**(2008) 09 UK CK 0024**

**In the Uttarakhand High Court**

Commissioner, Commercial Tax — APPELLANT

Vs

Jalpac India Ltd. — RESPONDENT

**Date of Decision :** 26-09-2008

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 9, 9(2A)
Uttar Pradesh Trade Tax Act, 1948 — Section 8

**Citation :** (2009) 25 VST 168

**Hon'ble Judges :** Prafulla C. Pant, J;B.S. Verma, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Prafulla C. Pant, J.—Both these revisions have arisen out of the same order and involve the same question of law and are, therefore, taken together for disposal. The above two revisions, filed u/s 11(1) of the Uttaranchal (U.P. Trade Tax Act, 1948) Adoption and Modification Order, 2002 read with Section 80 of the Uttaranchal VAT Act, 2005, are directed against the order dated September 8, 2006 passed by Trade Tax Tribunal, Uttarakhand, in Appeal No. 37 of 2006 and Appeal No. 38 of 2006, whereby the appeals of the respondent/assessee are allowed setting aside the order passed by the Joint Commissioner (Appeal) affirming the order of the assessing officer dated March 11, 2003 passed u/s 22 of the aforesaid Act.

2. The question of law involved in the revision is as under:

Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in knocking off the interest imposed by the assessing officer, ignoring the provision contained in Section 9 of the Central Sales Tax Act, 1956?

3. Heard learned Counsel for the parties.

4. Brief facts of the case are that the respondent/assessee is engaged in the business of metallized polyester film and paper. His assessment was completed by the Assistant Commissioner (Assessment), Trade Tax, Hald-wani on March 5,

 

2002 under the Central Sales Tax Act, 1956. The books of account of the assessee were accepted, but the demand was made by the Department disallowing the exemption u/s 4A of the U.P. Trade Tax Act for non-receipt of form C. The assessee submitted the form C and the assessment order was rectified u/s 22 of the U.P. Trade Tax Act, 1948, but the assessing officer directed the dealer to pay interest at the rate of two per cent per annum with effect from November 1, 1999. Aggrieved by the order of the assessing officer (hereinafter referred as "the A.O."), the dealer preferred first appeal before the Joint Commissioner (Appeal), Trade Tax, Haldwani, who vide his order dated May 19, 2006 affirmed the order of the A.O. Thereafter, the dealer preferred second appeal before the Trade Tax Tribunal. The Tribunal after hearing the parties vide its order dated September 8, 2006 allowed the appeal and knocked out the interest part from the assessment order. Hence this revision.

5. Before further discussions, it is pertinent to mention here the relevant provision of law applicable to the case. Sub-section (2A) of Section 9 of the Central Sales Tax Act, 1956, reads as under:

(2A) All the provisions relating to offences, interest and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in Sections 10 and 10A) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.

6. The rate of interest on the admitted tax is provided u/s 8(1) of the U.P. Trade Tax Act, 1948, applicable in the State of Uttarakhand, which reads as under:

8. Payment and recovery of tax.--(1) The tax admittedly payable shall be deposited within the time prescribed or by the thirty first day of August, 1975, whichever is later, failing which simple interest at the rate of two per cent per mensem shall become due and be payable on the unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount and nothing contained in Section 7 shall prevent or have the effect of postponing the liability to pay such interest.

Explanation.--For the purpose of this sub-section, the ''tax admittedly payable'' means the tax which is payable under this Act on the turnover of sales or, as the case may be, turnover of purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or proceeding under this Act, whichever is granted, or, if no accounts were maintained then according to the estimate of the dealer and includes the amount payable u/s 3B or Sub-section (6) of Section 4B.

 

7. Learned Counsel for the revisionist argued that since the assessee/dealer failed to show form C in respect of the transactions and as such he was not entitled to the concessional rate of tax which he deposited. As such, the imposition of interest by the assessing officer on the tax payable did not suffer from any illegality. Having gone through the relevant provisions of law and the facts of the case, we are of the view that the interest is payable on the admitted tax or the tax payable on the disclosure by the dealer/assessee. In the present case the tax which was required to be paid u/s 9 of the Central Sales Tax Act, 1956, read with Section 8 of the U.P. Trade Tax Act, 1948, is the tax as disclosed payable by the assessee/dealer in his return. The interest is payable u/s 8 of the U.P. Trade Tax Act, 1948, only when the assessee failed to pay the admitted tax within time prescribed under the law. There is no dispute in the present case that the respondent/assessee did deposit the concessional rate of tax, within time, which he mentioned to be payable by him in his return and also with regard to the fact that he has paid the tax assessed by the assessing officer within time thereafter. The dispute is only with regard to the interest payable on the difference of tax. Perusal of the Explanation to Section 8 quoted above read with Section 9 of the Central Sales Tax Act, 1956, makes it abundantly clear that the interest under the aforesaid provision is payable only in respect of the admitted tax or the tax payable by the assessee shown in his return.

8. In para 14 of the J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , it has been held by the apex court that expression "tax payable" means the tax which becomes due under the particular provision of law. It is further mentioned in the aforesaid case that the meaning of the expression must be understood in the context of the relevant provision of law. Since the admitted tax, i.e., at the concessional rate, was paid within time, and the one imposed by the A.O. on the ground that form "C", relating to certain transactions, were not shown, was also paid, after the assessment order was passed, within time, as such there is no liability to pay interest demanded by A.O.

9. For the reasons as discussed above the question of law stands answered accordingly in the negative. Both the revisions are liable to be dismissed. The same are dismissed.