

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

S.A. No. 153 (ET) of 2017-18

(Arising out of order of the learned Addl. CST (Appeal), Central Zone,
Odisha, Cuttack in Appeal No. AA- ANG/JCST/648/13-14,
disposed of on 20.09.2017)

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

M/s. Indian Oil Corporation Ltd. (IBP Division),
213, Koyala Nagar, Talcher, Dist. Angul ... Appellant

-Versus-

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

For the Appellant : Sri A.K. Mohanty, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 04.04.2023 *** Date of order : 20.04.2023

ORDER

Dealer is in appeal against the order dated 20.09.2017 of the Addl. Commissioner of Sales Tax (Appeal), Central Zone, Odisha, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA-ANG/JCST/648/13-14 enhancing the 'nil' tax demand passed in the assessment order of the Joint Commissioner of Sales Tax, Angul Range, Angul (in short, 'Assessing Authority').

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

M/s. Indian Oil Corporation Ltd. is a manufacturer and seller of bulk explosives utilizing raw materials, i.e. ammonia nitrate, calcium nitrate, ASM, HSD, FO, ATC and soyaethine etc. The assessment relates to the

period 01.04.2007 to 29.02.2012. The Assessing Authority raised 'nil' tax in assessment proceeding u/s. 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 enhanced the tax demand to ₹65,669.00 including penalty and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, the appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority to be just and proper in the facts and circumstances of the case.

3. The learned Counsel for the Dealer submits that the First Appellate Authority has erred in not allowing set off of ET paid on purchase of raw materials in whole in terms of provision as contained in Section 26 of the OET Act. He further submits that there being no dispute with regard to payment of ET on purchase of raw materials. Dealer ought to have been allowed adjustment of the same against the tax payable on sale of finished products. He further claims that the refund of excess payment of tax. He also submits that the imposition of penalty is wholly unjustified and illegal particularly in absence of any allegation of suppression by the Dealer. So, he submits that the impugned order is liable to be set aside.

4. On the contrary, the learned Standing Counsel (CT) for the State submits that the First Appellate Authority has rightly allowed the set off keeping in view the provision contains in Section 26(1) of the OET Act. He further submits that the penalty u/s. 9C(5) of the OET Act is statutory mandated and thus, the First Appellate Authority has rightly imposed penalty in this case. So, he submits that the impugned order is lawful and the same requires no interference in appeal.

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The Assessing Authority determined the TTO at ₹32,11,41,904.00 and computed the tax at the appropriate rates, which came to total of ₹39,52,916.55. The Assessing Authority allowed set off of ₹11,73,012.00 and rejected the claim of refund of ₹1,01,761.00. The Assessing Authority raised 'nil' demand after allowing adjustment of ₹47,35,157.00.

In appeal, the First Appellate Authority reduced the set off of ET to ₹11,51,123.00 and raised the tax demand of ₹65,669.00 including penalty.

6. The Dealer claims set off on the amount paid on purchase of raw materials as per the provisions of Section 26 of the OET Act. The Dealer further claims adjustment of payment of tax on purchase of raw materials against the tax payable on sale of finished products and refund of excess payment.

Section 26 of the OET Act authorizes the manufacturer to collect the ET from the buying dealer. Proviso to Section 26 of the OET Act stipulates that the tax so collected and payable by the manufacturer shall be reduced by the amount of tax paid on the raw materials under the said Act. 1st proviso to Rule 3(4) of the OET Rules provides that the tax payable under the Act is collected by the manufacturer in case of (b) and by such registered in case of (c) and shown separately in cash memo or credit memo or bill issued to such manufacturer and declaration in E-15 form from the buying manufacturer is furnished.

7. The impugned order reveals that it is not in dispute that the Dealer has purchased the raw materials from the selling dealer and paid ET @ 1%. It is also not in dispute that the Dealer had submitted Form E-15 to the selling dealer of raw materials, who did not accept the same. The fact remains that the raw materials were purchased on payment of tax. Proviso to

Section 26 of the OET Act provides that tax so collected and payable by the manufacturer shall be reduced by the amount of tax paid on the raw materials under the said Act. So, in view of stipulations contained in the proviso to Section 26 of the OET Act, the Dealer is entitled to get full amount of set off of ET paid and the same cannot be denied merely on the ground that the selling dealer of raw materials did not accept the Form E-15. Therefore, the First Appellate Authority went wrong in reducing set off amount of ET paid. Hence, it is ordered.

8. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby modified to the extent of set off of ET paid on raw materials. The matter is remanded to the Assessing Authority for computation of tax liability afresh 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**

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(G.C. Behera)
Chairman**