

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

**S.A. No. 143 (ET) of 2014-15**

(Arising out of order of the learned Addl. CST (Appeal), South Zone,  
Berhampur in Appeal No. AA (ET) 20/2011-12,  
disposed of on 11.08.2014)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Mr. J. Khan, Accounts Member-III**

M/s. Patnaik Steel & Alloys Ltd.,  
Plot No. A/22, Falcon House,  
Cuttack Road, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Mohanty, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT) &  
Sri N.K. Rout, Addl. SC (CT)

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Date of hearing : 21.11.2023 \*\*\* Date of order : 19.12.2023  
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**ORDER**

Dealer is in appeal against the order dated 11.08.2014 of the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (hereinafter called as 'First Appellate Authority') in F A No. AA (ET) 20/2011-12 confirming the assessment order of the Deputy Commissioner of Sales Tax, Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. Briefly stated, the facts of the case are that –

M/s. Patnaik Steel & Alloys Ltd. is engaged in manufacture and sale of sponge iron and steel billets. The assessment relates to the period

01.04.2005 to 31.03.2009. The Assessing Authority raised tax demand of ₹22,84,593.00 u/s. 9C of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of 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.

The State files cross-objection supporting the impugned order of the First Appellate Authority.

3. The learned Counsel for the Dealer submits that the Dealer did not pay the ET in view of the decision of the Hon'ble Court in case of *Reliance Industries Ltd. v. State of Odisha*, [2008] 16 VST 85 (Orissa), in the return, but subsequently paid the ET after the judgment dated 28.03.2017 of the Hon'ble Apex Court in case of *State of Odisha v. Reliance Industries Ltd. and Others* (SLP (C) No. 14454-14778/2008). So, he submits that the Dealer is not liable to pay penalty as there is no suppression. He further submits that the orders of the First Appellate Authority and Assessing Authority are otherwise bad in law and require interference in appeal.

4. On the contrary, the learned Standing Counsel (CT) for the State submits that the Dealer is liable to pay interest in view of the decision of the Hon'ble Court rendered in case of *M/s. Shree Bharat Motors Ltd. & another v. The Sales Tax Officer & others* (W P (C) No. 13736 of 2017 & batch appeals, decided on 15.03.2013). So, he submits that the Dealer is required to pay interest as per law.

5. Heard the rival submissions, gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The assessment order reveals that the Dealer has paid ET on bill value without addition of freight and incidental charges. Accordingly, the

Assessing Authority computed the tax liability by adding 5% of bill value towards freight and incidental charges besides imposing penalty. Learned First Appellate Authority confirmed the order of assessment.

6. Before this forum, the Dealer assails the impugned order on the grounds that ET levied on capital goods which are not manufactured inside the State of Odisha is erroneous in view of the judgment of the Hon'ble Court rendered in case of *Reliance Industries Ltd.* cited supra (W P (C) No. 6515 of 2006) and the imposition of penalty u/s. 9C(5) of the OET Act is arbitrary and illegal.

In the case of *Reliance Industries Ltd.* cited supra, the Hon'ble Court have been pleased to observe that no tax can be imposed on those imported from outside the State which are not manufactured or produced in the State of Odisha. Hon'ble Apex Court in the case of *Jindal Stainless Ltd. v. State of Haryana (2017) 12 SCC 1. 3453/2002* were pleased to observe that a tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.

Relying on the judgment of the Hon'ble Court in case of *Reliance Industries Ltd.* cited supra, the Dealer contends that he did not pay the ET and he is liable to pay ET only after the verdict of the Hon'ble Apex Court in case of *Jindal Stainless Ltd.* cited supra. The Dealer further claims that he has already paid ET of ₹7,61,531.00 against the invoice value. So, he submits that he is not liable to pay penalty as there is no suppression.

7. Pursuant to the order of the Hon'ble Court dated 08.12.2017 in **W P (C) No. 21189 of 2017**, the Committee suggested for waiver of penalty for non-payment of withheld amount of entry tax, if there is no suppression of turnover and suggested for payment of interest. The above facts have already been dealt by the Hon'ble Court in case of *M/s. Shree Bharat*

*Motors Ltd.* cited supra. So, the Dealer is not liable to pay penalty, but he is liable to pay interest as per law. Hence, it is ordered.

8. In the result, the appeal is allowed in part and the impugned order of the First Appellate Authority stands modified to the extent of deletion of penalty. The matter is remitted to the Assessing Authority for recomputation of tax liability with interest, if any, as per law keeping in view the aforesaid observations 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/-  
(J. Khan)  
Accounts Member-III**