'. Consequently, the assessment has been completed demanding tax and penalty. The dealer states that, there is no enabling provision for levy of penalty where there is default in submitting the necessary declaration form.

Levy of penalty is a substantive levy, which must be predicated by the legislature. There is no provision enabling for levy of penalty for default in submitting declaration form 'C'. Further, the CST(O) Rule (sub rule 2 of Rule 12 of CST(O) Rules) has been amended w.e.f. 01.10.2015 which states that, no penalty shall be imposed only due to non-submission of declaration form by the dealer. The amendment is clarificatory in nature and would have retrospective effect. Accordingly, no penalty is leviable. Further, the Commissioner of Commercial Taxes had issued Circular No.42/CT dtd.20.04.2015, which specifically mandates that, there is no levy of penalty for non-filing of the concessional declaration form. No interest is attracted when there is failure on the part of the selling dealer in furnishing the declaration form 'C', in terms of Rule 8(1) of the CST(O) Rules. Rule 8(1) of the CST(O) Rules mandates on the levy of interest when there is no submission to return or no payment of tax in the present case. The eventualities specified in the said rule is not available. Further, the said rule also states that, interest would be attracted if it is not supported with sufficient cause. The present case falls under the scope of sufficient cause and accordingly no interest is leviable. The learned Advocate for the dealer has cited the decision of J.K. Synthetics Vrs. State of Rajasthan 94 STC 422 (SC). The State has filed cross objection and has sought for levy of interest, but the authorities below had not levied interest. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan for the State

argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunity to produce the documents in favour of his stand, but the dealer failed to produce the same. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The learned AA and FAA have rightly completed the assessment/appeal basing on statutory provisions under the Acts and Rules with regard to the points raised by the dealer. When notice was issued u/r.12(3) of the CST(O) Rules and assessment was made accordingly, the imposition of penalty u/r.12(3)(g) of CST(O) Rules is mandatory in nature. Further, imposition of interest is also mandatory in nature as per Rule 8(a)(2) of CST(O) Rules. The order of the learned FAA is crystal clear with respect to other points raised by the dealer. He has dealt each and every item, which is self-explanatory and requires no further interference. So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. D. Pati, appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. Pradhan on behalf of the State. Gone through the grounds of appeal, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstance of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit

case, where the matter should be remanded back to the learned FAA to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned FAA and he is directed to re-compute the tax liability of the dealer after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-Respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S. Mishra)
2nd Judicial Member

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