

Orissa High Court

Case Status Information System

Case Status : Disposed
Status Of : STREV - Sales Tax Revision, 29 Of 2015
Litigants : M/S.PRITHI OIL LTD. Vs. STATE OF ORISSA
Pet's Adv : M/S.B.N.AGRAWAL
Res's Adv :
Last Date of Hearing : Wednesday, September 30, 2015
Next / Final Date of Hearing : Thursday, October 01, 2015
Case Updated On : Tuesday, October 06, 2015
Category : OTHERS

Order(s)

[Click Here For Order Dated](#) Thursday, October 01, 2015

STREV No.29 of 2015

03. 01.10.2015 Heard Mr. Lal learned counsel for the petitioner.

In the present revision the petitioner has sought to challenge the order dated 28.05.2015 passed in S.A No.18(C) of 2013-2014 whereby the Tribunal has been pleased to allow the appeal filed by the petitioner in part and the order of the appellate authority was set aside and the matter was remanded to the A.C.S.T. for necessary examination and disposal in accordance with law.

Learned counsel for the petitioner submits that the petitioner has come before this Court seeking to challenge the aforesaid order inter alia questioning essentially the finding of the Tribunal that penalty under Rules 12(3)(g) of the C.S.T. (O) Rules is mandatory. He places

*So (law)
to pass in
order date
13-10-15*

reliance on a circular issued by the Commissioner of Commercial Taxes Odisha under Annexure-5 pertaining to the manner and circumstances under which the penalty under Rules 12(3)(g) of the C.S.T. (O) Rules can be levied.

Having considered the above and having heard learned Standing Counsel for the Revenue we find no justifiable ground to entertain the present revision. However it shall be open for the A.C.S.T. to deal with the issues raised by the assessee and on production of the necessary declaration form pass necessary order keeping in view the circular dated 20.04.2015 issued by the Commissioner of Commercial Taxes Odisha under Annexure-5 and without in any manner being influenced by the observation of the Tribunal to the contrary.

With the aforesaid observation and directions the revision stands disposed of.

A free copy of this order be handed over to the learned Standing Counsel for the Revenue.

Urgent certified copy of this order be granted on proper application.

.....
I. MahantyJ.

.....
Dr.D.P.ChoudhuryJ.

BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A.No.18 (C) of 2013-2014

(Arising out of the order of the learned DCST(Appeal), Sambalpur Range, Sambalpur in Appeal No.AA 12/SAII/CST/12-13 disposed of on dt.30.01.2013)

Present: Miss Sarojini Mohapatra, & Shri A.K. Bhuyan,
Judicial Member-I Accounts Member-I

M/s. Priti Oil Ltd.,
At/Po:-Rengali,
Dist:-Sambalpur.

... Appellant

- Versus -

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

... Respondent

For the Appellant ... Mr. B.N. Agrawal, Advocate
For the Respondent ... Mr. S.S. Ray, DCCT (Appeal)

Date of hearing: 13.05.2015

*** Date of Order: 28.05.2015

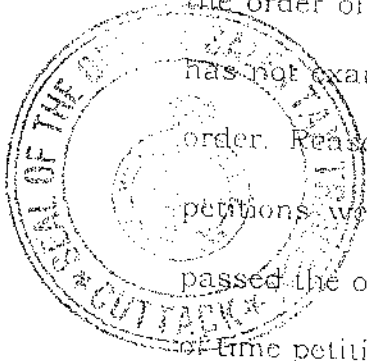
CRDER

This second appeal is filed against the order of the learned Dy. Commissioner of Sales Tax, (Appeal) Sambalpur Range, Sambalpur (in short, learned 'D.C.S.T.(Appeal)') passed in appeal case No.AA 12/SAII/CST/12-13 on 30.01.2013 reducing the demand to 4,96,083.00 from Rs.6,09,093.00 raised by the learned Asst. Commissioner of Sales Tax, Sambalpur II Circle, Sambalpur (in short, learned 'A.C.S.T.}') on 17.03.2012 for the period from 01.11.2006 to 30.06.2011 U/r.12(f) of the Central Sales Tax (O) Rules, (in short, 'C.S.T. (O) Rules').

