

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 69 (ET) of 2013-14**

(Arising out of order of the learned JCST, Bhubaneswar Range,  
Bhubaneswar in Appeal No. AA (ET) 108111110000063/BHI/  
11-12, disposed of on 07.03.2013)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri B. Bhoi, Accounts Member-II**

M/s. Hindustan Distributors,  
Plot No. 22/A, Second Floor,  
Balaji Bhawan, BJB Nagar,  
Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri N.K. Dash, Advocate  
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

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Date of hearing : 22.03.2023 \*\*\* Date of order : 06.04.2023  
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**ORDER**

Dealer is in appeal against the order dated 07.03.2013 of the Joint Commissioner of Sales Tax, Bhubaneswar Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA (ET) 108111110000063/BHI/11-12 confirming the assessment order of the Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. Hindustan Distributors carries on business in scheduled goods like edible oil and biscuits. The assessment relates to the period 01.09.2008 to 30.06.2010. The Assessing Authority raised tax and penalty of ₹11,88,912.00 u/r. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') basing on the Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

State files cross-objection supporting the order of the First Appellate Authority confirming the order of the Assessing Authority as just and proper.

3. The learned Counsel for the Dealer submits that the Dealer has already paid the ET dues and thus, the Dealer is not liable to pay any penalty as per the guidelines of the Hon'ble Court passed in *M/s. Shree Bharat Motors Ltd. & others v. Sales Tax Officer, Bhubaneswar & others* (WP (C) No. 13736 of 2017 & batch, decided on 15.03.2023). So, he submits that the levy of penalty by the Taxing Authorities is not sustainable in law and the same requires interference in appeal.

4. On the contrary, the learned Standing Counsel (CT) for the State submits that imposition of penalty is mandatory and the Dealer is liable to pay the interest for the unpaid ET from the date of due till the payment made. He further submits that the orders of the Assessing Authority and First Appellate Authority are correct in perspective and the same do not require any interference in appeal.

5. Having heard the rival submissions and on going through the materials on record, it transpires from the assessment order that the Dealer

had received stock of edible oil for ₹3,96,30,386.00 from outside the State of Odisha on stock transfer basis and caused entry of the same to the local area for sale, but has not paid ET thereon. The Assessing Authority assessed the tax @ 1% and raised the tax liability of ₹11,88,912.00 including twice penalty on 20.04.2011. The First Appellate Authority also confirmed the finding of the Assessing Authority.

6. On 18.02.2008 the Hon'ble High Court has been pleased to hold in the case of *Reliance Industries Ltd. v. State of Odisha* in **WP (C) No. 6515 of 2006**, reported in **[2008] 16 VST 85 (Orissa)** that the State has no jurisdiction to impose ET on the goods if the goods are not manufactured within the State of Odisha and imported from outside the State. On 24.06.2009 the Dealer had preferred a writ petition before the Hon'ble Court vide **WP (C) No. 8916 of 2008** seeking direction not to levy ET on the product of the appellant and to refund the ET already paid by the Dealer since the Dealer was not a manufacturer. On 21.07.2008 the Dealer had filed a representation before the Commissioner of Sales Tax in pursuance of the direction of the Hon'ble Court passed on 21.07.2008.

7. After four years, i.e. on 30.07.2012 the Addl. Commissioner of Sales Tax asked the Dealer to appear before him for consideration of the representation filed on 21.07.2008. On 11.09.2012 the Hon'ble Apex Court were pleased to stay the order of the Hon'ble Court passed in the case of *Reliance Industries Ltd.* cited supra.

On 08.06.2011 the Dealer deposited the ET of ₹79,261.00 vide pay order No. 019966 dated 07.06.2011. On 10.09.2011 the Dealer has also paid balance due of ET of ₹3,17,043.00 vide pay order No. 021586 dated 10.09.2011.

8. Relying on the decision of the Hon'ble Apex Court in the case *Jindal Stainless Ltd. v. State of Haryana*, reported in **[2017] 12 SCC 1**,

Hon'ble Court have been pleased to observe in the case of *M/s. Shree Bharat Motors Ltd. & others v. Sales Tax Officer, Bhubaneswar & others* (WP (C) No. 13736 of 2017 & batch, decided on 15.03.2023) at **para-17.3** that no penalty is required to be enforced in respect of subject matter falling within the purview of para-30 of the judgment in *Reliance Industries Ltd.*'s case.

9. Hon'ble High Court were further pleased to direct at **para-17.2** of the said decision that the unpaid ET is to be paid along with simple interest @ 9% per annum.

In the case at hand, The Assessing Authority has raised tax liability along with penalty of ₹11,88,912.00 and the same was confirmed by the First Appellate Authority. So far as levy of penalty is concerned, the same is not sustainable in law in view of the decision of the Hon'ble Court in the case of *M/s. Shree Bharat Motors Ltd. & others* cited supra.

Dealer claims that he has already paid the ET dues on two different dates, i.e. ₹79,261.00 on 07.06.2011 and ₹3,17,043.00 on 10.09.2011. So, the Dealer is liable to pay interest @ 9% till the date of payment as per law.

10. For the aforesaid reasons, the levy of penalty by the Authorities below is not sustainable and the Dealer is liable to pay interest from the due date till the tax deposited as per law. Therefore, the orders of the First Appellate Authority and the Assessing Authority require interference in appeal. Hence, it is ordered.

11. In the result, the appeal stands allowed in part and the impugned order of the First Appellate Authority is hereby modified to the extent of deletion of penalty. The matter is remitted to the Assessing Authority for computation of interest as per law keeping in view the observations made

above within a period of three months from the date of receipt of this order.  
Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

**Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member**

**I agree,**

**Sd/-  
(B. Bhoi)  
Accounts Member-II**