

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 39 (ET) of 2021

(Arising out of order of the learned DCST, Koraput Range,
Jeypore in Appeal No. AAE (RGD) 2/11-12,
disposed of on 27.06.2013)

Present : **Shri G.C. Behera, Chairman**

M/s. S. Viswanadham Sons,
Gunupur, Dist. Rayagada ... Appellant

-Versus-

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

For the Appellant : Sri N. Anand Rao, A/R
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 21.06.2023 *** Date of order : 30.06.2023

ORDER

Dealer is in appeal against the order dated 27.06.2013 of the Deputy Commissioner Sales Tax, Koraput Range, Jeypore (hereinafter called as 'First Appellate Authority') in F.A. No. AAE (RGD) 2/11-12 confirming the demand raised in assessment order of the Sales Tax Officer, Rayagada Circle, Rayagada (in short, 'Assessing Authority').

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

M/s. S. Viswanadham Sons carries on business in kerosene on wholesale basis under Public Distribution System. The assessment period relates to 01.04.2005 to 31.03.2008. The Assessing Authority raised tax and

penalty of ₹1,42,870.00 u/s. 10 of the Odisha Entry Tax Act, 1999 (in short, 'OET Act') on the basis of miscellaneous Tax Evasion Report (TER).

The dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the assessment 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 orders of the First Appellate Authority and Assessing Authority to be just and proper.

3. Learned Counsel for the Dealer submits that proceeding u/s. 10 of the OET Act is not maintainable in absence of communication of acceptance of return u/s. 9 of the OET Act. He further submits that freight and transportation charges and other incidental charges were included in the books of account, i.e. trading, profit & loss account, though the same were not included in the return filed. So, he submits that the Assessing Authority should not impose penalty over the same. He further submits that orders of the First Appellate Authority and Assessing Authority are otherwise bad in law and the same require interference in appeal.

4. Per contra, the learned Addl. Standing Counsel (CT) for the State submits that the Dealer has not taken the ground of maintainability in the grounds of appeal. So, he further submits that this forum cannot adjudicate the extraneous matter in absence of any ground of it. He further submits that the Dealer admits that he has not included the freight, transportation and other incidental charges in the return turnover and did not pay entry tax on the same. So, he submits that the Dealer is liable to pay penalty for non-payment of entry tax and non-disclosing of the same in the return by violating the provisions of law. So, he submits that the orders of the First

Appellate Authority and Assessing Authority do not suffer from any infirmity and the same requires no interference in appeal.

5. Heard the rival submissions of the parties, gone through the orders of the First Appellate Authority and the Assessing Authority vis-a-vis the materials on record. The Dealer has challenged the impugned order on the ground that the transportation and freight charges have not been mentioned in the return, but the same have been mentioned in the books of account. He has also challenged imposition of penalty and TER.

This is a proceeding u/s. 10 of the OET Act. The Dealer has not challenged the maintainability of assessment proceeding u/s.10 of the OET Act. So, in absence of any ground, this forum does not feel proper to render any observation on that score.

The assessment order reveals that on confrontation of TER, the Dealer admitted that he has not included the transportation and freight charges in the return and paid the entry tax on the ground of ignorance. Purchase value includes transportation charges, freight charges and all other incidental charges as per Section 2(j) of the OET Act. Assessment order further reveals that the said charges were included in the financial statement of the Dealer, i.e. trading, profit & loss account. So, the Assessing Authority rejected the books of account on the ground that the same are not true and correct. As it is an admitted case that the Dealer has not included the freight and transportation charges in the invoice and paid entry tax as per return, which is in contrary to the provision of Section 2(j) of the OET Act. So, the Assessing Authority completed the assessment by adopting best judgment principle and added the freight and transportation charges with the GTO and TTO returned. The First Appellate Authority confirmed the finding of the Assessing Authority. Therefore, I do not find any illegality or impropriety in the said orders.

6. As regards imposition of penalty, Section 10(2) of the OET Act provides imposition of twice penalty and the Assessing Authority imposed penalty as per law. The First Appellate Authority also confirmed the same. So, the orders of the First Appellate Authority and Assessing Authority do not suffer from any infirmity and needs no interference in appeal. Hence, it is ordered.

7. Resultantly, the appeal stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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(G.C. Behera)
Chairman**