2. The appellant effected sale of goods in course of inter-State trade or commerce. The assessment is based on the Audit Visit Report as observed

by the learned A.C.S.T., Sambalpur-II Circle, Sambalpur. That the appellant has failed to submit declaration in 'C' Form to the tune of Rs.18,27,42,652.00. This includes VAT exempted sale of DORB of Rs.13,68,71,756.00. In the process, he raised a demand of Rs.4,06,062.00 including penalty U/r.12(3)(g) of the C.S.T. (O) Rules. Being dissatisfied with this order, the appellant went in first appeal before the learned D.C.S.T. (Appeal) wherein the assessment is reduced to Rs.4,96,083.00. Again not being satisfied, the appellant came in second appeal before this Tribunal.

3. Learned Counsel appearing on behalf of the appellant has submitted a written submission and in the grounds of appeal has challenged the order of learned D.C.S.T. (Appeal) to be bad in law as well as in facts. He has not examined the points agitated before him. The order is a non-reasoned order. Reasonable opportunity of being heard has not been extended. Time petitions were filed on genuine grounds. The learned D.C.S.T. (Appeal) has passed the order ex-parte on 30.01.1993 without specifically stating the details of time petitions. Learned D.C.S.T. (Appeal) has not looked into the assessment record. So, wrong figures were taken. Figure of the NTO has been wrongly taken as Rs.15,69,435.00 instead of Rs.15,64,435.00. Wrong rate of differential C.S.T. has been charged for which a rectification petition has been filed which is pending for disposal. He has calculated the actual position of extra demand at Rs.1,59,229.87. Calculation sheet has been attached to the written submission. He also submitted that mandatory penalty in C.S.T. Audit assessment U/r.12(3)(g) cannot be imposed. A circular of the Commissioner Commercial Tax of Odisha, Cuttack bearing No.42 dtd.20.04.2015 forwarded to



the departmental officers has been submitted. However, he has submitted copies of declaration in 'C' Forms numbering 13 for acceptance.

4. Learned DCCT (Appeal) appearing on behalf of the revenue challenged the points raised by the learned Counsel appearing on behalf of the appellant. He has also filed a cross-objection. Accordingly, the second appeal filed cannot be sustained in the eyes of law. Both the fora below have properly disposed of the case. Reasoned order has been passed after affording reasonable opportunity. As per Rule-12(7) of the C.S.T. R & T Rules, the declaration forms have not been submitted during the time prescribed. Moreover, penalty U/r.12(3)(g) of the C.S.T. (O) Rules is mandatory. Executive instruction cannot over-ride the statutory provision. In support of his argument, learned DCCT (Appeal) has also relied upon the case judgement of the Hon'ble Madras High Court in case of Pizzeria Fast Foods Restaurant (Madras) Pvt. Ltd. Vrs. Commissioner of Commercial Taxes, Chennai and others reported in 140 STC 97 (S.C.).

5. Considered the rival contentions, gone through the impugned orders of assessment as well as first appeal, grounds of appeal, written submission, cross-objection and case laws cited. Learned Counsel has submitted 13 Nos. of copies of 'C' Forms. In the absence of books of account, it could not be checked. However, learned A.C.S.T. is to examine the genuineness of these declaration Forms and if found correct may allow. Here another dispute relates to penalty imposed U/r.12(3)(g) of the C.S.T. (O) Rules. Considering the challenges made by the revenue and going through the provisions under the said Section, we find it mandatory.

6. In the result, the appeal is allowed in part and the order of the learned D.C.S.T. (Appeal) is set aside. The case is remanded to the learned A.C.S.T. for necessary examination and disposal in accordance with law

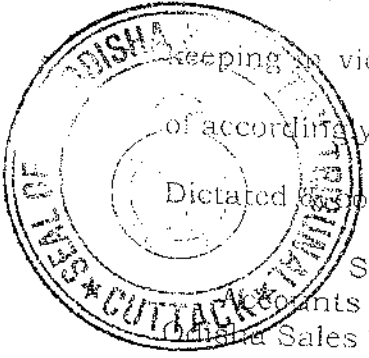
Keeping in view our observations made above, The cross-objection is disposed of accordingly.

Dictated & corrected by me,
Sd/-
Accounts Member-I,
Odisha Sales Tax Tribunal.

Sd/-
Accounts Member-I,
Odisha Sales Tax Tribunal.

I agree,

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal.



ATTESTED AS TRUE COPY
M. Sethy
Computer Stenographer

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Memo No. 3426 /Trl.,dt. 30.5.2015
Copy of the order forwarded to

1. The Dealer Ms. Pratee Ool Ltd.
A.T./R.O. At/p.o - Rengali,
District Dist - Sambalpur

2. The State in triplicate along with the L.C.R. for the
Year _____ containing _____ pages for
information.

[Signature]
Registrar,
Odisha Sales Tax Tribunal

CIRCULAR

Sub: Non-levy of mandatory penalty on audit assessment under Central Sales Tax Act

Madam/Sir,

It has come to my notice that in many case the assessing authorities are imposing penalty equal to twice the amount of tax assessed in the assessments due to non submission of declaration forms as per Rule 12(3) (g) of the CST (O) Rules, 1957. As per Rule 12(3)(a),(e) and (f) of the CST(O) Rules, 1957, the tax audit, if results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the Assessing Authority (AA) is required to do assessment of the dealer and impose penalty equal to twice the amount of tax assessed in such assessment as per Rule 12(3)(g) of the CST(O) Rules, 1957.

In cases of non-production of 'C' Forms, it has been noticed that there is no uniformity and consistency in the approach by the departmental officers as to whether penalty is leviable for non-production of 'C' Forms or not. It is seen that assessing officers and appellate officers are interpreting the provisions of the relevant statutes in a varying manner. This is leading to unnecessary litigation which is affecting the dealers adversely and also not bringing any revenues to the department when orders are set aside in the OSTT and in the higher judicial forums. In order to obviate such dissimilar approach by the different assessing authorities, in cases of non-production of 'C' Forms, there is a need to issue this circular based on the decisions of the Odisha Sales Tax Tribunal and the judiciary.

As the provision of the Central Sales Tax Act, 1957 stands, in cases relate to non-production of 'C' Forms, appropriate tax is to be levied by applying the higher rate of tax as prescribed under Section 8(2) of the CST Act. In this context, it is to be mentioned here that the imposition of penalty at the time of audit assessment for non submission of 'C' Forms may or may not be proper in all cases. The conditions precedents for imposition of penalty under Clause (g) of Rule 12(3) as provided in Clause (a) of the said Rule are

1. Suppression of purchase or sale or both;
2. Erroneous claim of exemption or deduction;

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3. Evasion of tax;
4. Contravention of any provision of the Act affecting the tax liability of the dealer.

It is required to determine whether failure to furnish declaration in Form 'C' against the bonafide claim of concessional rate of tax falls under the ambit of any of the offences stated above.

The Odisha Sales Tax Tribunal in the case of M/s Sri Lalbaba Roller Flour Mills, Nayabazar, Cuttack vrs State of Odisha in S.A No. 87 (C) of 2012-13 dated 03.04.2014 have observed that [to quote]

"The dealer respondent has been assessed u/r 12(3) of the CST (O) Rules, 1957 and the disputed amount of penalty has been imposed on the amount of the tax assessed on the turnover not supported with declarations due to failure on the part of the dealer to furnish the required declaration in Form "C" and "H". Since there was no allegation of Audit visit report and the dealer respondent has produced the required books of accounts excepting the declarations as already cited above, which are beyond his control and also the facts remains that the dealer has not concealed / suppressed any part of its turnover and has also been assessed appropriately on the turnover not supported with the declarations, for which the levy of penalty u/r 12(3)(g) of the CST (O) Rules by the learned STO is not justified and hence is liable to be deleted."

Similarly in another judgment in the case of M/s Gajalaxmi Iron Works, Industrial Estate, Kalunga, Rourkela vrs State of Odisha in S.A No. 53 of 2011-12 dated 18.12.2013, the Hon'ble Odisha Sales Tax Tribunal have given a clear finding along similar lines which reads as follows [to quote]

"On a careful reading of Rules 12(3) (g), I find that the imposition of penalty can be made in this provision only where there has been assessment under clause 'e' or 'f' of the said rules. On a reading of the aforesaid two rules, I find that non-submission of "C" forms is not covered for assessment under the same rules. Therefore, considering submissions from both sides I come to a positive finding that the filing of "C" form is an optional condition to avail of concessional rate of tax and non compliance of the same will only debar the dealer to get the exemption of tax benefit"

In the judgment of Gujarat Ambuja Cement Ltd. and Another Vrs. Assessing Authority-Cum-Assistant Excise and Taxation Commissioner and Others reported in [2000] 118 STC 315 HP, it has been observed by the Hon'ble High court of Himachal Pradesh that for the provisions of the CST Act and Rules made there under, the question

of filing of Form 'C' is envisaged only in order to avail of concessional or reduced rate of taxation. Such Forms are permitted to be filed not only before the finalization of the assessment and even at the appellate and revisional stages. In cases where the availing of concession is dependent upon filing of 'C' Forms the non filing of 'C' Forms or the 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 clause. It will be appropriate to quote the relevant portion:

"Case law 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 or 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."

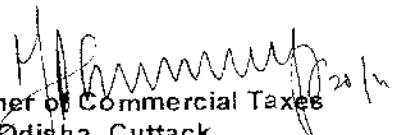
Similarly the Hon'ble High court of Karnataka in case of Fosroc Chemicals (India) Pvt. Ltd Vrs. the State of Karnataka in STRP Nos 130, 136 – 168 & 169 – 170 of 2014 is of opinion that on a representation made by the purchaser the dealer company has sold the goods claiming concessional rate of tax. When the purchaser is unable to produce the 'C' Forms for any reason whatsoever, then the liability is cast on the assessee to pay tax under the State VAT Act. The said tax ought to have been paid on the date of sale, if there is a delay in payment of the said tax then there is automatic and mandatory interest in terms of State VAT Law.

On a plain reading it emerges that mere non-submission of declaration in Form 'C' against a bonafide transaction does not constitute an offence under rule 12(3)(a) of the

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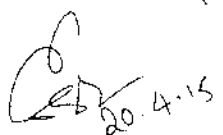
3) CST(O) Rules so as to attract liability to imposition of penalty under Clause (g) of the said Rule. The filing of 'C' Form being optional and a mere condition to avail concessional rate, the lapse, if any, cannot be considered to operate as a penal clause. Being an optional benefit available to the dealer, the non-availing of the same or non-compliance with such provision, in any event, cannot be held to be non-compliance with the provisions of the Act, Rules and notifications. It is not only that tax liability is affected but when tax liability is affected by contravention of any conditions mentioned in Rule 12(3)(a) of the CST(O) Rules, then only penalty can be imposed. On the other hand the submission of declaration forms is not strictly in the control of the assessee dealer, since it is to be obtained from the purchasing dealer and submit before the assessing authority to avail concessional rate of tax. Non submission of Forms is not an incentive for the assessee as he has to pay higher rate of tax as prescribed under Section 8(2) of the CST Act. Hence, no intention can be attributed to the assessee for his failure to submit declaration in Form C.

In view of the above facts it is required to impress upon all assessing/appeal authorities that non-filing of Form 'C' and 'F' Form for a bonafide transaction in terms of the provision of Clause (a) of the Rule 12(3) of the CST (O) Rules, will not attract penalty under Clause (g) of the said Rule in the absence of substantive provision for such imposition under the Section 9(2) of the CST Act or CST(R&T) Rules.


Commissioner of Commercial Taxes
Odisha, Cuttack
Dated: 20/04/2015

Memo No. 43 ICT,

Copy forwarded to the Spl. C.C.T (Enf.)/All Additional Commissioners (H.O) / JCCTs of all Territorial Ranges / All DCCTs / ACCTs / CTOs in charge of Circles/ Assessment Units/ CTOs in charge of Investigation Units/ ^{CTP, U.P.O. etc} for information & necessary action.


20.4.15
Joint Commissioner of Commercial Taxes
(VAT)